

Professor Mitchell
NEGOTIATION EXAM
SUMMER 1997

This exam, including instructions, consists of EIGHT (8) pages. Please stop at this point and make sure that you have EIGHT (8) pages. There are THREE QUESTIONS OF EQUAL WEIGHT. Each question begins on a separate page.

USE SEPARATE BLUE BOOKS FOR EACH QUESTION. PUT THE QUESTION NUMBER ON THE BLUE BOOKS.

You have three hours to complete the exam.

You are to place your Examination Number, NOT your name on your exam. If you do not have a Summer Examination Number, put your social security number on the exam. Be sure that you put your number on each blue book that you use.

Exam taking procedure:

1. We would suggest that you approach each question as follows:
 - a. Turn first to the question being asked and read it;
 - b. Then read the question;
 - c. Then read the question being asked again, and finally;
 - d. Answer the question.
2. Answer only the questions we have asked.
3. Do not answer a question that you prefer to answer.
4. Relax. This is only school.

SUBMIT YOUR COMPLETED BLUE BOOKS IN ROOM 37.

Negotiation Exam/Summer 1997

QUESTION A

Mary Jones lives in Philippi, Ohio, a town of 14,000 people. Philippi has two grocery stores, Kroger and Big Bear. Mary was shopping at Kroger a few months ago. She rounded a corner and slipped on mayonnaise, which was oozing from a broken jar on the floor. She twisted her ankle.

She paid for her groceries and left the store. That evening, her ankle began to swell and it was very painful. She went to the local urgent care facility. The doctor gave her prescriptions for an anti-inflammatory and a pain killer. She recovered nicely. She continued to shop at Kroger because the produce section was much better than the one at Big Bear.

About 10 minutes after Mary slipped, Stephen Smart rounded the same corner, slipped and fell in the same mayonnaise, breaking his ankle. He screamed for help. The store manager called an ambulance, and Stephen was rushed to the hospital. The ankle was put in a cast. Several weeks later, Stephen approached the store manager about Kroger's paying for his medical expenses and a little for his pain and suffering. The store manager agreed without hesitation to pay for the medical expenses but would offer nothing more.

While Stephen was being loaded onto the stretcher, Jane Abbott rounded the same corner, slipped slightly in the mayonnaise and struck her ankle bone on the lowest shelf. The ankle hurt briefly. She had a bruised ankle for several days, and then she felt fine. Two years later, she developed a cancerous tumor at the point where the ankle was bruised.

Discuss each party's response to the injury within the context of grievance theory.

QUESTION B

About two months after she hurt her ankle, Mary was attending an evening presentation at her church. The topic was "You and Your Rights." The presenter was Lawrence Trade, a local attorney. He explained the nature of his practice and described some typical bodily injury suits he had handled. Several days later, Mary called Trade's office for an appointment to discuss the injury to her ankle.

Discuss Mary's most recent response to the injury to her ankle and, within the context of grievance theory, describe what has influenced her current behavior.

QUESTION C

During the appointment, Lawrence listened as Mary provided the following additional information. She wants to recover enough money to reimburse her for her medical expenses of \$150 and a little for pain and suffering. She wants to recover no less than \$8,000.

She also told Lawrence that she had learned about Stephen's injury, and she is considering contacting Stephen and suggesting that they organize a boycott of Kroger's. She asserted that it is the principle of the matter; that stores should keep their aisles clean. She announced that she was in this for the long haul. When Lawrence suggested that Kroger was a multi-million dollar organization and one could not anticipate its response. Mary said she could live with that.

Lawrence has identified several sources of power in this negotiation. What are they? Do you think they will be effective sources of power?

QUESTION D

Lawrence has decided to attempt to settle this matter by calling counsel for Kroger. Can he ethically do this?

When he calls Kroger, can he ethically make the following statements:

- a. "Mary Jones and Stephen Smart are proposing a boycott of Kroger which will cost you thousands of dollars."
- b. "Mary has been in pain for two months."
- c. "My client will settle for no less than \$50,000."

QUESTION TWO

Use the following information to respond to the task described at the end.

You are a sole practitioner, and you conducted an office consultation with new client, Mary Baker. The client was involved in an automobile accident over a year ago, and she is confused about how to proceed. Ms. Baker feels that she has been wronged and that she has suffered physically, emotionally and financially. She wants to hire you to represent her in recovering everything to which she is entitled. Your interview elicited the following information:

Mary Baker said the other party ran a red light and hit her car. Neither party was cited by the police. The other party apparently denies running the red light and did not appear injured. Mary said a bystander reported to the police that the other party ran the red light.

Mary was transported to the hospital by ambulance for evaluation and released. Mary suffered a mild concussion, and a cut on her head, which required 6 stitches. Mary was also diagnosed with a cervical sprain/strain and had back pain for 8 months after the accident.

Medical bills for Mary Baker total:

- \$2500 in medical bills and
- \$4000.00 in chiropractic treatment lasting 6 months

Mary's health insurance covered all bills, except for chiropractic treatment which is unpaid

A 3 inch scar on Mary's forehead at the hairline is permanent. Mary is single and employed as a secretary at \$10.00 per hour. Mary missed 40 hours of work for medical appointments. Mary had \$2500 in damage to her car which is still unrepaired.

Mary Baker visited your office approximately one year after the accident date. She brought

with her copies of all of her medical bills. She brought no other papers with her. She mentioned that she couldn't afford to spend a lot of money on this matter because the chiropractor is pushing her for payment on his bill, she wants to schedule plastic surgery for the scar on her forehead, and her car is still unrepaired, although it can still be driven. She stated that she had attempted to resolve this matter with the attorney for the other party by herself. Mary reported that the other attorney denied her claim by telephone. Mary was unclear as to why her claim was denied. She gave you the name and telephone number of the attorney. You are aware that this attorney is a well respected attorney in a large firm.

Mary Baker also exhibited fear and distrust of the court system and stated that she had been cheated out of everything she owned in a divorce 5 years ago. She also stated that she felt that the bad advice of her divorce attorney had been the cause of her unsatisfactory experience, and she expressed fear at the prospect of going to trial because of this accident. She also expressed anger about the fact that the other driver was apparently going to get off without paying for his negligence because he could afford to hire an expensive attorney.

COMPLETE THE FOLLOWING QUESTIONS You have decided to represent Mary Baker in this matter, but you have not yet determined how you would advise her to proceed. Based on your past legal practice you know that most personal injury claims are negotiated to a successful conclusion either before or after the lawsuit is filed. Therefore, you recognize that any case evaluation involves adequate and thorough negotiation planning in a number of different areas. At this point you have not had the opportunity to talk to opposing counsel or to do legal research, but you still need to plan what you would do. The following list contains some of the areas in which you would do planning in your client's case.

From this list and based on the limited information that you have, select **FOUR ITEMS** you would consider to be the most important. Explain why you have selected each item, and describe how you would approach or prepare planning in that area. Item number one should be the most important planning consideration, then number two, then number three and then number four.

Objectives
Information
Facts
Legal Positions
Interests
BATNA
Creative Resolutions
What is a Win?

QUESTION THREE

Question 1: Read the following fact pattern and answer the questions that ensure

The National Association for Dispute Resolution (NADR) is a national organization based

in New York City. NADR was created in 1983 by four national corporate foundations. During its first 10 years NADR's mission was to promote the use of conflict resolution programs by administering a grants program that seeded a variety of conflict resolution initiatives throughout our society. In addition, NADR developed an associates programs which attracted mainly attorneys, conflict resolution practitioners in the public policy arena, researchers and conflict resolution trainers. The associates received a bi-monthly newsletter and quarterly journal.

In 1994, NADR was notified by its major founders that after December 1998 they would no longer be providing funding. Despite this action, the founders stated that they believed the mission of NADR remained important and encouraged the board members of the charitable organization to "re-invent" itself and continue in existence.

In 1995 the NADR board decided to narrow its scope to focus on conflict resolution skills for youth and their teachers and committed to the development of an active membership and a set of projects in line with the new focus. The board believed that a narrower focus would be more easily understood by future founders and that this was necessary to meet the organizations \$1.2 million annual budget.

The Association for Conflict Management in Education (ACME) was also created in 1983 as a national association for teachers and other individuals who were interested in teaching conflict management skills to students. ACME was started as a grassroots organization and operated as a special program of Kansas State University in Manhattan, Kansas.

Over the years, ACME has gained national recognition for its work in school conflict management, especially for its annual conference, active and knowledgeable membership, extensive publications clearinghouse, and expert technical assistance via telephone. ACME has a volunteer advisory council of seven individuals, and its membership includes primarily teachers, conflict management trainers, student peer mediators, and peace activists. ACME has a small staff of four people and an annual budget of \$325,000.

In 1996 NADR board members learned that ACME was looking for a new home and entered into some very preliminary discussions about a merger. Follow-up inquiries lead to the meeting that is scheduled for a week from today. The NADR board has hired you to represent them during the negotiations. Although the location for the meeting has not been set, you know that you will be meeting with an attorney who is representing ACME. In addition to the information listed above, you have been able to glean the following information:

ACME owes a \$50,000 debt to the university for a loan it received in 1995, and the university states that the debt must be paid in full before the university will allow ACME to move to another organization. ACME is frustrated because it has not been able to make a larger impact on national and state legislation and educational policy development. ACME is proud of its social justice roots, and its members are concerned that a New York City organization will not adhere to ACME's founding values. ACME's attorney has a personality type of INFJ based on the Myers-Briggs Type Indicator. ACME feels that its current advisory council must have some role in the new merged organization to ensure NADR's long-term commitment to school conflict

management. ACME indicates that its publications clearinghouse has an existing inventory of school conflict management publications which was purchased for \$80,000 and has a resale value of \$112,000. NADR has current cash reserves of \$1.8 million. NADR board members believe that school conflict resolution is a very attractive topic for funders. NADR's position is that the sooner the merger occurs, the better.

Question A:

As the attorney for NADR, you are to prepare a comprehensive negotiation strategy that will result in a successful merger of the two organizations. Describe the attitude, style, strategy, and tactics you will use and explain why this is the best approach based on the information that is available to you at this point in time.

Question B

Assume the negotiation is underway and you are attempting to implement the comprehensive negotiation approach you described in your answer to Part A of this question. Also assume that during the negotiation, the opposing negotiator makes the following statements. For each statement, provide your response and explain why it is the best response based on the information that is available.

1. "It's clear that NADR's board wants ACME to move to become a part of their organization, but I'm not exactly sure why. Specifically, what are NADR's interests - or underlying needs - in wanting ACME? It's important that I share these interests with the ACME Advisory Council."
2. "Personally, I don't think you get it. The ACME Advisory Council is concerned about the impact this move will have on its members. Until you and NADR acknowledge this issue and demonstrate a commitment to ACME's traditional activities and founding values, this is going to be a difficult process."
3. "If you can't agree to place all members of ACME's advisory council on your board, I don't think we have much more to talk about today."