

Fall 2023 NEGOTIATION SYLLABUS
Law 642 **SECTION I-- Tues-Thurs**, 1:30- 2:45 pm
Professor Valery C. Behan valbehan@siu.edu

Course Overview:

Welcome to negotiations! The skills you will learn (or hone) and practice in this class are ones that you can use for the rest of your life. Nearly every decision you make *with* another person requires negotiating, from deciding where to eat lunch together, to how much you'll pay to buy a car or a house. Negotiation is at play even in common-place interactions with strangers, like in allowing a vehicle in the next lane to merge, or putting your kids to bed. I believe all lawyers and law students would benefit from negotiation training, and personally found it to be the most useful class I took in law school.

As lawyers you will invariably negotiate much more than you will ever litigate. Most criminal matters are resolved through guilty pleas, and most civil cases are settled before trial. You will negotiate with opposing counsel many times more than you will ever face them in a courtroom. As a practicing attorney you will also need to negotiate with your own clients and even with the other attorneys and personnel in your own office.

1. Course Philosophy/ Objectives:

You will be learning the theory behind effective negotiation, but more importantly you will be implementing/practicing the skills and learning from one another's successes and mistakes. (Most **Thursdays we discuss theory** and **Tuesdays are usually reserved for practice exercises.**) In addition to reading about and watching others negotiate, each of you will participate in four practice and five graded negotiation exercises. For those who are not comfortable negotiating, these problems should give you more confidence. For those who are already skilled negotiators the goal is to improve upon your skills. Among other things, the exercises allow each student to learn for themselves the importance of preparation, of setting high but defensible goals, of asking what and why questions, of recognizing when to compromise, and of maintaining personal integrity and professional courtesy.

Additionally, in class and for the exercises, students will be able to identify instances of inequity in the treatment of others as well as in the valuation of damages, and to learn to make persuasive arguments that promote equity. You will also be able to effectively employ strategies of active listening, empathy and effective allyship during classroom discussions and negotiation exercises.

Conflict is inherent in negotiation, and the law school setting adds further *competition for grades*. This approximates the conflict and *competition for money* in the real world, but it doesn't mean that this must be unpleasant. It makes things exciting! Try not to give or take offense (don't be either a whiner or a jerk); and, like actors playing a role, don't take what

happens during a negotiation personally. Remember you will be interacting with the same students throughout the semester, just as in the real world you will likely negotiate with some of the same opposing counsel in future negotiations. Effective negotiators (cooperative or aggressive) always treat each other with respect and courtesy. I want full effort but please don't be *full of yourself*. Keep in mind that each of your graded exercises is only worth appx. 11% of your grade. Remember to be PREPARED but also try to have FUN!

2. Course Materials:

The required texts are: (1) *Effective Legal Negotiation and Settlement*, 9th Ed., Charles Craver, ISBN # 9781531017798, Carolina Academic Press [*the 8th Edition is also acceptable]; and (2) *Getting To Yes*, by Roger Fisher, William L. Ury and Bruce Patton (Penguin Books, May 3, 2011) or any addition.

3. Audio visual Materials & Equipment:

This semester we will usually meet in person on Thursdays but also some Tuesdays. There may be a few classes that I may need to teach via Zoom. *Unless there is some sort of last-minute emergency, I will always give you at least 24 hours' notice before we change an in-person meeting to a Zoom format.* If/when we do meet via Zoom make sure that you have a good internet connection, that you have the camera on during class, that the light source is in front of you (not behind you), and that you are fully dressed. Please set up a designated place where you are comfortable having the camera on or set up a virtual background.

For negotiation exercises you are encouraged to meet in person, but you can also negotiate via Zoom, other video chat platforms, telephone, or email.

You must record one of your graded negotiations. You do not need to send me a copy of the recording(s) but please place a note in that week's Self Evaluation what you learned from listening/watching to the exercise that you recorded and reviewed. Of course, if you have specific questions or concerns and would like me to review any of these recordings, I'd be happy to do so. Though not required, you're *allowed* to audio or video record* *each* of your negotiations and are encouraged to record those that are graded. Reviewing a recording is one of the best ways to learn from an exercise. This (while rarely needed) is also a way to protect yourself if a partner should claim you said or did something unethical during an exercise. Just ***make sure the other party is informed and gives consent before you record a negotiation.**

4. Attendance:

Attendance is critical for this class. **Most (but not all) Tuesdays you will be doing Negotiation Exercises out of class and attendance will not be taken.** Most Thursdays we will review the exercise from that week and discuss the technique and theory *that you will thereafter be expected to apply* in your future negotiations. **Some days you will be assigned videos of guest lectures**

and will have assigned worksheets to submit. Attendance is taken only on days we have class scheduled (in person or via zoom/video) and if there is an assignment given in lieu of class. Since we usually only meet once a week you CANNOT HAVE MORE THAN 2 UNEXCUSED ABSENCES WITHOUT PENALTY. Each day missed, starting with the 3rd absence, will result in a .10 reduction in one's final grade. (Exceptions will be made for grave injury or illness.) **You will also be counted absent on any day that you are not prepared/haven't read before class.** (Granted I won't know this unless there is a quiz or if you can't answer questions in class.)

All days that are designated as a "LAB" period on the schedule are *reserved* for you to *negotiate if you wish to*. **PLEASE KEEP this class time on TUESDAYS clear of other appointments**, so you **always have this time to negotiate** AND in case of schedule changes or for makeup classes. I will always be available for questions about an exercise during Monday class times so feel free to call me with any questions then.

6. Classroom Behavior:

You are expected to have **read the materials before class** and **to participate in discussions during class**. Behavior in class and during the negotiation exercises must conform to the Honor Code: "Law students are expected to uphold the standards of professional conduct that are reflected in this Code, which includes obligations to be honest, [and] to act in a manner that is civil toward others...." (Introduction, SIU School of Law Honor Code.) Any student who is dishonest or uncivil will be asked to leave the classroom and will be counted absent for that day.

7. Grading: 430 Points Possible

- a. **46.5%** of your grade (**200 points**) is based on your performance in 4 of the 5 **graded exercises** (the lowest exercise score will be dropped). For each exercise, the student with the highest raw score for his/her side will get 50 points. The next highest raw score will receive 47 points and so on. Record your results and raw score right onto the D2L drop box by Wednesday @ 5:00 pm. If there is a score sheet, fill in the details of your agreement, double check your math, and attach that to the drop at the same time.

Example of Scoring/Ranking of Graded Exercises

| <i>Scores Ranked</i> | <i>Side A</i> | <i>Side B</i> |
|--|---------------|---------------|
| <i>1st (highest score)</i> | <i>50</i> | <i>50</i> |
| <i>2nd</i> | <i>47</i> | <i>47</i> |
| <i>3rd</i> | <i>44</i> | <i>44</i> |
| <i>4th</i> | <i>41</i> | <i>41</i> |
| <i>5th</i> | <i>38</i> | <i>38</i> |
| <i>6th Or No Settlement</i> | <i>35</i> | <i>35</i> |

**If two or more students tie or are within 5 raw points of each other they will share the same rank/score.*

***Note: If we have an odd number of people in our class you may need to negotiate with me or a person who has taken this class before and has agreed to participate in an exercise for pro bono credit. This person will not be ranked.*

- b. **46.5% of your grade (200 points)** is based upon your performance on the **FINAL EXAMINATION**. You will be tested from lectures (including guest lectures) and your readings. It will consist of some matching and multiple choice, mostly short answers, and short summaries. If you do the READINGS and TAKE NOTES IN CLASS, it is not difficult. If you do not study beforehand, you will be unable to complete the exam in 2 hours. **FINAL EXAM DATE= _____ @ _____ (TBD).**
- c. **Appx. 7% of your grade (30 points)** will come from your writing across the curriculum (WAC) and other assignments: (1) **1 point** possible for your “Negotiate Anything with Anyone” Summary; (2) **8 points** possible for your *Selma* paper; (3) **9 points** possible for your combined Self and Peer assessments (explained in Section 8 below.); (4) **3 points possible** for participating in an **Inter-School Negotiation** and fulfilling all its’ requirements (date and details to follow); and (5) **9 points possible** for the BAR-TYPE ASSESSMENT (date and details to follow).
- d. **Reading Quizzes & Extra Credit: (2 + Points).** Pop quizzes may be given at the beginning of class from time to time to make sure you have read the material for the day. These are not worth points but if you fail you will not get attendance credit for the day. I may give extra credit for a particularly well written assignment or other task TBD. Extra credit for an Expand the Pie Opportunity will be offered week 7 (+1 point for all who complete it, +2 points for the person with the most points increased for each side).

8. Assessments:

Self-Assessments (SAs) and Peer-Assessments (PAs) **are helpful tools to improve one’s negotiating skills.** After each exercise you are required to post onto D2L: (1) a **SelfAssessment** (*that only I can view*) **written right onto the drop box itself at the same place you write in your score and attach your scoresheet (if there is one for that exercise)** on Wednesday by 5:00 pm; and (2) a **separate Peer Assessment (PA)** (*that all may view*) posted on the FORUM discussion for that week. The PA may be posted anytime Wednesday (up until midnight) for full credit. A late SA or PA will get half credit. One not posted in the correct place or manner will likewise be reduced by half.

- a. **Self-Assessments (SA)** (9 Total= 1 after each of the 4 ungraded and 5 graded exercises; each worth .5 points). Again, TYPE each SA right ONTO the DROPBOX for the exercise (those not typed onto the drop box will be -.25 points). Number and type out the following: 1) **your name**, 2) **your side**, 3) **your results**, 4) **the total points** (if there is a scoresheet) for the exercise); 5) **who you negotiated with**; 6) **how you prepared for**

the negotiation; 7) what your specific goals were for each item to be negotiated; 8) what your bottom line/ or walk-away point was for each item; what you did well; and 10) what you could improve upon.

Self-Assessment Example: “Ex. A. 1) *Val Behan*, 2) *defendant’s rep.*, 3) *my client agreed to x, y and z in the negotiation*; 4) *total points 250*; 5) *partner John Doe*. 6) *How I prepared for the negotiation*: *I looked up comparable settlements for this type of injury and researched the law on comparative fault in the jurisdiction*. 7) *My goal* for the settlement amount was for the defendant (my client) to pay no more than \$300,000 and I also wanted the plaintiff to sign a non-disclosure agreement. 8) *My client’s absolute bottom line/ walk-away point* was for him to pay \$400,000 with a non-disclosure agreement. 9). *What I did well--* *Near the start of negotiations, I used bracketing successfully; in other words, I was also able to give a counteroffer that placed my goal exactly in the middle of their initial offer and mine. They asked for \$500 K, my goal was \$300 K, so I started off offering \$100 K (and I had figures to back up that amount)*. 10). *Things I could improve*—*a couple of times I think I made two concessions in a row, and I was nervous and didn’t hold my ground on X; next time I’ll plan out my concessions ahead of time, and”*

b. Peer Assessments (PAs) are brief entries you should post onto our class D2L forum page critiquing the person you negotiated with. (9 Total= 1 after each of the 4 ungraded and 5 graded exercises; each worth .5 points). A discussion will be labeled after each exercise (e.g., *Peer Assessments for Practice Exercise #1*). Identify: (a) your name/side and (b) the name of your opponent/her side. Then list: (1) **what your opponent did well during the negotiation** (*at least one thing*); and (2) **give some suggestions for improvement** (*at least 1 mistake they made/ something to improve*).

***Note:** *Many of us are uncomfortable giving criticism (even constructive criticism) to others, but this is very important! You’re the only one who has seen the negotiation and are in the unique position of helping your opponent improve. So, if you write something like, “nothing can be improved –it was great” you will get a .25-point reduction. Late submissions are also -.25.*

Peer Assessment Example: “(a) *My name--defendant*. (b) *Opponent’s name--plaintiff*. 1. *O did an excellent job making me feel comfortable, asking questions about my underlying interests, and listening. O also deflected my question about X which* 2. *As for suggestions, O may want to be watch out for verbal leaks. At one point he said, “I don’t think I could go much higher than Y” so I knew he could go higher....*

9. Workload:

The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), “a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.” A 50-minute classroom hour is considered an hour.

This is a 3-credit hour class that meets twice a week (two 75-minute blocks). As stated earlier, for this class **most Tuesday sessions will be Lab periods** in which you negotiate. Negotiations typically take the same time as a class period or 75 minutes, but sometimes they can last longer. The amount of assigned reading for class, and out of class preparation for the negotiation exercises (including post-exercise self-assessments and peer assessments) should take you at least 6 hours per week. This added to class/lab time would total 9 hours per week. On weeks that there are no exercises your writing assignments are designed to take the same amount of time.

10. **RULES for ALL NEGOTIATION EXERCISES:**

- a. Before negotiating an exercise, you may NOT READ the other sides' Confidential Information. **Nor may you discuss it with anyone who has taken the class before or who is in the other section.** A violation of this rule will result in a failing grade for the class and disciplinary action.
- b. While negotiating do not show your Confidential Information sheet(s) to opponents; however, you may disclose some of the factual/legal information set forth in your Confidential Information if it helps your client in the negotiation.
- c. While negotiating neither side may disclose any of the specific information pertaining to their side's scoring system. (They may say that one item is valued twice as much by their client than another item, but they may not disclose that any item is worth "x" points.)
- d. **After final terms are reached**, negotiators may read Opponent's Confidential Info. & Scoring System Info. With this information you can **try to expand the pie**. (*This means that without lowering the points of either side, you both can figure out a distribution of items/terms so that at least one side gets--but ideally both sides get-more total points.*)
- e. Negotiators may **not make any knowing misrepresentations of material law or fact during their interactions**. In other words, do not lie. Representations concerning their side's value system (what their client wants/does not want) or what they are willing to accept (settlement intentions) shall not be considered representations of material fact. Such puffing and embellishment is considered "nonmaterial" information [Model Rule 4.1]. Anyone who violates this rule will receive the lowest score for the exercise in which the representation is made, and I may increase their opponents' score at my discretion.
- f. Unless otherwise directed, do not discuss settlement talks or any agreement achieved with any other Negotiation Course members, except your partner or opponents, until the time limit for all the group has expired.
- g. After a negotiation exercise, the "attorneys" must sign a joint agreement including all the terms. (Initialing a screen shot is fine.) It does NOT NEED TO BE TURNED IN but must be kept in case of disagreement as to the terms and/or point calculation. It is for

your own protection and so that you can get used to documenting and attesting to the terms agreed to after every negotiation in the real world too. The negotiation is not considered finished until the terms are initialed by each party's representative.

- h. All negotiations must be completed by 3 pm each Tuesday. Scores or score sheets (and self-assessments) are to be submitted by 5 pm. [2 points will be deducted from your final exercise score if your score/score sheet is posted AFTER 5 pm.]
- i. **Remember that a bad deal is worse than no deal!** If during a negotiation you are at or near your client's bottom line, you will probably get the lowest score on the negotiation. Therefore, it behooves you to **tell the other side that if you cannot get more for your client then you will take a non-settlement.** (This would be the same score you'd likely get anyway but would also put them at the lowest score for their side.) If you are serious about this option, the other party will likely give some more concessions since they don't want to get the lowest score either. (With some exercises there are built-in options for non-settlement; for example, you may be able to flip a coin or roll dice for your result. If this is the case, make sure your settlement is better than what you've calculated your worst result would be if you decided to roll/flip/etc.)
- j. If there is no settlement the parties still must initial each other's final offers (again, sending a screen shot will work) and each must POST his/her final offer. Please do this right on the drop box itself, labeling your name and side, the opposing counsel's name, writing "NON-SETTLEMENT" and attaching the score sheet (if there is one) showing what your last offer was and what points you *would have* received for it had it been accepted.
- k. Occasionally a party might hold out for ridiculously high points or a dollar amount much higher than anyone else on the plaintiff/prosecution side; or an insanely low dollar amount (much lower payout) or otherwise demand many more points than anyone else on the defense/defendant's side. If this party refuses to budge even after a non-settlement is proposed by opposing counsel; and if as per rule j. they both initial the final offers, and the other party had a reasonable offer and takes a non-settlement; then, **in my discretion I may** award the person who had the reasonable final offer the lower of (i) the points his/her last offer would have garnered OR (ii) the median grade for the exercise. Such an action would not affect the ranking of any other students.

NOTE 1: If you wish to negotiate in person, you may do so if you follow state guidelines as to mask wearing and social distancing. You can call the office to reserve a room at the law school or meet at any pre-arranged location. You can negotiate via email, telephone or video conferencing as well.

*NOTE 2: You are not required to negotiate Tuesdays from 1:30 to 2:45, but **keep in mind that it is a time that you, me, and your classmates have free in our schedules.** (Remember--I WANT YOU TO KEEP THIS TIME FREE OF ALL OTHER APPOINTMENTS, to negotiate if necessary or if we need a make-up class for some reason.) But since partners will be assigned and exercises given out on Thursdays, it is perfectly fine to negotiate with your partner any time*

after class on Thursday (Thursday pm, Friday, Saturday, Sunday, Monday, Tuesday, or even Wednesday as long as you finish by 3 pm and have your results and assessments in by 5 pm).

*NOTE 3: Please **check email each day** after an exercise is assigned **and respond quickly to your partner's requests to meet**. Also be considerate of each other's time. No negotiation need go longer than 1.5 hours or so.*

11. Contacting Me:

You can **contact me anytime** via email at valbehan@siu.edu or behanvalery@gmail.com I usually respond immediately or within an hour. I am also available to meet via Zoom, telephone, or in person. Email me to make an appointment. In an emergency or for questions during an exercise you can **text** or **call** me at **618-521-1847**.

12. Notice of Recording Policies:

You are not authorized to make your own recording of this class, but classes will be recorded on Echo 360 and at my discretion I will allow access to class recordings. It is an Honor Code violation to create or distribute recordings when the instructor has prohibited either action [Honor Code I.E.1.g].

13. Ban on Collaboration:

You are not allowed to obtain help from any other person (including any other student) or from generative artificial intelligence (including, but not limited to, ChatGPT) on any of the written assignments or the Final Exam in this course. If you violate the ban on collaboration policy, you will receive a failing grade on that assignment. You also may be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation.

14. Emergency Procedures:

We ask that you become familiar with Emergency Preparedness @ SIU. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit <http://emergency.siu.edu/>.

15. Disability Policy:

SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of

accommodations. If you think you may be eligible for accommodations but have not yet obtained approval, please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Please send approved accommodations to your faculty through the DSS online portal.

16. Saluki Cares:

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students, and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-2461, or siucares@siu.edu, <https://salukicare.siu.edu/>. Associate Dean Doug Lind (dlind@siu.edu, 618-453-8713) and Assistant Dean Judi Ray (judiray@siu.edu, 618-453-8135) are available at the School of Law to help students access university resources.

17. Safety Awareness Facts and Education:

Title IX makes it clear that violence and harassment based on sex and gender is a Civil Rights offense subject to the same kinds of accountability and the same kinds of support applied to offenses against other protected categories such as race, national origin, etc. If you or someone you know has been harassed or assaulted, you can find the appropriate resources here: <http://safe.siu.edu>

18. University Syllabus Attachments: see D2L

19. SCHEDULE FALL 2023: The schedule is posted on D2L under Syllabus Tab.

Schedule will likely remain as written, **but I reserve the right to make changes.**