

PREFACE TO THE SECOND EDITION

Negotiating is a routine part of the professional life of virtually all lawyers, regardless of their area of specialty. With the possible exception of writing, no subject is as important for lawyers to understand thoroughly and practice competently. In the 21st century, law school curriculums are reflecting this reality more and more. Most law schools offer a course devoted entirely to the study of negotiation, many schools offer multiple courses, and a few have even developed special programs in the field of negotiation and dispute resolution. This book was written with the goal of providing an in-depth, intellectually rigorous yet practically useful introduction to the study of negotiation for law students, as merited by the importance of negotiation to the practice of law.

The design of the book reflects, of course, my personal views about the study of negotiation. The following four themes, I believe, are reinforced throughout the volume, and give the book its unique character:

First, negotiation is an inherently interdisciplinary subject. The reprinted excerpts, narrative sections, and note material in this book draw heavily on insights from a variety of social sciences (particularly economics, psychology, and sociology), as well as more traditional legal sources such as judicial opinions and law review articles.

Second, lawyers and other professional negotiators are best served by developing a thorough understanding of the structure of negotiation rather than merely mastering the execution of a list of tactics. The book attempts first to provide a conceptual framework for understanding negotiation, and then to consider how tactics that negotiators use and issues that arise at the bargaining table fit into that framework. By leaving the classroom with such a framework, students will have the tools to teach themselves to be successful negotiators throughout their lives as they continually face the need to adapt their skills to new contexts and changing situations.

Third, the basic structure of negotiation is the same regardless of the particular bargaining context. Many of the examples provided in the book come from contexts in which lawyers often find themselves. And some of the concepts covered, i.e., challenges and opportunities created by the relationship of a principal party and his agent, are of particular relevance to lawyers, given the context in which they work. Nonetheless, the core concepts taught in the book can be applied to all negotiation situations, not just legal ones. Students should benefit from this approach whatever their career goals. Similarly, although the book was written with law students in mind, it can be successfully used for a course taught to students in other fields. I have used it to teach both M.B.A. and undergraduate courses.

Fourth, the goal of equipping students with the ability to implement what they have learned in their daily personal and professional dealings is best served by the following three pedagogical steps:

1. Communicate intellectually challenging concepts.
2. Reinforce those concepts by challenging students to apply them to new situations and to their life experiences.
3. Provide an opportunity for students to tailor the concepts for their own use in an interactive setting.

Each chapter of the book exposes students to challenging theoretical concepts through a combination of narrative material, excerpts of published books and articles, and note material that further explains and builds on points made in the narrative and excerpted sections. The “Discussion Questions and Problems” that end each chapter provide an opportunity for students to explore and apply the reading material in a class discussion format. Finally, a recommended negotiation simulation (or simulations) accompanies each chapter. These exercises, provided in the teacher’s manual that accompanies this book, were designed specifically to reinforce the concepts emphasized in the relevant chapter.

The structure of the book remains the same as the first edition: 15 chapters (approximately one per week for a one-semester law school course) are divided into five parts, with each part adding a new layer of complexity to the core concepts of the course. Chapters 1, 14, and 15 are essentially unchanged. The rest of the chapters have been revised to sharpen the analysis, add new points, and include new materials. Some of the revisions represent efforts at fine-tuning the content and presentation based on what I have learned from teaching the book many times at UCLA and around the world. For example, the decision-analytic approach to setting a reservation price provided in Chapter 2 (“Estimating the Bargaining Zone”) has been adjusted to flow a bit more smoothly; Chapter 4 (“Integrative Bargaining”) adds a new section on creating value by mitigating the problems of adverse selection, moral hazard, and uncertainty; Chapter 5 (“Power”) contains an expanded analysis of the risks of using bargaining power; and the major topics included in Chapter 6 (“Fair Division and Related Social Norms”) have been reordered so that the chapter now begins with a discussion of the meta-norms of distributive justice. Other revisions add new depth to topics that I felt were covered too briefly in the first edition, often taking advantage of new developments in the scholarly literature. For example, Chapter 3 (“Psychological Factors in Evaluating Alternatives”) includes new materials on support theory and attribution biases; Chapter 7 (renamed “Interpersonal Obstacles to Optimal Agreements”) has been expanded to include new discussions of the determinants of trust and the role of emotions in negotiation; Chapter 8 (renamed “Negotiator Style”) now includes an expanded treatment of the role of aspirations in bargaining; and Chapter 9 (“Group Membership”) incorporates a substantial amount of new social science literature on the role of gender in negotiation.

Even as I have tried to make the book richer in substance and, in some cases, to expand its scope, I have also taken pains to keep it short enough in length that it can be assigned and taught in its entirety in one semester. The text is about 10-15 percent longer than the first edition (although the second edition has

fewer pages due to the book's larger trim size), but I think that professors can reasonably expect even busy law students to read and prepare one chapter each week, even assuming that most will also require students to prepare out-of-class for weekly negotiation simulations (all of which are included in the teacher's manual available to instructors from the publisher). The book's design is modular, so instructors can choose to assign the chapters in a different order than the one I have chosen to better suit their conception of the course without creating undue confusion on the part of students.

As I continue to study and teach negotiation, the list of people who have personally influenced my thinking on the subject and/or who have provided specific feedback or advice on the book continues to grow: the contributions, large and small, of Janet Cooper Alexander, Ian Ayres, Linda Babcock, Max Bazerman, David Binder, Richard Birke, Iris Bohnet, Gabriella Blum, Bob Bordone, Paul Brest, Jennifer Gerarda Brown, Rachel Croson, Joe Doherty, Craig Fox, John Fleming, Clark Freshman, Don Gifford, Jonathan Greenberg, Chris Guthrie, Art Hinshaw, Chris Honeyman, Ken Klee, Al Korobkin, Grande Lum, Carrie Menkel-Meadow, Michael Meurer, Bob Mnookin, Michael Moffitt, Woody Mosten, Janice Nadler, Bruce Patton, Jeff Rachlinski, Alan Rau, Len Riskin, Lee Ross, Andrea Schneider, Dan Shapiro, Ed Sherman, Donna Shetowsky, Guhan Subramanian, Eric Talley, Amos Tversky, Tom Ulen, John Wade, and Nancy Welsh are gratefully acknowledged, as is the invaluable research assistance provided over the years by Paul Foust, Leib Lerner, Bo Moon, Joe Woodring, Gina Nicholls, Paul McReynolds, and the entire UCLA School of Law library staff.

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