Description and Goals

This seminar is intended to explore the processes of negotiation and settlement in legal and other contexts. Negotiation is defined as the process by which two or more parties attempt to reach a mutually agreed upon decision regarding the social ordering of relationships or the resolution of a dispute. Thus, agreement on a contract between two or more parties entails negotiation. Most civil and criminal litigation is settled by negotiation rather than decided at trial. Today, in many states, mandatory mediation–negotiation facilitated by a neutral party–is required before a case can be scheduled for trial. Other forms of alternative dispute resolution such as arbitration or summary jury trials are usually preceded by negotiation. The seminar will focus on the nature of interpersonal and intergroup conflict and strategies and tactics of negotiation. The goal of the seminar is to provide students with the opportunity to analyze the social process of conflict resolution in different legal contexts and to gain insight into their own negotiation styles. One class will introduce mediation advocacy to help prepare students to negotiate when a mediator is involved in dispute resolution. The seminar will make use of role-play simulation material and cases, as well as reading material.

Texts

There are two texts:

(a) Charles Craver: Effective Legal Negotiation and Settlement

(b) Fisher, Ury, and Patton: Getting to Yes

Additional assigned readings are on reserve in hard copy in the Library and in electronic form linked to the course Blackboard.

Grading

(1) Class participation and assignments 30%
(2) Personal Journal 30%
(3) Paper of 15-20 pages 40%

100%

Given the nature of the seminar, participation is essential. This includes class attendance and preparation of assignments.
The journal is a personal account and analysis of your activities and insights. Journal entries are due weekly. Please use your Duke identification number and not your name on all assignments.

The paper topic is of your own choosing but should deal with some aspect of negotiation or mediation. As an alternative to a paper you may create a negotiation exercise. Some examples of the latter are on reserve in the Library. You may collaborate in groups of up to four students in creating a negotiation exercise. If you write a paper, it must be done alone. This assignment is due in hard copy on Friday, December 11, 2009, at 12:00 NOON.

**Honor System**

All work for this course must be completed in adherence to all Law School rules and policies related to academic integrity, the Honor Code, and any supplemental requirements I may impose during the course of the semester. If you are unsure of what constitutes impermissible conduct, consult Law School Rule 5.2, the Law School bulletin on academic integrity (available in the Registrar’s Office), and any instructions given and materials distributed in connection with the particular assignment. Please see me if you have any questions.

In addition to the general requirements mentioned above, the honor system applies specifically to your work in this course in several ways:

1. You may not show your written role instructions for a negotiation exercise to anyone before or during the exercise. If you wish to share your instructions with other members of this class after you and they have completed negotiating, you may do so. You may not continue to negotiate once you have shown each other your written instructions.

2. You may not show the exercises to or discuss the exercises with anyone who is not presently taking this course, either before or after you complete them. The integrity of this course depends on your willingness to comply with this requirement.

3. Unless group preparation is clearly part of an exercise, all preparation for the exercises is to be done individually.

4. You may show your journal entries to anyone you want, subject to item (2) above.
Negotiation Journal Assignment

This assignment involves keeping a journal recording of your thoughts and plans for each upcoming session, your reactions to the session, and your notions about how the reading material and class discussion relate to the negotiation experience. It may also incorporate insights applied to other aspects of your personal or professional life that involve negotiation. The purpose of this assignment is to have you take a little time each week to reflect on negotiation, so as to improve your understanding of negotiation tactics and strategies and their strengths and weaknesses. Ultimately, such reflection should make you a better negotiator or mediator.

There must be a journal entry prior to and following each class session (except for the first class of the semester and the mediation class–each of these classes requires only a post-class entry). Since this is a personal journal, you have wide discretion as to what you write. However, each entry should discuss some or all of the exercises and readings for each session. The entries should not, however, merely summarize the readings or provide a blow-by-blow description of what happened during a particular negotiation exercise. Instead, you should try to analyze your negotiations and apply the material covered in class and in the readings. For example, for a given negotiation exercise you might include (as appropriate):

1. Prior to negotiation:
   - what is unique about this exercise? What should I do differently to accommodate these unique attributes?
   - what specific skill or process will I work on this week?
   - what strategy and tactics do I plan to use for this negotiation and why? What experiments will I try?
   - what do I expect of my opposing negotiator and how will I respond?

2. After negotiation:
   - what did I learn?
   - what strategy and tactics did I use? Did they work? Who drove the use of strategy and tactics, me or my opponent?
   - was I right about my choice of strategy and tactics, about my strengths, and about my opposition? If not, why not?
   - how does what I did or learned relate to my everyday world? How can this help me function better in that world or in the future?
   - can I think of an example of this type of negotiation process at work or home? How do I behave the same or differently?
what are my general ruminations on negotiating?

Journal entries do not have to be restricted to what we cover in class. You may write about negotiations you are involved in at work or home.

Journal entries must be typed in a 12-point font, double-spaced, and on one side of the paper only. Identify each entry with the date, and indicate whether it is pre or post class.

**Fall 2009**

**Reading Assignments**

**Negotiation Seminar**

*There is no reading assignment to be completed before the first class; the reading assignment listed for the first class is to be done after class. After the first class, all reading assignments are to be completed before class on the day they are listed.*

**Texts:**
- Craver: *Effective Legal Negotiation and Settlement* (6th ed. 2009)

Assigned readings not in the texts are on reserve in hard copy in the Library and in electronic form linked to the course homepage.

**August 27:** Introduction

- Craver chapters 1, 2, and 3 (pp. 1-44)

**September 3:** Individual, Gender, and Cultural Differences

- Craver chapter 14 (pp. 233-43) and chapter 15, sections 15.01 (p. 249) and 15.05 (pp. 259-67)

- Hazel R. Markus and Leah R. Lin, "Conflictways: Cultural Diversity in the Meanings and Practices of Conflict," in Deborah A Prentice and Dale T. Miller, eds., *Cultural Divides: Understanding and Overcoming Group Conflict* (Russell Sage Foundation 1999) (This article has been redacted for purposes of this course.)

September 10: Preparing to Negotiate and the Preliminary Stage

Craver chapters 4 and 5 (pp. 45-72)

September 17: The Information Stage

Craver chapter 6 (pp. 73-97)

Metcalf v. Goodvalue materials

September 24: The Competitive/Distributive Stage

Craver chapter 7 (pp. 99-126) and chapter 12, sections 12.01 (p. 192) and 12.15-12.16 (pp. 216-19)

October 1: Principled Negotiation

*Getting to Yes*, chapters 1–8

October 8: The Closing Stage, the Cooperative/Integrative Stage, Post Negotiation Assessment, and Ethics

Craver chapters 8, 9, 11, and 17 (pp. 127-43, 181-87, and 355-74)

*Getting to Yes*, Conclusion and 10 Questions People Ask

October 15: **FALL BREAK** (no class)

October 22: International Negotiations

Craver chapter 12, section 12.17 (pp. 219-20) and chapter 15, sections 15.02-15.04 (pp.250-59) and 15.06-15.07 (pp. 267-89)


*plus, after class: J. Salacuse, The Global Negotiator, Chapter 16, "Renegotiating Existing Transactions," pp. 229-55 (2003)--this will be posted and available after class*

October 29: Mediation

Craver chapter 16, sections 16.01–16.12 (pp. 291-340), and 16.14-16.16 (pp. 342-53)
November 5:  Negotiating Games, Techniques, Issues

Craver chapter 10 (pp. 145-79), chapter 12, sections 12.02-12.10 (pp. 192-208), 12.12-12.13 (pp. 210-13), and 12.18-12.19 (pp. 221-26), and chapter 13 (pp. 227-31)

November 12: Multiple Party Negotiations I

Craver chapter 12, section 12.11 (pp. 208-09)

H. Raiffa, The Art and Science of Negotiation, Introduction to Part IV "Many Parties, Many Issues" (pp. 251-255) and chapter 18 "Law of the Sea" (pp. 275-87)

November 19: Multiple Party Negotiations II

No reading

December 3: Negotiated Rulemaking

[Note: This class will not be held at the regularly scheduled time or place, as we will be combining our class with other sections. We will reschedule this class based on student and instructor availability.]

Craver chapter 12, section 12.14 (pp. 214-16), and chapter 16, section 16.13 (pp. 340-42)