

# **Negotiation Theory & Practice**

**Professor Thomas J. Stipanowich**

**Max-Kade-Visiting Professor**

**Summer, 2015**

## **Description of Course**

This course provides an intensive introduction to the insights and skills that are essential to effective negotiation of legal disputes. In this course, we will briefly explore:

- negotiation as an exchange involving mixed motives;
- human conflict modes;
- competitive positional bargaining and collaborative problem-solving, and strategic management of the tension between the two approaches;
- preparing for negotiation, including goal-setting, risk analysis, interest inventories and concession plans.
- the many forms of power and leverage, including the power of a good “BATNA”;
- the role of cognitive perceptions, concepts of fairness, psychological “traps” and opportunities; and
- the impact of emotions and other realities that undercut “rational” bargaining.

Our class sessions, each of which will be 90 to 100 minutes in length, will consist of periods of discussion interspersed with exercises designed to explore certain aspects of negotiation.

## **Course Materials**

*A Negotiation and Settlement Advocacy Notebook* will be distributed on the first day of class.

Readings to accompany our class discussions will be made available in electronic form prior to the first class. In the brief Syllabus (below), have identified readings associated with each of the topics that will be covered during the course. You are encouraged but not required to read pertinent readings in advance of class.

I would also encourage you to read Roger Fisher & William Ury, *GETTING TO YES* (latest edition), which is available in German translation.

## **Course Grades**

This is a Pass/Fail course. Grades will be based on attendance and participation in the classroom.

## Thomas Stipanowich

**Thomas Stipanowich** holds the William H. Webster Chair in Dispute Resolution and is Professor of Law at Pepperdine University School of Law, as well as the Academic Director of the Straus Institute for Dispute Resolution (ranked first by peers in U.S. NEWS & WORLD REPORT ratings for 11 years). Stipanowich came to Pepperdine in 2006 after serving for as President and CEO of the International Institute for Conflict Prevention & Resolution (CPR Institute), a Manhattan-based nonprofit think tank, before which he enjoyed a long career as chaired law professor and attorney.

He co-authored the much-cited five-volume FEDERAL ARBITRATION LAW (Best New Legal Book, Association of American Publishers) and COMMERCIAL ARBITRATION AT ITS BEST (2001); he is also co-author of the popular law school text and materials RESOLVING DISPUTES: THEORY, PRACTICE, AND LAW (3<sup>rd</sup> ed. 2016). He was Editor of the COLLEGE OF COMMERCIAL ARBITRATORS PROTOCOLS FOR EXPEDITIOUS, COST EFFECTIVE COMMERCIAL ARBITRATION (2010); is an Advisor for the RESTATEMENT OF AMERICAN LAW OF INTERNATIONAL ARBITRATION and a member of the Academic Counsel of the Institute for Transnational Arbitration and the Advisory Board of the New York International Arbitration Center.

Stipanowich is an experienced commercial arbitrator and mediator with emphasis on large and complex cases in the U.S. and internationally; has trained arbitrators or mediators for several different organizations and has conducted in-house programs on negotiation and dispute resolution for many leading companies and law firms around the world.

In 2010 he was Scholar-in-Residence at the Park Lane (London) office of WilmerHale, and in 2014 the New Zealand Law Foundation's International Visiting Scholar on Dispute Resolution. Among other honors, he received the D'Alemberte-Raven Award, the ABA Dispute Resolution Section's highest honor, for contributions to the field (2008); he twice received the CPR Best Professional Article award.

## Syllabus

### **Class One (July 1): Negotiation as a Mixed-Motive Exchange; Introduction to Competitive or Distributive Bargaining**

*Negotiation and Settlement Advocacy Notebook*, Section 1; Section 2 (pp. 2.1-2.2)

Related Reading:

*"Competitive Negotiation"*

### **Class Two (July 8): The Predictability of Distributive Bargaining**

*Negotiation and Settlement Advocacy Notebook*, Section 2

Related Readings:

*"Competitive Negotiation"*

*"Making Offers and Other Concessions"*

### **Class Three (July 15): Creating Value: The Potential of Integrative Bargaining**

*Negotiation and Settlement Advocacy Notebook*, Section 3

Related Readings:

*"Cooperative or Interest-Based Negotiation"*

*"Preparation, BATNAs, Power, Goal-Setting"*

*"Trust and Rapport; Sharing Information"*

### **Class Four (July 22): Human Factors: Cognitive Bias, The Role of Culture, Emotion**

Related Readings:

*"Perception, Fairness, Psychological Traps and Emotions"*

*"Applying Neurobiology to Conflict-Resolution Process Design"*