

**USC Gould School of Law
NEGOTIATION THEORY &
APPLICATION
LAW-712
FALL 2019 SYLLABUS**

I. BASIC INFORMATION

A. Course Description

Negotiation Theory & Application is premised on the reality that the practice of law often requires the use of negotiation as a tool to advocate on behalf of clients, resolve disputes, and settle legal claims. This course introduces students to the process of negotiation, explores the theoretical approaches underlying various systems of negotiating, and cultivates students' advocacy skills to become effective negotiators. Students will learn each of the major bargaining theories, explore the practical application of each theory in context, and better understand strategic movements in negotiating. Through simulated exercises and reflective discussions, students will also develop skills and confidence as negotiators both as individuals and as client representatives.

B. Instructor

Professor: Jason C. Marsili
Phone: (213) 389-6050 ext. 28
Email: jmarsili@rmrllp.com (primary)
jmarsili@law.usc.edu or marsili@usc.edu
Office Hours: By Appointment

C. Textbooks

Folberg and Golann, *Lawyer Negotiation: Theory, Practice, and Law* (2d ed. **OR** 3d ed.)¹
Fisher and Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (3d ed.)

D. Time and Place

Tuesdays, 5:00-7:50 PM
Room: 114

E. Credit and Grading

This course will be a 3 unit course lasting for one semester. The course will not be offered as pass/fail.

¹ There are no significant substantive difference between the second and third editions of the main text.

F. Prerequisites

None.

G. Class Recording

Your class will not be routinely recorded. In the event you want a class session to be recorded please send an e-mail to help@law.usc.edu with the date(s), start time(s), end time(s), and room number(s) for the recording(s) you are requesting. Please note that while our Computing staff will do their best to accommodate every request, you should submit any recording requests at least 24 hours before the class session begins.

H. Course Objectives

Through classroom discussion and completion of the assigned readings, students will understand negotiation theory and appreciate the psychological, emotional, legal, and ethical components comprising the process of negotiating. Students will also comprehend the competitive, collaborative, and collective approaches to negotiating and discern opportunities to employ various aspects of each approach in different contexts. By participating in simulated exercises, students will develop skills and confidence to better represent both themselves and clients in negotiations.

II. COURSE REQUIREMENTS & GUIDELINES

A. Class Preparation and Participation

Class discussions will operate on the assumption that students have completed the assigned readings and are prepared to actively participate. Reading assignments and/or exercise roles for each class will be assigned during the previous class.

B. Attendance and Classroom Behavior

Regular and punctual attendance is expected of all students as well as active participation in classroom discussions and simulated exercises.

C. Use of Laptop Computers and Electronic Devices

Use of laptop computers, tablets, or any other electronic devices will not be required or permitted during class meetings. All necessary substantive information will be provided to students by way of handouts and/or print copies of presentation slides.

D. Grading Criteria

1. Journaling (10%)

Students will be required to draft a journal comprised of five (5) entries addressing selected topics assigned periodically throughout the semester. Journal entries are intended to foster students' considerations of negotiating in everyday life. Each journal entry shall be no longer than one (1) page in length.

2. Small Group Exercises and Classroom Discussion (40%)

Students will be required to participate in simulated negotiation exercises and engage in classroom discussion reflecting on concepts drawn from the readings.

3. Midterm Negotiation and Reflective Paper (20%)

As part of the midterm assignment, students will engage in a negotiation exercise against the Professor. Students will write a reflective paper addressing their preparation for the exercise, performance during the exercise, and perception of the Professor's tactics during the negotiation.

4. Final Negotiation and Reflective Paper (30%)

Students will participate in a large group, multi-party negotiation that will incorporate various aspects of the course material, require use of many different approaches to negotiation, and comprise both individual and group objectives. Similar to the midterm assignment, students will write a reflective paper addressing their preparation for the exercise, performance during the exercise, and perception of the other participants' positions and approaches to the exercise.

III. TOPICAL OUTLINE

1. Introduction to Course / Review of Syllabus / Overview of the Dispute Resolution Spectrum and Advocacy in Dispute Resolution
2. The Psychology of Conflict / Fairness, Emotions, and the Ripeness of Conflict / Subjective and Objective Considerations of Conflict
3. Distributive Bargaining / Game Theory and The Prisoner's Dilemma
4. Integrative Bargaining / Collaborative Approaches to Problem Solving
5. The Negotiation Process from Start to Finish / Impasse and Memorializing Agreements
6. Negotiation Personalities / Approaches to Negotiation / Understanding Your Adversary
7. Combined and Hybrid Approaches to Negotiating

8. Client Interests and Control / Managing Expectations / Maintaining Relations with the Client
9. Agency Responsibility / Negotiating as a Representative / Ethics in Negotiations
10. Divergent Interests / Incentive Schemes / Barriers to Settlement
11. Collective Bargaining / Multi-Party Negotiations

IV. OTHER POLICIES

A. Statement on Academic Integrity

USC seeks to maintain an optimal learning environment. General principles of academic honesty include respect for the intellectual property of others, the expectation that the work submitted represents solely the effort of the person(s) submitting the work (unless otherwise allowed by an instructor), and the obligations both to protect one's own academic work from misuse by others as well as to avoid using another's work as one's own. All students are required to understand and abide by the Law School's policies and expectations,

<http://mylaw2.usc.edu/portal/policies/handbook/character/plagiarism.cfm>, as well as those of the University, <http://www.usc.edu/student-affairs/SJACS/forms/AcademicIntegrityOverview.pdf>, regarding academic integrity.

B. Reporting Incidents

Discrimination, sexual assault, and harassment are not tolerated by the university. You are encouraged to report any incidents to the *Office of Equity and Diversity* <http://equity.usc.edu/> or to the *Department of Public Safety* <http://capsnet.usc.edu/department/department-public-safety/online-forms/contact-us>. This is important for the safety of the whole USC community. Another member of the university community – such as a friend, classmate, advisor, or faculty member – can help initiate the report, or can initiate the report on behalf of another person. *The Center for Women and Men* <http://www.usc.edu/student-affairs/cwm/> provides 24/7 confidential support, and the sexual assault resource center webpage sarc@usc.edu describes reporting options and other resources.

C. Accommodation of Disabilities

USC is committed to providing reasonable accommodations for members of the student body who have permanent or temporary physical, learning or other disabilities, to ensure that all students are given an equal opportunity for learning and for pursuing their academic interests. Students wishing to seek accommodation should consult the policies and procedures in the Law School Student Handbook, <http://mylaw2.usc.edu/portal/policies/handbook/exceptions/disabilities.cfm>.

D. Support Services

A number of USC's schools provide support for students who need help with scholarly writing. Check with your advisor or program staff to find out more. Students whose primary language is not English should check with the *American Language Institute* <http://dornsife.usc.edu/ali>, which sponsors courses and workshops specifically for international graduate students.