

English for Dispute Resolution Companion Site Materials

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University of Michigan Press
Ann Arbor

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Published in the United States of America by the
University of Michigan Press

Manufactured in the United States of America

First published July 2025

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CAVEAT (WARNING!): This book presents general principles about Alternative Dispute Resolution (ADR) for education and information. Readers should not use it as advice for specific cases. Instead, readers should seek legal advice from their own attorneys or carefully research the applicable laws and rules for their specific cases.

OTHER BOOKS BY BARRIE J. ROBERTS:

The “Getting to Yes®” Guide for ESL Students and Professionals:
Principled Negotiation for Non-Native Speakers of English

Conflict Resolution Training for the Classroom: What Every ESL Teacher
Needs to Know

For more information about English for Dispute
Resolution (EDR) visit www.learn-edr.com/

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CHAPTER 1

1.01. ADR Terms (Table 1.1)

	Synonyms	Other forms of the word	Translated into other languages you know
Dispute	<i>Disagreement</i>	<i>Disputant</i>	<i>la disputa</i>
Conflict			
Negotiation			
Mediation			
Resolution			
Settlement			

1.02. Other Dispute Resolution Processes

Negotiators, mediators, and ADR professionals provide a variety of dispute prevention and resolution services. Review these summaries and research the processes that interest you. Also consider how Online Dispute Resolution (ODR) and AI may affect each process.

Collaborative Law¹: Parties hire collaborative lawyers to help them resolve their disputes with win-win solutions that satisfy both parties' interests. If the parties do not reach an agreement and decide to go to trial, they must hire different lawyers. Collaborative lawyers may help parties create a team of experts, such as accountants or marriage counselors, to provide advice. Collaborative law can be used for many case types but it is most commonly used in family law (divorce and child custody cases). For an example, see the hypo on p. 236 in the book.

Conflict Coaching²: Conflict coaches are trained to help one party consider ways to deal with problems they are having with someone else, such as a boss, coworker, spouse, neighbor, or roommate. After working with a conflict coach, a party may decide to try to negotiate or mediate with the other person or to resolve their problem in another way.

Dispute Prevention: Dispute prevention professionals develop ways to protect business and employment relationships by identifying and resolving disputes before they *escalate* (become more serious). They may *serve as* (provide the service of) mentors or coaches who are on *standby* (available to help if needed). To learn more about this important, growing, and cutting-edge field, visit the International Center for Conflict Prevention and Resolution (CPR) website (<https://www.cpradr.org/dispute-prevention>).

Dispute Systems Design: ADR “systems design professionals” create systems for preventing, managing, and resolving disputes within organizations. You can easily find articles, websites, and course descriptions online by searching for “Dispute Systems Design.”

Neutral Evaluation: When parties want a “reality check” about the strengths and weaknesses of their case and the likelihood of success at trial, they can use a “Neutral Evaluation” program to ask a retired judge or very experienced attorney to evaluate their case. The parties do not ask the evaluator to help them reach an agreement; instead, they ask for an evaluation that will help them make decisions about using ADR or going to trial. This approach may be called Early Neutral Evaluation (ENE) when it takes place early in the case, soon after it is filed.

Ombuds: Ombuds work for government agencies, private companies, and institutions such as universities, hospitals, and nursing homes. They have a variety of important roles, but their main function is to respond to complaints and conflicts from the organization’s employees and/or *customers* (the people that the organization serves). Ombuds use a range of problem-solving techniques including interviewing, conflict coaching, and mediating. They may also research and report on systemic or recurring problems within organizations and propose solutions. Ombuds are often a key element in ADR Systems Design. You can easily research “Ombuds” or “Ombudsman” organizations online.

Public Policy Mediation: Public policy mediators work with groups that have conflicting positions on important issues that affect the public, such as the environment, zoning for controversial projects (nuclear power plants, housing for low-income people), and conflicts between police and

communities. Participants may include representatives from government agencies, businesses, neighborhood groups, and non-profit organizations. Public policy mediators use a wide range of processes to help people on all sides find common ground and solve problems or at least understand each other better. For more information, see the list of resources in this endnote.³ For an example, see the “Happy Valley Hypo” (pp. 118–119 in the book).

Restorative Justice⁴: Restorative justice is a special type of mediation that is most commonly used in criminal cases for both juveniles and adults. The focus is on how the offender can repair the harm they inflicted on the victim. In a restorative justice session, the mediators, often called “facilitators,” arrange a meeting between the offender, the victims, and anyone else who has been impacted by the offender’s actions.

The victims describe how the offender has harmed them and what should be done to repair the damage. The offenders may describe their background, life experiences, and reasons for their actions, not to be excused but to be understood. They are asked to take responsibility for those actions, show understanding of the harm they have caused, and repair the damage by making payments, performing community service or service to the victims, apologizing or expressing remorse, or taking other actions that are meaningful to the victims.

Notes

1. See, for example, Collaborative Practice of California accessed December 18, 2023, <https://cpcal.com/>. Also see Collaborative Practice of California, <https://cpcal.com/>; “Judges Love Collaborative Law—Here’s Why,” American Bar Association, July 2018, <https://www.americanbar.org/news/abanews/publications/youraba/2018/july-2018/neither-mediators-nor-negotiators-collaborative-lawyers-emphasi/>; and John Lande, *Lawyering with Planned Early Negotiation: How You can Get Good Results for Clients and Make Money* (Washington, DC: American Bar Association, 2011).

2. See Robin Amadei, “Conflict Coaching,” Mediate.com, February 21, 2017, <https://www.mediate.com/conflict-coaching/>; the San Francisco Community Boards website: <https://communityboards.org/resolution-services/conflict-coaching/>; and Barrie J. Roberts, *Conflict Resolution Training for the Classroom: What Every ESL Teacher Needs to Know* (Ann Arbor: University of Michigan Press ELT, 2023), 42.

3. The following search for “public policy mediation” at Mediate.com provides links to many articles and videos about public policy mediation: <https://mediate.com/?s=public+policy+mediation>

4. For an excellent feature film (adapted from the play by David Williamson) about a restorative justice process in Australia, see *Face-to-Face* <https://filmfestivalflix.com/film/face-to-face-lady-filmmakers-channel/>

1.03. Exploring ADR

YOUR CAMPUS

- Search for Ombuds or Ombudsman; conflict resolution, dialogue, intergroup dialogue, or mediation programs; and courses such as ADR, mediation, negotiation or peace and conflict studies.

OTHER UNIVERSITIES, LAW SCHOOLS, AND GRADUATE SCHOOLS

- Examples: Straus Institute for Dispute Resolution; Harvard Project on Negotiation; University of Missouri School of Law, Center for the Study of Dispute Resolution (CSDR).
 - Straus
 - Harvard PON
 - Missouri

FEDERAL OR STATE COURTS

- Search for “ADR” or “mediation” on a court website. Examples:
 - The Judicial Branch of California
 - Georgia Office of Dispute Resolution
 - Hawai’i State Judiciary
 - Los Angeles County Superior Court
 - United States Courts for the Ninth Circuit

- Check court websites for information about ADR that is translated into your first language or other languages you know. Analyze the information. Does it seem accurate? Is it “user-friendly” (easy for non-native speakers of English who are not lawyers to understand and use)? Examples:
 - The Los Angeles Superior Court ODR page: <https://my.lacourt.org/odr/small-claims> (Look for the list of languages in the top right corner.)
 - The Santa Clara Superior Court ADR page: https://www.sccscourt.org/online_services/adr.shtml# (Look for the Google Translate arrow at the top of the page.)
- Check court websites for organizations that provide mediation services for the court and for “mediator profiles” or “mediator panels” that help parties find good matches for their case. Example: Riverside County Superior Court: <https://adr.riverside.courts.ca.gov/Home/CivilMedPanel>

FEDERAL AGENCIES

Research mediation programs used in federal agencies that interest you. Examples:

- The U.S. Equal Employment Opportunity Commission
<https://www.eeoc.gov/mediation>
- The US Postal Service has a particularly well-known ADR Program: REDRESS Mediation Program: <https://about.usps.com/who/legal/redress/welcome.htm>

YOUR COUNTY OR STATE IN THE UNITED STATES

- Search for community or neighborhood mediation organizations, bar associations, private mediators, and professional ADR organizations. Examples:
 - San Francisco Community Boards: <https://communityboards.org/>
 - Riverside County Bar Association, Dispute Resolution Services <https://rcbadrs.org/>
 - JAMS, Inc. <https://www.jamsadr.com/>
 - American Arbitration Association (AAA) <https://adr.org/>

YOUR HOME COUNTRY OR ANOTHER COUNTRY

- Explore ADR or mediation programs outside of the US.
- Explore international ADR organizations. Examples:
 - American Bar Association's Dispute Resolution International Committee
<https://www.americanbar.org/groups/litigation/about/committees/international-dispute-resolution/?login>
 - The Ukrainian Academy of Mediation:
<https://en.mediation.ua/en/pro-akademiyu/partnery>
 - Mediators Beyond Borders
<https://mediatorsbeyondborders.org/>
- For international disputes concerning intellectual property, technology, and life sciences:
<https://www.icdr.org/technology-and-life-science-disputes/survey-and-report>

ADR WEBSITES

- Explore ADR websites. Examples:
 - www.mediate.com
 - <https://www.williamury.com/>
 - American Bar Association Dispute Resolution Section
https://www.americanbar.org/groups/dispute_resolution/?login
 - International Center for Conflict Prevention and Resolution (CPR) <https://www.cpradr.org/about-us>
 - Center for Effective Dispute Resolution (CEDR)
<https://www.cedr.com/>

EXPLORING ONLINE DISPUTE RESOLUTION (ODR) AND AI

- To learn about current and future AI tools for ADR, see John Lande, “When AI comes to the table: a taste of the future for dispute resolution,” June 1, 2025
<http://indisputably.org/2025/06/when-ai-comes-to-the-table-a-taste-of-the-future-for-dispute-resolution/>
- To learn about using AI for negotiation, see Katie Shonk, “From Agent to Advisor: How AI is Transforming Negotiation,” Program on Negotiation, Harvard Law School, March 17, 2025, <https://www.pon.harvard.edu/daily/negotiation-skills-daily/from-agent-to-advisor-how-ai-is-transforming-negotiation/>
- For a six-minute video introduction to ODR, see Colin Rule, “Colin Rule on Online Dispute Resolution,” Reinvent Law Channel, August 22, 2013, available at Mediate.com, <https://www.mediate.com/colin-rule-on-online-dispute-resolution-video/>

- For a court website that explains ODR to parties in eviction lawsuits, see “Unlawful Detainer (Eviction),” The Superior Court of California, County of Los Angeles, n.d., accessed November 2, 2023, <https://my.lacourt.org/odr/unlawful-detainers?popup=TakeAVideoTour>. This page is translated into five languages.
- To learn about the National Center for Technology and Conflict Resolution, visit <https://odr.info/rule/> and the International Council for Online Dispute Resolution, <https://icodr.org/>
- To learn about ODR for disputes between online buyers and sellers, such as eBay’s ODR program, see: <https://pages.ebay.com/services/buyandsell/disputeres.html>
- For more on ODR, see Amy J. Schmidt and Colin Rule, *The New Handshake: Online Dispute Resolution and the Future of Consumer Protection* (Washington, DC: American Bar Association, 2018).
- Choose a few AI platforms, ask them to work on the ADR issues of your choice, and analyze your experience.

RESEARCHING THE JOB MARKET FOR ADR CAREERS AND SKILLS

- Research listings of attorneys who offer ADR services <https://www.martindale.com/alternative-dispute-resolution-lawyers/los-angeles/california/>
- Find job descriptions for legal jobs and other jobs that require or prioritize negotiation, mediation, and communication skills.

- Research ADR or mediation programs for your field or interests. Examples: family law, employment law, environmental law, corporate law, administrative law, civil rights, probate, personal injury, professional malpractice, business, securities, construction defect, real estate, zoning.

GAINING PRACTICAL EXPERIENCE IN ADR

- See if your university or law school has a mediation clinic or internship program.
- Take a mediation training with a community or neighborhood mediation program and volunteer in their programs.
- Explore national and international negotiation and mediation competitions. There are too many to list; here are two examples:
 - International Negotiation Competition <https://law-competitions.com/>
 - Intercollegiate Negotiation Competition <https://www.negocom.jp/eng/>

Are you a *Star Wars* fan? If you'd like to see how the principles in this book apply to the movie, take a look at this book: Noam Ebner and Jen Reynolds, editors, *Star Wars and Conflict Resolution: There Are Alternatives to Fighting* (St. Paul: DRI Press, 2022).

CHAPTER 2

2.01. Analyzing Ethical Problems for Negotiators (Table 2.1) (pp. 39–40 in the book)

<i>Ethical or unethical ...</i>	<i>in your culture?</i>	<i>in other cultures?</i>	<i>for you?</i>	<i>for your counterpart?</i>
a.				
b.				
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				
k.				

2.02. Summary of Ethical Rules for Negotiation and Mediation Role-Plays (See pp. 46–51 in the book.)

A. FACTS

1. You may not delete, change, or add “material facts.”
2. You may not add any new facts for the purpose of trying to deceive your counterpart.
3. These things are *not* material facts:
 - a. Opinions, feelings, motivations.
 - b. Negotiation strategies, such as bottom lines.
 - c. Facts that do not affect the parties’ key decisions.

The rules in #1 do not apply to these items.

B. PARTICIPATION

Role-plays require each participant to participate “meaningfully” and in “good faith.”

- Be prepared, professional, courteous, and on time.
- You are not required to reach an agreement, but you need to explain what you will do instead, and why this is a better outcome.

C. CONFIDENTIALITY

Optional for classroom role-plays; mandatory for real life:

1. Research the confidentiality rules that apply to your case.
2. Create confidentiality agreements for information that you want to keep private. Include penalties for violations.

D. TESTS

Imagine that

- a video of your negotiation or mediation is posted online.
- your counterparts will treat you the same way you treat them.

Recommended reading on negotiation ethics from the Harvard Project on Negotiation: “Ethics and Negotiation: 5 Principles of Negotiation to Boost Your Bargaining Skills in Business Situations,” Daily Blog, Program on Negotiation, Harvard Law School, August 22, 2023.

2.03. Protecting Ourselves from Unethical Negotiation Tactics

This section provides suggestions for protecting yourself and your clients from counterparts you don't know or trust.

BEFORE THE NEGOTIATION

1. **Prepare for the substantive topics to be negotiated.** Do your own research on the facts and issues. Unless you have good reasons to trust your counterparts, beware of information they give you. Do not rely on them for key information. Avoid signing agreements based on information from the other party until you can verify it on your own. Remember that they are trying to get the best possible deals for themselves and their clients just like you are. They may be acting zealously or aggressively but not unethically.
2. **Research your counterpart's reputation.** Ask colleagues if they have any experience negotiating or mediating with them. Check online for information about them.
3. **Prepare your negotiation strategies.** You will have the opportunity to practice the following strategies in Chapters 4–6.
 - a. Use a checklist or other planning document to prepare for your negotiation and to make sure you have the information you need.
 - b. Write down two or three difficult or uncomfortable questions that you hope the other party will not ask you. These could be questions about the weaknesses in your case, problems with the things that are being

negotiated, matters you want to keep confidential, or issues about money. Plan responses that do not violate your professional and personal ethical standards. Or plan how you will *deflect* (avoid answering) the questions.

- c. Know your bottom line or “walkaway point,” the worst deal you would accept. If you cannot get that deal or a better deal, you may decide to end the negotiation. Knowing this can protect you from *giving in* (surrendering) to a very persuasive negotiator.
 - d. Know your “BATNA,” your Best Alternative to a Negotiated Agreement (what you will do if you cannot reach an agreement with your counterpart). This allows you to end the negotiation and find another way to meet your goals. (To learn about BATNAs, see pp. 88–89 in the book.)
 - e. Write two or three possible agreements that could work for both sides whether or not they are using dirty tricks during the negotiation. Include a Plan B and *compliance mechanisms* (ways to make the agreement work even if the other party is not trustworthy). Also include clear penalties and consequences if your opponent violates the agreement. (These points are discussed in Chapter 8.)
4. **Size them up** (evaluate, assess, determine their character or trustworthiness). Pay attention to their conduct before the negotiation or mediation begins. What was your impression of them while scheduling the date, time, and place of the session? Are there any “warning signs” or “red flags” that they may not be trustworthy?

DURING THE NEGOTIATION

1. **Size them up again.** Pay attention to your impressions of them during small talk and at the start of the negotiation. What is your *gut feeling* about them (your instinct about them, which could be a combination of emotional and physical reactions)?
2. **Use small tests.** Ask them a question to which you already know the answer. Or ask for a small favor, such as suggesting a break or changing the time of a meeting, and see how they respond.
3. **Ask questions about information they have *not* provided.** In some cases, staying silent has the same effect as telling a lie. This is called lying or *misrepresenting by omission*.
4. **Beware of “wolves in sheep’s clothing.”** Sometimes it is easy to identify dirty tricks because the bad conduct is obvious. But some negotiators are wolves in sheep’s clothing: They hide their unethical tactics under a pleasant communication style. Do not assume that an amicable, professional and friendly *communication* style is the same as a trustworthy *negotiation* style.¹ Also remember that competitive negotiators can use collaborative methods, so don’t assume that your counterpart is seeking a win-win solution just because they use active listening or other collaborative tools described in Chapter 5.

PROTECTING YOURSELF FROM WOLVES IN SHEEP'S CLOTHING

Identifying wolves in sheep's clothing can be challenging in cross-cultural negotiations. A party may not understand that their counterpart's friendly conduct (smiles, eye contact, and compliments such as *You have a strong case* and *You are a good negotiator*) may be covering up aggressive and possibly unethical conduct.

To protect yourself from negotiators who might be wolves in sheep's clothing, communicate courteously but "cautiously"² until you build up trust or realize that you are dealing with someone who cannot be trusted no matter how nice they seem to be. Chapter 6 provides strategies for doing this. Another way to protect yourself is to learn about the most common dirty tricks. This will help you identify and respond to them during negotiations. It's easy to find lists of dirty tricks in online research and in negotiation books like *Getting to Yes*, which devotes a whole chapter to this topic.³

5. **Use the "tit for tat" strategy** (Chapter 6). This is one way to achieve a collaborative working relationship with your counterparts while protecting yourself from unethical tactics they may try to use on you. If you are not using Chapter 6, you can research that strategy online.
6. **Deal with (respond to) unethical conduct on the spot** (immediately). Consider these approaches:
 - a. **Use active listening** (Chapter 5) to repeat back what they've said or to summarize what they have done, and ask if you have understood them correctly. This will show them that you know what they are doing and that it will not work on you. It may

also give them a face-saving way to change their approach by claiming that there was just a simple misunderstanding.

- b. **“Call them out”** on their unethical tactics. If you can see that the other party is behaving unethically, you can state what you believe is happening. In other words, describe their unethical tactics and explain how you think the negotiation should continue instead. To learn how to identify specific dirty tricks, you can research “negotiation dirty tricks” online or review books on negotiation.⁴ This may be enough to stop the unethical conduct. If not, you can end the negotiation, temporarily or permanently.
 - c. **Use silence.** Don’t respond at all. This gives both sides a chance to reflect on their options. As with active listening, silence shows them that you know what they are doing and that it won’t work on you.
7. **End the negotiation or mediation.** If you feel uncomfortable during a negotiation or mediation or if you believe your counterpart is using unethical tactics on you, stop negotiating. You can take a short break or end the session for the day. “Let me get back to you” or “Let me sleep on it” are common phrases that will give you some time to think or to discuss the situation with someone you trust.
8. **Check your own behavior.** Are you using the kind of strategies that you would want your counterpart to use with you? Think about how your ethical or unethical conduct toward your counterpart may affect their conduct toward you.

Notes

1. Stephen J. Ware, *Principles of Alternative Dispute Resolution*, Concise Hornbook Series, (St. Paul: West Academic Publishing, 2001), 161; Peter R. Robinson, “Contending with Wolves in Sheep’s Clothing: A Cautiously Cooperative Approach to Mediation Advocacy,” *Baylor Law Review* 50 (1998): 963, 965n4.

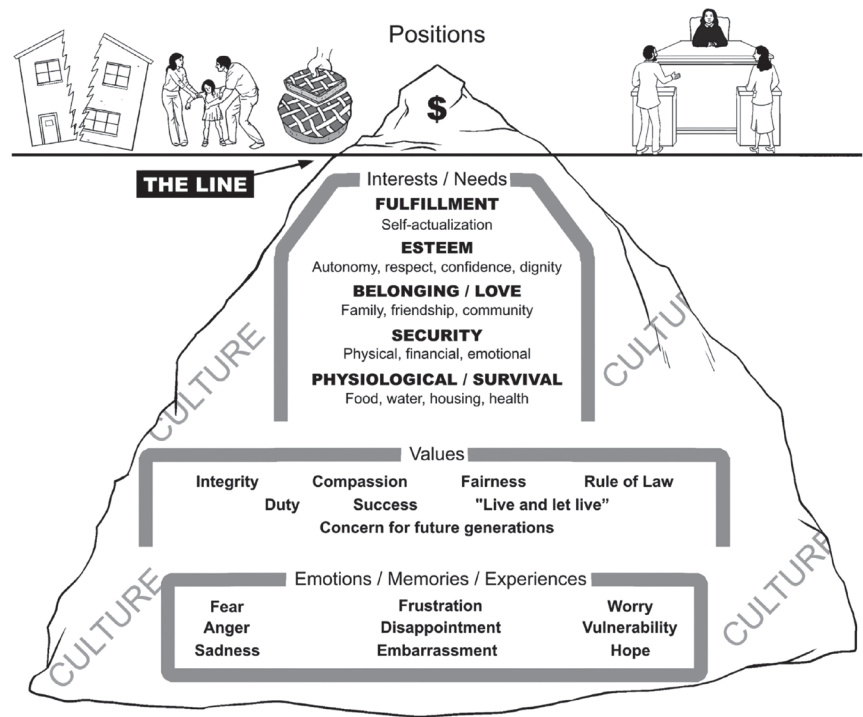
2. Based on Robinson, “Contending with Wolves in Sheep’s Clothing.”

3. Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin, 2011), ch. 8.

4. Fisher, Ury, and Patton, *Getting to Yes*, ch. 8.

CHAPTER 3

3.01. Iceberg of Conflict (Figure 3.1)



3.02. Conflict Styles Chart (Table 3.2)

Conflict Style	Definitions	Synonyms	Idioms
COMPETE Pros/ effective: Cons/ ineffective: Examples:			
COLLABORATE Pros/ effective: Cons/ ineffective: Examples:			
COMPROMISE Pros/ effective: Cons/ ineffective: Examples:			
ACCOMMODATE Pros/ effective: Cons/ ineffective: Examples:			
AVOID Pros/ effective: Cons/ ineffective: Examples:			

3.03. Conflict Styles Word Forms Chart (Table 3.3)

Verbs	Nouns	Adjectives	Adverbs	Gerunds
Compete				
Collaborate				
Compromise				
Accommodate				
Avoid				

3.04. Conflict Styles Idioms (Table 3.4)

A. Compete	B. Collaborate	C. Compromise	D. Accommodate	E. Avoid
_____1. Don't rock the boat		_____21. Let's find a happy medium		
_____2. Two heads are better than one		_____22. Go along with		
_____3. My way or the highway		_____23. Play hardball		
_____4. Win-win		_____24. Drive a hard bargain		
_____5. Leave well enough alone		_____25. Expand the pie		
_____6. Over my dead body		_____26. Take it or leave it		
_____7. Let's put our heads together		_____27. Half a loaf is better than none		
_____8. Split the baby		_____28. Might makes right		
_____9. Split the difference		_____29. Bury one's head in the sand		
_____10. Find common ground		_____30. Find middle ground		
_____11. Let's split it 50-50		_____31. You catch more flies with honey (than with vinegar)		
_____12. Let sleeping dogs lie		_____32. Take someone to the cleaners or get taken to the cleaners		
_____13. Fixed pie		_____33. Bend to their will		
_____14. Sweep it under the rug		_____34. Hold out		
_____15. Meet in the middle		_____35. See you in court (not: See you in the court)		
_____16. Dig in your heels		_____36. Jockey for position		
_____17. Zero-sum game		_____37. Horse trade		
_____18. Give in		_____38. Get the lion's share		
_____19. Give up		_____39. Lock horns		
_____20. Let's put our cards on the table		_____40. Put yourself in their shoes or walk a mile in their shoes		

3.05. Practice - Sample Answers

1. I usually use the *collaborative* style when I negotiate with friends or relatives.
2. I never *compete* when I negotiate with friends or relatives.
3. I never *compromise* when I negotiate for clients.
4. My negotiation counterparts would probably describe me as a *competitor* or as a *competitive* negotiator.
5. The last time I negotiated about an important matter, I *collaborated* with the person on the other side.
6. *Collaboration* usually produces the best results for me.
7. I enjoy negotiating *collaboratively*.

3.06. Conflict Styles Idioms – Sample Answers (Table 3.4)

A. Compete	B. Collaborate	C. Compromise	D. Accommodate	E. Avoid
<u>D or E</u> 1. Don't rock the boat		<u>C</u> 21. Let's find a happy medium		
<u>B</u> 2. Two heads are better than one		<u>D</u> 22. Go along with		
<u>A</u> 3. My way or the highway		<u>A</u> 23. Play hardball		
<u>B</u> 4. Win-win		<u>A</u> 24. Drive a hard bargain		
<u>E</u> 5. Leave well enough alone		<u>B</u> 25. Expand the pie		
<u>A</u> 6. Over my dead body		<u>A</u> 26. Take it or leave it		
<u>B</u> 7. Let's put our heads together		<u>C</u> 27. Half a loaf is better than none		
<u>C</u> 8. Split the baby		<u>A</u> 28. Might makes right		
<u>C</u> 9. Split the difference		<u>E</u> 29. Bury one's head in the sand		
<u>B</u> 10. Find common ground		<u>C</u> 30. Find middle ground		
<u>C</u> 11. Let's split it 50–50		<u>A or B</u> 31. You catch more flies with honey (than with vinegar)		
<u>E</u> 12. Let sleeping dogs lie		<u>A</u> 32. Take someone to the cleaners or get taken to the cleaners		
<u>A</u> 13. Fixed pie		<u>A or D</u> 33. Bend to their will		
<u>E</u> 14. Sweep it under the rug		<u>A</u> 34. Hold out		
<u>C</u> 15. Meet in the middle		<u>A</u> 35. See you in court (not: See you in the court)		
<u>A</u> 16. Dig in your heels		<u>A</u> 36. Jockey for position		
<u>A</u> 17. Zero-sum game		<u>A</u> 37. Horse trade		
<u>C or D</u> 18. Give in		<u>A or C</u> 38. Get the lion's share		
<u>D or E</u> 19. Give up		<u>A</u> 39. Lock horns		
<u>B</u> 20. Let's put our cards on the table		<u>B</u> 40. Put yourself in their shoes or walk a mile in their shoes		

CHAPTER 4

4.01. Negotiation Planning Checklist for Role-Play 1

1. Goals

What do you hope to achieve in this negotiation?

Buy/ Sell (circle one) a used car for

\$ _____ by (date/day) _____

Additional goals:

What objective standards did you use to decide on your goals? _____

2. Bottom line (the worst deal you will accept)

\$ _____ by (date/day) _____

Sellers: What is the least amount of money you will accept?

Buyers: What is the most you will pay?

3. BATNA (Best Alternative to a Negotiated Agreement)

a. What will you do if you cannot get your bottom line or better in this negotiation? List at least two options:

b. Rate these options: 0 1 2 3 4 5 (0 = unacceptable; 5 = excellent)

4. **Information is power!**

- a. What information do you have about this negotiation?
- b. What information do you need?
- c. How could you get this information in a real-world negotiation? —in a role-play?
- d. Is there any information that you do not want to share with the other party?

5. **Opening Offer** (the first amount that is proposed in a negotiation)

- a. Do you want to make the opening offer? __ Yes __ No
Why?
- b. If you do make the first offer, what would it be?
\$_____ Why?

6. **Counteroffer and concessions** (responses to offers)

Predict how the negotiation might go if you offer the above amount.

If my opening offer is \$_____, their counteroffer would probably be about \$_____.

Then I would counter with \$ _____. And they might counter with \$ _____.

We could probably agree on a final price of \$_____

7. **Ethical issues**

Review the ethical rules (pp. 46–51 in the book). Are you worried about any ethical issues? What do you hope the other party won't ask you? What will you say if they do?

8. **Working relationships**

How important is it to “be on good terms” (courteous, polite, amicable) with your counterpart? 0 1 2 3 4 5
(0 = not important; 5 = very important) Why?

9. **Negotiation styles** (compete, collaborate, compromise, accommodate, avoid, problem-solve) Which negotiation style . . .

- is most comfortable and natural for you in general?

- do you predict your counterpart will use?
_____ Why?
- will you use in this negotiation? _____ Why?

10. **Leverage**

Do you have any resources, people, or organizations that can help you get a better deal?

“Sweetening the pot”: Do you have anything to offer the other party that doesn't cost you much or that isn't important to you but that might be valuable to them?

11. **Your reputation**

After the negotiation, what do you hope your counterpart will tell others about you as a negotiator?

12. **Getting started:** How will you start the negotiation?
- a. Topics for small talk:
 - b. How will you transition from small talk to talking about the car?
 - c. What questions will you ask your counterpart before making or accepting an offer?

For help getting started, see MUM 3.

For additional questions to help you prepare for negotiation, see <https://www.pon.harvard.edu/daily/negotiation-skills-daily/negotiation-preparation-checklist/>

CHAPTER 5

5.01. Collaboration and Cooperation (Table 5.1)

	Definitions	Synonyms	Word Forms (<i>nouns, verbs, adverbs, adjectives</i>)	Translated into other languages you know
Collaboration				
Cooperation				

5.02. Emotions

Negotiation and mediation often trigger these emotions: *anger, fear, sadness, frustration, disappointment, surprise, shame* and *vulnerability* or *feeling vulnerable*. Additionally, many disputes occur or become more difficult to resolve because someone feels *disrespected* or *misunderstood*, which may trigger feelings of *righteous indignation* during the negotiation or mediation process. If the process goes well, participants may feel positive emotions such as *relief, gratitude*, or even *joy* and *happiness*.

RANGES OF EMOTIONS

To increase your *emotional literacy* as discussed in pp. 128–134 in the book, study the ranges of emotions (on the next page) that you may encounter in yourself or your counterparts during negotiations or mediations. Feel free to add to these lists or to change them, as we may have different ideas about which words belong in each category. The Iceberg of Conflict (3. 01) may also be helpful.

CONSIDER USING GENERAL TERMS

Remember that if you are not sure of the best word to choose, you can use general phrases along with an invitation for the other person to “say more about it.” (*This seems very difficult; This sounds upsetting; This sounds emotional; would you like to say more about it?*) Mediators could also show parties the words on the following list and ask them to choose the words that describe their emotions.

FOCUS ON YOUR OWN EMOTIONS

Also remember to use this list to help you understand your own emotions before, during and after negotiations and mediations. What can you learn from understanding your own emotions?

WOULD AN APOLOGY BE HELPFUL?

And when thinking about emotions, consider whether apologies may have a role to play, as discussed in Chapter 7.

ANGER

Mild: *annoyed; bothered; irritated; peeved; (informal: bugged)*

Moderate: *agitated; mad; bitter; perturbed; worked up; (informal: ticked off; pissed off)*

Intense: *enraged; furious; livid; incensed; irate; seething; my blood is boiling; steam was coming out of my ears; he hit the roof; she was riled up*

SADNESS

Mild: *disappointed; dissatisfied; upset; low*

Moderate: *discouraged; disheartened; distressed; down; hurt; unhappy; forlorn; gloomy; feeling blue; somber (informal: bummed out; down in the dumps)*

Intense: *anguished; depressed; despondent; devastated; heartbroken; hopeless; miserable; tortured*

FEAR

Mild: *apprehensive, uneasy, worried, nervous, timid*

Moderate: *afraid, alarmed, anxious; frightened, scared; tense*

Intense: *panicked, petrified; terrified; in shock*

CONFUSION

Mild: *unsure; uncertain; ill at ease*

Moderate: *surprised; baffled; bewildered; mixed up; off balance; perplexed; confounded*

Intense: *shocked; stunned*

UPSET

Mild: *uneasy; uncomfortable*

Moderate: *anxious*

Intense: *agitated, overwhelmed*

GLAD

Mild: *content (con TENT); pleased; satisfied*

Moderate: *delighted; happy*

Intense: *elated; ecstatic; overjoyed; thrilled*

Other emotions that often arise during conflict

Feeling disrespected; embarrassed; guilty; humiliated; hurt; insecure; jealous/envious; lonely; misunderstood; filled with regret or remorse; vulnerable

5.03. Needs and Values

Needs and values are discussed in pages 134–139 in the book and illustrated in the Iceberg of Conflict image in 3.01 in this Companion Site. These *below-the-line* issues vary based on personality, culture, gender, age, economic class, and role in the negotiation (such as attorney or party). It's easy to research “needs” and “values” online, so use the list on the next page as a starting point to create your own list.

Keep these things in mind:

- If you're not sure which words to choose, use general phrases along with an invitation to “say more about it,” or to “help me understand.” Examples: *This seems very important to you. Can you help me understand what this means to you?* OR *I understand that this is significant for you. Would you like to say more about that?*
- Mediators can show parties the list on the next page or in pages 135–137 in the book and ask if any of the words “resonate with” them or help them explain what's important to them.
- Many ideas on these lists overlap and could go in more than one category.
- Items on these lists may or may not apply to a person or to whole groups of people.
- People may interpret the words on these lists in very different ways. For example, everyone may think that “family” is an important need but people may have very different definitions and interpretations of what that means.
- Some items on this list will not seem like “needs” or “values” to you, and you won't agree with all of them—but your counterparts may consider them essential. If so, that will give you a lot to talk about; your different perspectives may be a cause of the dispute—and a path to resolving it. Either way, talking about this may help you and your counterpart understand each other better.

- A key part of active listening is to listen for abstract words like the ones on the lists, and instead of assuming that we know what the speaker means, asking them a question, such as, *Can you help me understand what you mean by ____?* And then repeat back what they said and ask them if you got it right.

NEEDS AND VALUES

The following list provides examples of needs. It is not a complete list, and you are encouraged to add to it and change it, and even better, to create your own list, formatted in any way that makes to you. The Iceberg of Conflict (3.01) may also be useful.

Survival needs: food; water; shelter; safety; health; rest

Interdependence: family; friendship; colleagues; community; connection; group harmony; hierarchy; duty; acceptance; appreciation; courtesy; hospitality; generosity; empathy; love; respect; trust; support; loyalty; serving or helping others

Independence: autonomy; self-reliance; choice; privacy; adaptability; self-actualization; success

BELIEFS/VALUES

honesty; integrity; reliability; kindness; treating others the way we want to be treated; hard work; discipline; achieving excellence; relaxing and enjoying life; trustworthiness; fairness; equality; justice; rule of law; freedom; diversity; open-mindedness; fulfilling one's duty; honor; respect for elders, authority, and hierarchy; respect for tradition; focus on the past; stability; focus on the future; progress; innovation; creativity; critical thinking; questioning authority; taking action to support/oppose the government.

CHAPTER 6

6.01. Additional Resources for Tit for Tat

VIDEOS

- *Nice Guys Finish First*, Richard Dawson, BBC, Horizon, 1986 (50 minutes), <https://www.dailymotion.com/video/x7n0igh>

This entertaining and informative video explains tit for tat in terms of game theory and evolutionary biology. It demonstrates the classic game theory game, Prisoner's Dilemma, which tit for tat played so successfully in the computer tournament described in Chapter 6. It also shows competitive and cooperative behavior in vampire bats and other species, and considers whether tit for tat is hardwired in our brains.

- “Golden balls split or steal . . . saints and sinners . . .” clip from an episode of *Golden Balls*, YouTube video, 5:10, posted by spinout3 on August 23, 2012, <https://www.youtube.com/watch?v=jXYxAY1CkBQ>

This video, a clip from a British game show that is similar to the Prisoner's Dilemma, sparks lively discussion about tit for tat.

RADIO PODCAST

- *Tit for Tat*, Radiolab, WNYC Studios, Apple Podcasts, September 17, 2019, <https://podcasts.apple.com/bs/podcast/tit-for-tat/id152249110?i=1000450157068>

This podcast discusses Prisoner's Dilemma and explores the fascinating informal Christmas truces of World War 1.

ARTICLES

- Robert Axelrod, “The Evolution of Cooperation,” excerpt from the 1984 edition of his book by the same title, are available at <https://ee.stanford.edu/~hellman/Breakthrough/book/pdfs/axelrod.pdf>
- Jake Frankenfield, “What Does Tit for Tat Mean and How Does It Work?,” Investopedia, November 28, 2020, <https://www.investopedia.com/terms/t/tit-for-tat.asp>
- Elvis Picardo, “Prisoner’s Dilemma in Business and the Economy,” Investopedia, updated May 22, 2022, <https://www.investopedia.com/articles/investing/110513/utilizing-prisoners-dilemma-business-and-economy.asp>

ACADEMIC PAPER

- Erika Simpson, “The Contributions of Anatol Rapoport to Game Theory,” Political Science Publications, 135, May 27, 2016, <https://ir.lib.uwo.ca/politicalsciencepub/135>

Books

- Robert Axelrod, *The Evolution of Cooperation: Revised Edition*, with a foreword by Richard Dawkins (New York: Basic Books, 2006).
- Anatol Rapoport, “Prisoner’s Dilemma—Recollections and Observations,” in *Game Theory as a Theory of Conflict Resolution*, Theory and Decision Library, vol. 2. (Dordrecht, Netherlands: Springer, 1974), 17–34, https://doi.org/10.1007/978-94-010-2161-6_2

CHAPTER 7

7.01. Vocabulary for Different Types of Apologies (Table 7.1)

Word	Definitions	Synonyms	Words in your first language or other languages
<i>Apology</i>			
<i>Sorry</i>			
<i>Remorse</i>			
<i>Regret</i>			

7.02. Sample Language for Apologies

We need to choose our words carefully when we make an apology. The following list provides the main words, word forms, and phrases you will need to make the apologies described in Chapter 7. You can also search for “apologies” online. Examples: <https://www.berlitz.com/blog/how-to-say-sorry-english>; <https://languagetool.org/insights/post/word-choice-synonyms-for-sorry/>

SORRY/ SORROW

I'm sorry.

I'm sorry for interrupting you.

I'm sorry that I posted a negative review of your business.

Sorry for the inconvenience. Sorry for the delay.

I'm very sorry. I'm terribly sorry. I'm extremely sorry.

I am filled with sorrow.

APOLOGY/ APOLOGIES/ APOLOGIZE/ APOLOGETIC/ APOLOGETICALLY

I apologize.

I apologize for being late.

I want to apologize to you for my tardiness.

I want to offer you an apology.

I owe you an apology. I shouldn't have posted the negative review.

Apologies for the inconvenience.

Please accept my apology.

He was apologetic.

REGRET/ REGRETTABLE

I regret my unkind words during the mediation.

She expressed regret for sending the text.

We regret to inform you that the flight will be delayed.

It is regrettable that we waited until the day of trial to try mediation.

REMORSE/ REMORSEFUL

He expressed remorse.

I am filled with remorse.

He was remorseful.

PARDON

Pardon me.

FORGIVE/FORGIVENESS

Please forgive me. Can you (ever) forgive me?

I'm seeking his forgiveness.

FAULT

It was my fault.

I'm at fault.

WRONG

I was wrong.

I was in the wrong.

It was wrong of me to post the negative review.

CHAPTER 8

8.01. Sample Responses for “Using BEC to Reach Agreements” (p. 228 in the book)

AGENDA TOPICS FOR PROFESSOR PERRY AND STANLEY STUDENT TO DISCUSS

- Stanley’s grade on the paper.
- Stanley’s grade in the course.
- Referring Stanley to the dean.
- Other penalties for the plagiarism.
- Other ways of dealing with Stanley’s plagiarism.
- Stanley’s lack of understanding about plagiarism.
- Stanley’s sincere remorse.
- Professor Perry’s doubts about Stanley’s sincere remorse because he doesn’t understand what he did wrong.
- Professor Perry’s need to follow university policy and treat students equally.
- Plagiarism policy’s harsher effect on Stanley than on state residents.
- Professor Perry’s need to uphold strict academic and professional standards for the field of environmental science.
- Could or should the university provide information and support for international students like Stanley?
- Could or should Professor Perry provide more information and support for international students like Stanley?
- Professor Perry’s busy and stressful schedule during and after each semester.
- Stanley’s career goals and potential contributions to improving the environment and saving lives for future generations in his home country.

POSSIBLE SOLUTIONS FROM PROFESSOR PERRY AND STANLEY’S BRAINSTORMING SESSION – PLEASE ADD YOUR OWN IDEAS:

1. Let the dean decide the consequences.
2. Stanley will re-submit the paper without the plagiarism and Professor Perry will read it carefully and give it the grade it deserves.
3. The paper will get an F and Stanley’s course grade will be C.
4. Professor Perry will provide Stanley with a model research paper to review and he will write a new paper on a completely different topic.
5. Stanley will take an online course on plagiarism and then
 - write a letter of apology to Professor Perry explaining exactly what he did wrong and what he will do in the future to prevent it.
 - make a video for international students explaining what plagiarism is, why it is so serious, and how to prevent it.
 - write a paragraph on plagiarism for international students that Professor Perry will add to her syllabus.
6. Professor Perry will provide a training for professors on helping international students prevent plagiarism.

CHAPTER 9

9.01. Mediation Process Summary for Mediators

PART 1. MEDIATOR'S OPENING REMARKS

1. Welcome and introductions
2. Confirm authority
3. Explain confidentiality; sign agreement
4. Housekeeping/Logistics
5. Mediation: Purpose
6. Mediation: Process
7. Mediator's Role
8. Parties'/Attorneys' Roles
9. Ground rules
10. Ask if the parties have any questions.

Transition to Part 2

PART 2: ACTIVE LISTENING

1. Ask each party to speak. Example: "Please tell us how you see the situation."
2. Provide empathy and active listening on facts, emotions, interests, needs, and values.
3. Ask parties to repeat back what they heard the other party say, and ask the other party if they got it right.
4. Take notes of key facts, emotions, interests, needs, and values, and key words.
5. Consider private caucuses with each party.

Summarizing, Reframing, Discussion

1. Summarize and reframe the facts, emotions, interests, needs, and values for each party.
2. Include points that are shared, complementary, and different.
3. Ask the other mediator and the parties for their input.
4. Ask the parties to talk with each other, if appropriate.

Transition to Part 3

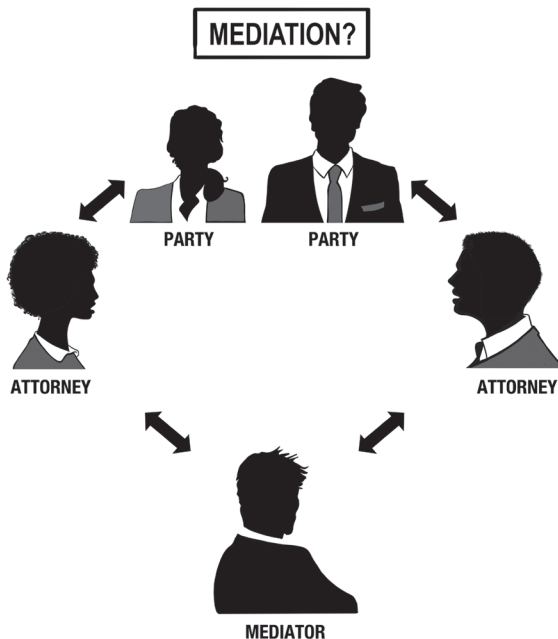
PART 3. BRAINSTORMING, EVALUATING, AND CONCLUDING

1. Ask the parties if they would like to brainstorm options for resolving their dispute.
2. Use the BEC Checklist (MUM 8). Use a board/flip chart.

9.02. Picturing Mediation: Instructions to the Artist. (Figure 9.1, p. 255)

Sample responses

1. Change the arrows to show the parties and the mediator speaking with each other.
2. The lawyers should be seated next to or behind their clients, not between their clients and the mediator.
3. The parties should be speaking more than the attorneys.
4. The mediator should be keeping eye contact with both parties equally, not turned toward one party.
5. The mediator should look like someone who's easy to talk to, not like a judge who's deciding which party will win.
6. Overall, this looks too adversarial. It should look like a more collaborative, amicable process.



CHAPTER 10

10.01. Sample Mediation Videos

To see a range of mediation processes, take a look at these videos and research other ones online.

- “MWI Opening Statement,” Harvard Mediation Pedagogy Project, posted Feb. 25, 2012. <https://www.youtube.com/watch?v=xmZyztC9PCU>
- “The Four Phases of the Mediation Process,” by Jean Munroe & Tennessee-Mediation.Com, A <http://www.Tennessee-Mediation.com> Exclusive Production Copyright © 2010 Tennessee-Mediation.com <https://www.youtube.com/watch?v=heUcre2d9wg>
- “Mediation: A Neighbor to Neighbor Conflict Role Play – The Mediation Process” One World Community Productions at Marblehead TV, Aug. 30, 2013 <https://www.youtube.com/watch?v=KS-ykB7nYiY>
- “Resolve Your Case”: Video Series, Judicial Branch of California. Note that these videos are available in several languages. <https://courts.ca.gov/programs/alternative-dispute-resolution-adr/resolve-your-case-video-series>

Just for fun:

- “Haggle scene” with Graham Chapman and Eric Idle in *Monty Python’s Life of Brian*, directed by Terry Jones, produced by HandMade Films and Python (Monty) Pictures, UK, 1979. YouTube video, 2:05, uploaded November 18, 2013, https://www.youtube.com/watch?v=8iQ7nr8xEPo&ab_channel=BusinessandEnterprise
- “Teaching Dwight Active Listening,” *The Office*, season 9, episode 2, 1.19 minutes, posted Aug. 5, 2014, <https://www.teachertube.com/videos/the-office-season-9-episode-7-teaching-dwight-active-listening-343198>
- “Please Pass the Butter,” *The Big Bang Theory*, season 7, episode 19, 1.54 minutes, posted April 4, 2014, https://www.youtube.com/watch?v=p1jzdSzGHnA&ab_channel=NetodelToro

MUM 1: The Civil-Assertive Communication Style

Chapter 3 describes six negotiation styles to keep in your negotiation toolbox. But how do you actually use a negotiation style? What do you actually say, and how do you say it? In other words, how can your *communication* style match and support your *negotiation* style and goals?

This section describes an “all-purpose” communication style that you can *adapt* (modify) for any negotiation style. In this book, this style is called “civil-assertive,” but this is not an official name. This name was created as a reminder to *steer a middle course* (avoid extremes). It is also a reminder to think about how your communication style may affect the outcome of your negotiations.

As you read about this communication style, think about how it compares to styles used in your business or legal culture. Also think about how you could use this style in written communications, such as texts and emails.

Civility

The middle course mentioned above is both civil and assertive. “Civil” communication is professional, reasonable, amicable, courteous, and *congenial* (easy to talk to, easy to work with). It creates a positive environment, which can lead to better results for both competitive and collaborative negotiators.

According to some studies, when our counterparts like us and our clients, we get better results than negotiators who are disliked for being adversarial, aggressive, arrogant, stubborn, and rude.¹ (For a study that shows different results for *one-shot deals*, see this endnote.²) One simple way to create a positive working relationship with a counterpart we don’t know is to start the negotiation with appropriate “small talk” on matters that have nothing to do with the negotiation.³ This is discussed more in MUM 3. But we should not “overdo” it. Negotiators who are overly polite and accommodating can be perceived as “weak,” and they will probably not achieve the best results.

Assertiveness

Thus, the civil-assertive style does not *give away the store*. “Assertive” communication is clear, confident, direct, firm, and straightforward; we use it to *assert* (clearly and directly state) what we need, want, and expect.

Wolves in Sheep’s Clothing

Even lawyers who are zealously representing their clients and who are determined to win are advised—and expected—to treat each other with *professional courtesy*. Therefore, your American counterparts may be *wolves in sheep’s clothing*: they may be courteous, pleasant, and easy to talk to—while working against you quite aggressively. Some may *go overboard*: they are overly nice or complimentary (*You have a strong case. You’re a great negotiator.*). This is probably a negotiation tactic designed to *soften you up* and make you *return the favor* by *giving in* (surrendering) during the negotiation. If you think Americans are too superficially friendly in general, it can be hard to tell the difference between this tactic and appropriate, professional civility, so practice “cautious cooperation,”⁴ *stay on your toes*, and *don’t let your guard down. Trust but verify*.

Incivility

Of course, lawyers and other negotiators can also be quite uncivil, rude, hostile, and aggressive. How should we respond to a counterpart who demonstrates a complete lack of civility? If we respond the same way, we could end up in a deadlock, without an agreement, or we could win or lose. If we respond with civility, we could gradually convince them to become more civil—or, if we’re not careful, we could *lose our shirt* or *be taken to the cleaners*. Strategies for dealing with adversarial negotiators who lack civility are discussed in Chapter 6 and in the Companion Site for Chapter 2 (2.03 Protecting Ourselves from Unethical Negotiation Tactics).

WHAT TO SAY AND HOW TO SAY IT

Assuming that you and your counterparts will be using the civil-assertive communication style, how will your discussions actually proceed? The next pages provide guidance. The first box provides general advice for cultivating a civil-assertive *mindset* (attitude, way of thinking). The next box lists places in the book and Companion Site that provide specific language for the civil-assertive style in various contexts. Guidance for using the civil-assertive style with US counterparts is provided after that.

To create a foundation for the civil-assertive style, follow this advice:

- Create a positive environment.
- Build rapport (rap POUR) and trust.
- Be confident (but not arrogant).
- Be reasonable (but not a *pushover*). A *pushover* is overly accommodating, doing whatever the other party wants in an effort to be liked.
- Be very interested in learning what's important to your counterpart and help them understand what's important to you, too. Ask them questions about their concerns and listen carefully and respectfully to their responses (even when you disagree with them).
- Depending on the situation, you may need to be very firm, but you don't need to be aggressive or rude.
- Depending on the situation, you may want to be amicable and even warm but not weak or a pushover.
- You may want to *be tough but fair; walk softly but carry a big stick*, and *extend professional courtesy* while *zealously* (vigorously, with strong determination) representing your client or yourself.

“Civil-Assertive” phrases in the book and Companion Site

- MUM 2: Hearing and Saying “No”
- MUM 3: Step-by Step Procedures for Negotiation Role-Plays (See the sections on starting a negotiation: introductions, small talk, pleasantries, transitions, and information sharing.)
- MUM 6: Sample Questions for Negotiators and Mediators
- Chapter 4: Section 4.5 “How Opening Offers, Counteroffers, and Concessions Work Together: Strategies and Sample Language” (pp. 97–106 in the book)
- Chapter 5: Active listening and reframing
- Chapter 6: Using tit for tat
- Chapter 7: Making apologies
- Chapter 8: Reaching agreements
- Chapter 10: The mediation script

GUIDANCE FOR USING THE CIVIL-ASSERTIVE STYLE WITH US COUNTERPARTS

Use a Direct, Linear (Non-Circular) Style

When it's time to “tell their story,” or share their perspectives, your US counterparts will probably use a linear style. This is similar to the style you may have studied in ESL courses for writing essays or giving presentations in English. Your counterparts may start with a brief introduction, state their “thesis” or position, support their positions with reasons and examples, and conclude with statements about what they believe the result should be. Or they might explain the problems from their point of view and then state their proposed solution or demands.

Supporting Their Points

US negotiators are usually focused on *getting to the point* and *sticking to the point*. To support their points, they will probably “tell their story” with the three classic strategies for persuasion, *logos* (logic), *ethos* (credibility), and *pathos* (emotion) even if they are not familiar with those terms. Lawyers may summarize the legal arguments they will make during litigation and trial, show some of their evidence, and summarize what their witnesses will say on the witness stand if the parties do not reach an agreement to settle the case before trial.

Why Use This Style?

This direct, linear style may or may not be comfortable for you. Some people think it is too blunt, simplistic, aggressive or rude. However, your US counterparts probably think that it's logical, organized, efficient, clear, and persuasive, which are all positive words for them. They believe that it is their responsibility to make their positions *crystal clear* for you so that you don't have to guess. They usually tell you what they want instead of giving subtle hints for you to figure out. And they probably can't imagine any other way to communicate and may not be able to follow or understand your thoughts if you use a different style to organize and present your points.

Be Direct, Clear and Courteous.

If, in an effort to be polite, you gently *suggest* points indirectly rather than state them directly, or if you use “flowery” language instead of “plain English,” your US counterparts may not understand what you are saying or what you are trying to accomplish. They may become frustrated or think you’re “playing games” rather than negotiating seriously and ethically. It is important to be both polite—and clear. Consider the differences between direct and indirect speech in these examples:

- a. Indirect: *This room is very warm, isn't it?*
Direct: *Could we open a window?*
- b. Indirect: *This proposal is interesting, but it's a little difficult for us.*
Direct: *Unfortunately, my client cannot accept this proposal.*
- c. Boss: *We'll make a final decision at the staff meeting on Wednesday.*
 - (i) Employee Ed: (Indirect): *Wednesday is my son's graduation ceremony.*
Boss: *Congratulations! See you at Wednesday's meeting.*
 - (ii) Employee Ellen: (Direct): *Unfortunately, I won't be able to attend in person because it conflicts with my daughter's wedding, but I can participate online for the first hour.*
Boss: *Well, it's not ideal, but I'll see you online. And congratulations!*

The direct statements above are clear, and civil enough. For specific phrases for saying “no,” see MUM 2: Saying and Hearing “No”

Focus on getting what you need more than on blaming your counterpart.

Blaming your counterpart or their client, especially at the beginning, isn't recommended. "Blaming" is not an example of "assertive" communication. First, you may be wrong; you may not have all the facts. Second, even if you're right, and even if you are being civil and polite, they may respond by defending themselves and attacking you.

Of course, when the negotiation or mediation concerns compensation for harms done in the past, there will be some direct and tough conversations about who did what, and what happened as a result, but ask yourself if, in a negotiation or mediation, your goal is to argue about who was wrong or to solve a problem and get what you or your client need to move forward.

The place to prove who was at fault for what happened in the past is the courtroom. The place to solve problems for the present and future is the negotiation or mediation table. Think about how you can make it as easy as possible for your counterpart to become interested in helping you get what you need to solve your problem.

To help keep your focus on what you need rather than on what they did or did not do, use "I" messages (using the pronouns "I" and "we" more than "you"). If it is necessary to discuss what the other side did wrong, try to do so without attacking them.

Agree to disagree.

You and your counterpart will probably disagree about many things, including what happened in the past. Arguing about what happened in the past is neither civil nor assertive. Nor is it *productive* (useful, effective). (The Larry Landlord vs. Tom Tenant hypo in Chapter 1 provides an example of arguing vs. negotiating.) If

you notice that you and your counterpart are *going around in circles*, ask yourself if it is necessary to agree on every fact and opinion in order to solve the current problem. It is often possible to *agree to disagree* on many points and still reach an agreement that works for both sides. How? By shifting the focus from the disagreement to each party's current and future needs.

Therefore, if you and your counterpart are arguing rather than negotiating, ask yourself if this is an opportunity to *agree to disagree*, and, if so, you can use the civil-assertive style to say, *How about we agree to disagree on this and move on to talking about what our clients need to resolve this problem? For example, what does your client need in terms of time and money?* This is one way to be both civil and assertive.

BODY LANGUAGE⁵

For US negotiators, body language that promotes the civil-assertive style includes appropriate smiles, eye contact, nods of the head, leaning slightly forward rather than backward, and not crossing our arms in front of us.

EYE CONTACT AND SMILES

We use brief eye contact to establish trust, confidence, and respect. If you don't *look us in the eye* (return our eye contact by looking directly into our eyes when being introduced and during important points in a conversation), we probably can't trust you. Maybe you're hiding information, using deception or a trick, or just not paying attention to us; we're not sure what the problem is, but we're pretty sure there's a problem. The same is true if we smile at you and you don't smile back, at least a little.

NODS

US negotiators may use small nods of the head up and down or may tilt their head to the side to encourage our counterpart to keep speaking and to show that we're listening to them carefully. This can be confusing because sometimes we are nodding to show that we're listening (which does not mean that we are agreeing), but other times we nod our heads up and down to show that we are indeed agreeing. If you're not sure, ask.

BALANCING CIVILITY AND ASSERTIVENESS

It can be challenging to find the appropriate balance between civility (without being overly friendly and nice) and assertiveness (without being aggressive and unpleasant), but simply being aware of the need to do so can help you find that balance.

You might want to consult an AI program for help with the civil-assertive communication style. For example, you could enter statements that sound good to you and ask the AI program to revise them so that they are more civil, assertive, linear, direct, clear, or polite. Of course, AI can only provide suggestions for you to consider, and its suggestions may or may not improve on your original statements, so consult a human colleague whenever possible.

Notes

1. Charles B. Craver, *Effective Legal Negotiation and Settlement*, 7th ed. (New Providence, NJ: LexisNexis, 2012), 79–80.

2. One study suggests that in a competitive or “distributive” negotiation conducted by email to get a lower price on a phone, “tough” negotiators get better monetary results than polite and “warm” ones; PON Staff, “Dear Negotiation Coach: Does Communication Style Matter in Negotiation?,” January 4, 2022, <https://www.pon.harvard.edu/daily/teaching-negotiation-daily/ask-anegotiation-expert-in-negotiation-communication-style-matters-nb/>

3. Janice Nadler, “Legal Negotiation and Communication Technology: How Small Talk Can Facilitate E-Mail Dealmaking,” *Harvard Negotiation Law Review* 9 (2004): 223–253. Northwestern Law & Econ Research Paper No. 03-11, Available at SSRN: <https://ssrn.com/abstract=428523> or <http://dx.doi.org/10.2139/ssrn.428523>

4. Peter R. Robinson, “Contending with Wolves in Sheep’s Clothing: A Cautiously Cooperative Approach to Mediation Advocacy,” *Baylor Law Review* 50 (1998): 963, 965n4.

5. For a comprehensive discussion of cultural differences in body language, see Rebecca L. Oxford, *The Language of Peace: Communicating to Create Harmony* (Charlotte, NC: Information Age Publishing, 2013), 303–321.

MUM 2: Saying and Hearing “No”

There are many ways to reject settlement proposals. This section describes direct, *blunt* methods that make it *crystal clear* that the answer is “no,” as well as softer methods that accomplish the same purpose in more civil and courteous ways. It also describes *equivocal* statements that sound like “no” but may mean something else, and indirect methods to avoid because they may be confusing to US negotiators.

As you read this section, think about how people in your business or legal culture say “no.”

BLUNT “No’s”: BEING CRYSTAL CLEAR THAT THE ANSWER IS *No*

Some negotiators use a direct style that can sound harsh. The following statements are meant to prepare you for counterparts who use this style, not to suggest that you should use them. Examples:

- *No. Nope. Not a chance.*
- *Absolutely not. Not gonna happen.*
- *Hard no.*
- *We will never agree to that.*
- *I can’t offer any more.¹*
- *My client rejects your offer.*
- *Come on; you can’t be serious. You’ve got to be joking.*
- *No. My hands are tied.*
- *No way. We’re not even in the same ballpark.*
- *We’re done. We’re done here.*

Negotiators may use this language to send a clear message and to be efficient. They may simply be stating the facts without intending to be rude. Remember that they are rejecting a settlement proposal, not the person who presented it, so don’t *take it personally*. Their

counterparts may consider this language *business as usual*, and may appreciate the clear answer, even if it is disappointing. Other negotiators may use this approach to sound aggressive and intimidating and don't care if their counterparts are offended. And keep in mind that negotiators may be using this style as a tactic to extract larger concessions (try to get a much better deal than their counterpart offered) rather than as a way to end the negotiation.

However, negotiation experts who focus on creating positive working relationships and keeping the possibility of agreement *on the table* would probably not advise us to use this style, and there is no need for you to use it. But you should be prepared for counterparts who do. As mentioned above, they may be telling you that the negotiation is completely over, or that it's over unless you make a larger concession, so you will need to check this out before packing up and leaving. And if you are the one who needs to say "no," you can use the civil-assertive style to be both crystal clear and courteous, as discussed next.

CIVIL-ASSERTIVE "NO's": SAYING "NO" CLEARLY BUT COURTEOUSLY

There are many ways to soften a crystal clear "no" whether you are asking for a better counteroffer or ending the negotiation without an agreement. Examples:

Kind words plus "but": *I appreciate the proposal, but unfortunately I can't accept it.*

Apology plus "but": *I'm sorry; that's not going to work for us, but I hope we can keep talking.*

Warning that bad news is coming: *Unfortunately, we're too far apart to reach an agreement, but we appreciated the chance to talk with you.*

Modals: *We wouldn't be able to accept that proposal. We couldn't agree to that.*

Saying "no" without saying "no": *I don't see how that could work. How would that be possible?*²

EQUIVOCAL NO'S: INTERPRETING STATEMENTS THAT SOUND LIKE "NO" BUT MIGHT NOT BE

Equivocal statements³ send messages that we need to interpret. They are not direct or crystal clear, but experienced negotiators know how to interpret them. Examples:

- *I can't offer you any more at this time.* (But maybe I can offer more later, after you do something I want, or after I talk to some people on my side.)
- *I don't believe I can offer you more.* (I'm not sure if I can offer more; I'd have to talk to others on my side to get authorization to offer more.)
- *I'm not authorized to accept that amount.* (But I could talk to my client about accepting it.)
- *My client is not inclined to offer any more.* (But she might offer more later depending on what you do.)
- *That's about as far as I can go. I don't have much more room.* (I might be able to make a few more concessions but they'll be very small.)
- *I really want X, and I'd like to get Y. (X and Y are not "dealbreakers"; there could still be a deal without them.)*
- *To be perfectly honest/candid ...* (This phrase often introduces a lie.)

INDIRECT "NO'S": HOW TO CONFUSE AND FRUSTRATE YOUR US COUNTERPARTS

You may come from a country or culture where certain phrases clearly mean "no" to you and your colleagues. Examples:

- *That would be difficult.*
- *That probably won't work.*
- *I'm not sure.*

- *That's interesting.*
- *We will try to do our best.*
- *Maybe.*
- *I see.*

For you, these may be polite and clear ways for your counterparts to gently get the message that the answer is “no.” However, for US negotiators, phrases like these do not mean “no.” They mean something like “We don’t have a deal yet, but we might be able to reach one, so let’s continue negotiating.” When we finally realize that we have misunderstood you, we will not appreciate you for being polite; we’ll be frustrated by the confusion and waste of time and wonder if we can trust anything you say if we can’t even agree on what “yes” and “no” mean.

We will also wonder if you are *just playing games*, or using deception and *bad faith* tactics to try to get a better deal. To find out, we may ask, *So what are you really saying, exactly?* Or we may ask very specific questions to try to understand what you are trying to tell us. US negotiators don’t appreciate having to work so hard to figure out if your answer is yes or no, so if your answer is “No, there is no agreement,” use one of the phrases above to be civil, assertive, courteous and clear.

Notes

1. Charles B. Craver, *Effective Legal Negotiation and Settlement*, 7th ed. (New Providence, NJ: LexisNexis, 2012), 26.
2. Based on Chris Voss’s famous question, “How am I supposed to do that?” Chris Voss with Tahl Raz, *Never Split the Difference: Negotiating As If Your Life Depended On It* (New York: HarperBusiness, 2016), 3.
3. These are examples of “verbal leaks” from Craver, *Effective Legal Negotiation*, 26–29.

MUM 3: Step-by-Step Procedures for Negotiation Role-Plays

This section provides five steps to help you work with your negotiation counterparts to achieve the best possible outcome. Use these procedures like training wheels on a bicycle while you're learning to ride and then make adjustments for your next role-plays and real-world negotiations.

As you read this section, think about how these procedures compare to negotiation procedures in your own business or legal culture. Also think about how the negotiation procedures we choose may affect the outcome of our negotiations.

This section begins with a quick summary of the five steps (A–E). The pages that follow explain the steps in detail and provide sample phrases to help you use them. For the most effective communication style to use for all five steps, use the civil-assertive communication style described in MUM 1.

NEGOTIATION PROCEDURES: SUMMARY

The following page numbers refer to pages in this Companion Site.

- A. **Schedule the Negotiation** (p. 64)
- B. **Prepare for the Negotiation** (p. 65)
- C. **Start the negotiation**(p. 66)
 - 1. Introductions (p. 66)
 - 2. Pleasantries: Create a Positive Environment (p. 67)
 - 3. Small Talk: Create Rapport (p. 67)
 - 4. Transitioning to the Subject of the Negotiation (p. 68)
 - 5. Information Sharing Q&A (Questions and Answers) (p. 69)

- D. **Conduct the Negotiation** (p. 71). The following list is for simple competitive negotiations. For collaborative negotiations, see Chapter 5. The page numbers below refer to pages in the book.
1. Opening Offer or Request for Opening Offer (pp. 89–92; 97–103)
 2. Counteroffer (pp. 93; 97–103)
 3. Back-and-Forth Communications and Concessions (pp. 93–94; 104–106)
 4. Parties Consider Their BATNAs (pp. 88–89)
 5. Parties Consider Possible Agreements (BEC Checklist: MUM 8)
- E. **Conclude the Negotiation** (p. 72 in this Companion Site): You may end the negotiation with or without an agreement or with a partial agreement, but in all cases, leave “on good terms.” See MUM 8.
- F. **Debrief/Reflect:** For class role-plays, you will debrief with your counterpart and reflect on your own. (See p. 73 in this Companion Site.)

NEGOTIATION PROCEDURES IN DETAIL

To get the best results from the following negotiation procedures, use the “civil-assertive” communication style described in MUM 1 during each step: Create a positive environment. Build rapport and trust. Be confident (but not arrogant) and be reasonable (but not a pushover). Be very interested in learning what’s important to your counterpart and help them understand what’s important to you, too.

A. Schedule the Negotiation

Negotiations begin during our first communication with the other party, even if we are only discussing the date, time, and place of the meeting and even if our assistant (secretary, clerk, staff) is contacting the other party or their assistant for us. What impression do you want to make on your counterpart? (Remember the old saying that “we never have a second chance to make a first impression.”) What messages do you want to send them about the kind of negotiator you are and how you expect the negotiation to go? And what impressions are you forming about them?

If this is your first contact with your counterpart and you need to introduce yourselves to each other before discussing scheduling, see Introductions, p. 66.

Be Civil and Assertive

Negotiation experts advise us to develop a positive working relationship with our counterparts right from the start.¹ If you are making direct contact with your counterpart to schedule the negotiation, consider taking this as an opportunity to engage in appropriate small talk, as discussed on pp. 66–67 in this section. Even if we are planning to use a competitive *negotiation* style, starting with a courteous, confident, pleasant, *communication* style can produce the best outcomes. However, we should not be overly eager to agree to their proposals for the date, time, and place of the negotiation because this could send messages that we may also be overly eager to accept their demands on substantive matters such as money and time.

And we must keep in mind that our counterparts may respond aggressively because they think “congeniality” is a sign of weakness even though it is actually a sign of confidence. Chapter 6 provides

strategies for responding to aggressive negotiators, but for now it's enough to show that you are fair but firm: be reasonable but also assertive about meeting your scheduling needs, even if this seems like a *trivial* (unimportant) topic.

Beware of Wolves in Sheep's Clothing

Likewise, remember that if your counterpart uses a congenial *communication* style for scheduling the negotiation, this may or may not mean that they will be using a reasonable *negotiation* style for the negotiation. Beware of “wolves in sheep's clothing.” Show your counterpart that you will be amicable and helpful if possible—and also that you can *stand up to them* and protect yourself from them if necessary.

Prepare for Your First Contact

Therefore, before calling, emailing, or texting your counterpart to schedule the negotiation—and before responding to a counterpart who *initiates* (starts) this contact—prepare for the discussion. Check your schedule. What are some dates and times that will and will not work for you? For in-person negotiations, where would you be willing to meet? For other negotiations, would you prefer a phone call or online video conference? Think about how you can match your communication style, word choices, and tone to the impression you want to make. And pay attention to the messages that your counterpart is *transmitting* (communicating indirectly) to you: What can you learn about them that will help you prepare for the negotiation?

For sample dialogues that demonstrate various ways to be both civil and assertive while scheduling a negotiation, see the “Drone Dialogues” in the book, Section 6.4, pp. 172–177.

B. Prepare for the Negotiation

Prepare carefully. Be sure you have plenty of time to read your Confidential Fact Sheet and complete your Negotiation Planning Checklist (Companion Site 4.01) and/or a FENS form (Companion Site, MUM 5) for collaborative role-plays.

C. Start the Negotiation

1. Introductions

Introductions are opportunities to develop trust, respect, and rapport. If you are meeting or talking to your counterpart for the first time, introduce yourself in a way that makes things easy for them. Tell them how to pronounce your name if that's usually a problem for others, and tell them how you would like to be addressed. Explaining these things before your counterpart needs to figure out a polite way to ask you about them shows *empathy* (understanding the situation from *their* point of view) and plants seeds of trust. Likewise, if you're not sure how to pronounce *their* name or how they would like to be addressed, politely ask. Getting their name exactly right is another way to show them respect. For example, the first phone call between attorney Robert Zhxlvll (pronounced "Zill") and his opposing counsel, Elisabeth Ngwxvh (pronounced "Nash") could go like this:

"Good morning, this is Bob Zill. It's nice to meet you, Ms.— I'm sorry; I'm not sure how to pronounce your last name."

"Good morning, Bob, nice to meet you, too. My last name's pronounced 'Nash' but please call me Beth."

Negotiators and mediators in the United States commonly use their first names.² To you, this may seem like a negative sign of disrespect or a positive sign of informality and friendliness. But using first names is not intended to be either disrespectful or an invitation to a close personal friendship. It's simply a cultural preference or habit. If your counterpart greets you with a big smile and says, "Hi, I'm Bob," you can smile back and introduce yourself in any way that's comfortable for you, but proceed with caution. Take a look at the picture called *Negotiation* on p. 159 in the book.

2. Pleasantries: Create a Positive Environment

Create a positive and professional environment with statements like these: *I'm looking forward to working with you on this. I hope we can reach an agreement that works for both of our clients.*

3. Small Talk: Create Rapport

Both competitive and collaborative negotiators should *engage in* (participate in) "small talk" to try to establish rapport and connections before transitioning to the subject of the negotiation. Studies show that creating a positive working relationship may lead to better outcomes for both parties, even in competitive negotiations, possibly because this helps negotiators trust each other enough to share information about their true needs and goals for the negotiations.³ If the negotiators have not met before the negotiation, small talk could start with neutral topics that affect both of them, such as the weather, traffic, or the city or neighborhood where they are meeting.

After that, they could try to get to know each other a little by looking for *commonalities* (things they share) or things they don't share but are interested in, such as their backgrounds, interests, or things they are both *familiar with* (know about). Examples are where they are from, which schools they attended, people they both know, and possibly recent sports events.

People who have things in common or who can talk about things they are both familiar with tend to create good working relationships that can make the negotiation go more smoothly. However, don't go *overboard* (don't be overly enthusiastic and friendly and don't share personal or private information); remember that you both have jobs to do.

Things to avoid talking about with negotiators you don't know well include family (this could be too personal and private for some people, but if they talk about it first, you can certainly respond if you want to), politics, controversial topics in the news, religion, appearance, clothing, and hairstyles. Do not make statements or give compliments about how your counterpart looks even if you think you are just being nice.

4. Transitioning to the Subject of the Negotiation

How do we move from small talk to the issues for negotiation?⁴ Skillful negotiators do not just start throwing numbers at each other. But someone has to *initiate* the transition. There are many ways to do this; we will look at two common approaches that competitive negotiators use.

Competitive negotiators usually want to quickly *get down to business* (start talking about the numbers) and show that they *mean business* (are serious and determined to accomplish their goals). These may not be the most effective methods, but you may hear a statement or question like these after a few minutes of small talk:

- Transitional statement + position: *Let's get started. My client needs x.* (This is their client's opening offer. They are asking for your counteroffer.)
- Transitional word or statement + question: *So, turning to the matter at hand* (the subject we're here to negotiate) *what are you asking for?* (They are asking you to make the opening offer.)

How could you respond? You could respond directly to their statement or question and start the back-and-forth negotiation dance. But a more skillful approach could be to slow things down a little by responding with a question instead.⁵ For example, you could say something like, *I certainly want to talk about that, but first I have a couple of questions for you, and I'm sure you have some for me.*

5. Using Questions to Transition from Small Talk

What questions could you ask? Consider broad questions to get to know your counterpart a little more and possibly to gain some information. The information may not be reliable (anything they say is probably calculated to get them the best price or other victory), but it may still be valuable in some way, especially if it leads to follow-up questions. For example, in a negotiation for a used car, the buyer could ask the seller, *What can you tell me about the car?* or *Why are you selling the car now?* The seller could ask, *What are you looking for in a car?* (What kind of car do you need; what qualities do you need the car to have?) or *Why do you want to buy a car today?*

These are the same kinds of questions that skillful competitive negotiators may use for the second approach to initiating the transition from small talk to the negotiation topics. Instead of starting with a statement or question to quickly start negotiating over positions, they make the transition with questions that lead to “information sharing” instead of bargaining. Competitive negotiators may focus their questions on the specific subject of the negotiation, as in the questions above, or they, along with collaborative negotiators, may broaden their focus and *cast a wider net* as discussed next.

6. Information Sharing Q&A (Questions and Answers)

This section describes questions to ask your counterpart, how to listen while they are answering, and how to answer their questions.

Questions for Information Sharing

The more information you can gather, the more power you will have. What information are you seeking? In general, you want to know as much as possible about your counterpart and their client, including things that don't directly relate to the negotiation. You want the *big picture*. What's important to them? What are their needs? Remember that these may be quite different from the positions they demand. Sample questions include the following; remember that you can use these to transition from small talk to the subject of the negotiation:

- *Can you tell me a little about your clients and what they need or are hoping to achieve?*
- *How do you see this situation?*

Open-ended questions like these show your counterpart that you are interested in what's important to them, which should inspire them to show similar interest in what's important to you. And the answers may provide pieces of the puzzle you didn't even know were there.

For Role-Play 1 and similar simple competitive negotiations, you'll probably want to go from your broad, general, transitional questions to specific, narrow questions that can be answered with a few words. You'll ask these questions to get specific information you need, to confirm information you're not sure about, and to test your counterpart's credibility and openness about information you already have. Prepare a few specific focused questions to ask your counterpart for these purposes.

How to Listen to Their Responses

Both competitive and collaborative negotiators should use "active listening," as described in Chapter 5. For Role-Play 1, you can adapt Script 1 (p. 149) to simply "paraphrase and check" what your counterpart is saying. Give your counterpart eye contact, nods of the head, and words of encouragement, such as *I see*.

When they are done speaking, summarize what they have said and ask if you have understood them correctly. Your goal is to show your counterpart that you are listening carefully to what they are saying and that you respect them—even if you disagree with them.

What Are You Listening For?

You are *listening for* (listening to learn about) information that will help you create an agreement that works for both sides. This includes listening for what they are—and are not—telling you, so that you can ask follow-up questions. You are also listening for clues from your counterpart's communication style. In other words, you are listening not only to *what* they are saying but also to *how* they are saying it.

How to Respond

Before the negotiation, think about questions that you hope your counterpart will not ask you, and plan your responses. During the negotiation, if you're not sure how to answer a specific question and you feel like they're *putting you on the spot*, you can say something like, *I'll have to think about that*, or *I can't answer that right now*, *maybe we'll come back to that*, or *Let's take a short break*. Try to keep the amount of information sharing equal so that both sides are sharing about the same amount of information.

D. Conduct the Negotiation

Now you're ready to start the negotiation itself. For competitive negotiations, review Chapter 4. For collaborative negotiations, review Chapter 5. For simple competitive negotiations like Role-Play 1, use this outline (page numbers refer to pages in the book):

1. Opening Offer or Request for Opening Offer (pp. 89–92; 97–103)
2. Counteroffer (pp. 93; 97–103)

3. Back-and-Forth Communications and Concessions (pp. 93–94; 104–106)
4. Parties Consider Their BATNAs (pp. 88–89)
5. Parties Consider Possible Agreements (BEC Checklist: MUM 8)

E. Conclude the Negotiation with or without an Agreement

To end the negotiation, use the suggestions in the BEC Checklist. The key points for Role-Play 1 are summarized here:

If you reach an agreement: Write it down. Both parties should get a copy. End the session in a positive way, such as with a handshake and courteous statements. Examples: *I'm glad we were able to work this out./It's great that we reached an agreement that works for both of us./It was a pleasure to work with you on this.*

If you did not reach an agreement: Leave on *good terms* (with a positive feeling, don't *burn your bridges*). You can end with a handshake and courteous words. Examples: *Thank you for working on this./It was a pleasure to work with you even though the outcome wasn't what we hoped for./I'm glad we had a good discussion even if we didn't make a deal. Let me know if you want to talk again.*

F. Debrief/Reflect

After Role-Play 1, meet with your counterpart. You may discuss anything you wish, but be sure to discuss the following points.

Debriefing and reflections for Role-Play 1:

1. Point out at least one positive or skillful thing your counterpart did.
2. Ask your counterpart for feedback about your negotiation strategies or skills in general or on specific points.
3. Discuss any questions you have for each other.
4. Exchange Confidential Fact Sheets. Read the information your counterpart was working with.
5. Now that you know the whole story, is there anything you wish you had done differently during the negotiation? Do you have any new ideas for an agreement, or questions or comments for your counterpart? Just for practice (and fun) you can reopen the negotiation and improve the agreement. If you do this, make a few notes to yourself about what you learned from this exercise.
6. Write down at least three “takeaway” lessons from this role-play that you can apply to real-world negotiations. Include lessons about negotiation and about yourself as a negotiator.
7. What questions do you have about competitive negotiation or about your negotiation skills? What do you want to research or practice?
8. Ask an AI platform to negotiate an agreement for this role-play. You can ask it to use a competitive style and then a collaborative style. Compare AI’s process and outcome to your own. What can you learn from this?

Notes

1. Charles B. Craver, *Effective Legal Negotiation and Settlement*, 7th ed. (New Providence, NJ: LexisNexis, 2012), 79–80.

2. Craver, *Effective Legal Negotiation*, 307.

3. Janice Nadler, “Legal Negotiation and Communication Technology: How Small Talk Can Facilitate E-Mail Dealmaking.” *Harvard Negotiation Law Review* 9 (2004): 223–253. Northwestern Law & Econ Research Paper No. 03-11, Available at SSRN: <https://ssrn.com/abstract=428523> or <http://dx.doi.org/10.2139/ssrn.428523>

4. Craver, *Effective Legal Negotiation*, 89.

5. Craver, *Effective Legal Negotiation*, 89.

MUM 4: (Script 4): Active Listening for Negotiators, Mediators, Attorneys, and Conflict Coaches

A is the active listener.

FACTS & POSITIONS

A: I'd be interested in hearing about _____.

Can you help me understand how you see the situation?

B: Yes: _____.

A: So, you said that . . .

[Paraphrase] _____.

[Check] Is that correct?

B: Yes.

[Or] No, not exactly. What I meant was _____.

A: So, you were saying _____ . Is that right?

B: _____.

EMOTIONS [TIPS] [EXAMPLES]

A: It sounds like you felt/were feeling _____. Does that sound about right?

B: Yes.

[Or] No, not really. I was actually feeling _____.

A: Oh, now I understand. You felt _____.

Does that sound right?

B: _____.

NEEDS/VALUES [TIPS] [EXAMPLES]

A: What's important to you is/are _____.

Have I got that right?

B: Yes.

[Or] No, not quite. What I really care about is _____.

A: So, what you really care about is/are _____.

Am I understanding you correctly now?

B: _____.

SOLUTIONS [TIPS]

A: Would you like to discuss some ways to satisfy those needs?

B: I could try _____.

[A and B: Remember to thank each other.]

MUM 5: Sample FENS Form (Table 5.2) (See pp. 142–143 in the book.)

	Party 1	Party 2
Facts/Positions		
Emotions		
Needs/Values		
Solutions		

MUM 6: Sample Questions for Negotiators and Mediators

OPEN-ENDED QUESTIONS

How do you feel about ____?

What do you think about ____?

What do you need?

How does ____ seem to you?

Can you help me understand how/why ____?

Could you say more about that?

What do you want me to understand?

What else?

What's most important to you about ____?

What questions do you have for [me/the other party]?

CLOSED QUESTIONS

When did that happen?

How much did that cost?

Who was in the room where that happened?

Questions that can be answered with “yes” or “no” or with one or two words.

SOLVING PROBLEMS

Can you help me understand why this won't work for you?

What changes would you need to make this work?

What are some other options we could consider?

Can you help me understand why this seems fair and reasonable to you?

Would you consider _____ instead of _____?

How could we solve that problem?

*What information do we need in order to reach an agreement?
If I could offer _____, could you offer _____?
How could we make this work?*

DIRECTIVE

Mediators: Could you repeat back what you heard [the other party] say about that?

Negotiators: Just to make sure we're on the same page, could you repeat back what I have said about ____?

HYPOTHETICAL/TIME TRAVEL (MEDIATOR QUESTIONS)

Past: If you could go back in time and say or do something other than what you actually did or said, what would it be?

Future: Can you imagine what your life would be like (tomorrow/next week/next year)

— if you reach an agreement today?

— if you do not reach an agreement today?

How would you like your life to be after today?

For disputes among relatives or close friends:

What about (birthdays, Thanksgiving, holidays)? Ideally, how would you like those special days to be?

REALITY-CHECKING QUESTIONS (MEDIATOR QUESTIONS)

What are the strengths of the other party's case? What are you most worried about?

What are the weaknesses in your own case? What are you most worried about?

What are some downsides to going to trial? Examples:

How much will it cost?

How much time off work will you need?

*How will it affect your family? —your reputation?
How stressful will it be?
What worries you most about going to trial?
What will you do if you lose at trial?
Have you researched the law on ____? What did you learn?
Are you sure the judge will allow you to use ____ as evidence?
Why are you sure?
Just to play devil's advocate (imagine the worst possible
situation for you), if the judge or jury . . .
a. doesn't understand ____ or
b. disagrees with you about ____
. . . how will that affect your chances of winning?
What's the best possible outcome at trial? Will that satisfy your
need for ____?
Is there anyone you should talk to about agreeing/not agreeing
to this proposal? —going to trial instead of settling?
You've agreed to do _____. Is that realistic? How, exactly, will
you be able to do that?
What if something goes wrong after you sign the agreement?
Do you need a Plan B?
What's your BATNA? Is that better than
—the best agreement you can reach with your counterpart?
—ending the session without an agreement?
—going to trial?*

For additional questions, see the BEC Checklist, MUM 8.

MUM 7: Debriefing and Reflection Questions for Negotiation Role-Plays

Debrief with Your Counterpart

1. Exchange positive feedback. Tell the other party what they did well. Be specific.
2. Request feedback.
3. Discuss questions you have for each other.

For sample responses, see the last page of MUM 7.

4. Exchange Confidential Fact Sheets. Read the information your counterpart was working with. Now that you know the whole story, is there anything you wish you had done differently during the negotiation? Do you have any new ideas for an agreement, or questions or comments for your counterpart? Just for practice (and fun) you can reopen the negotiation and improve the agreement. If you do this, make a few notes to yourself about what you learned from this exercise.

Reflections for Discussion or Writing

1. Describe your guesses or assumptions before the negotiation
 - a. about the other party.
 - b. about achieving a good result; were you optimistic or pessimistic?
2. Did your ideas change during the negotiation? If yes, what, exactly caused the change? Include statements, questions, tone, body language, or anything else.
3. How did you prepare for the negotiation? Was this helpful? Explain.

4. Did you use active listening? Did your counterpart?
 - a. How did it feel to provide active listening? Was it helpful? Explain.
 - b. How did it feel to receive active listening from your counterpart? Explain.
5. Did you apologize to the other party? Did they apologize to you? Describe the apologies you or they gave and how these affected the negotiation. If there were no apologies, explain why, and discuss whether apologies could have been helpful.
6. Was this a successful negotiation? Why or why not?
7. What have you learned about yourself as a negotiator from this negotiation?
 - a. What did you enjoy? What did you do well?
 - b. What was challenging? What would you like to improve?
 - c. What questions do you have about this role-play or about negotiation?
8. Did you learn anything about negotiation from your counterpart?
9. What lessons from this activity could you apply to real-world negotiations?
10. Is there a role for AI in negotiations like the one you just did? Try using AI in some way for this negotiation. What have you learned?

Debrief with Your Counterpart: Sample responses

1. Exchange positive feedback. Tell the other party what they did well. Be specific. Examples:
You used active listening really well to understand my interests.
You were very prepared for this negotiation; you knew your facts and what you needed to achieve.
It was easy to brainstorm many possible solutions with you.
Thanks for apologizing about _____. That really helped me overcome my resistance to reaching an agreement with you.
2. Request feedback. Examples:
Do you have any suggestions for me?
I wasn't sure if I should have asked you about _____. How did that question seem to you?
Did you trust the information I was giving you?
3. Discuss questions. Examples:
I'm wondering why _____. I noticed that you _____. Could you tell me what was going on for you then?
4. Discuss ethical issues that you have questions about. Examples:
Do you consider _____ a material fact?
Do you think I crossed the line when I said _____?
Do you think that saying _____ was a lie or an acceptable persuasive strategy?

MUM 8: BEC Checklist (Summary – See next page for the detailed version).

The page numbers in this checklist refer to the book.

Step 1. Brainstorm (p. 202)

Be creative. Be amicable. Think outside the box. No criticism.

- ☐ a. Create an agenda (a list of topics to discuss). Include below-the-line issues.
- ☐ b. Propose solutions for each topic on the agenda.
- ☐ c. Write down all suggestions. All ideas are welcome!

Step 2. Evaluate (p. 207)

Use the civil-assertive communication style (MUM 1). Look for win-win options.

- ☐ a. Review all proposals. Which ones meet the parties' below-the-line needs?
- ☐ b. Consider packages, trade-offs, compromises, mutual gains, and global agreements.
- ☐ c. Reality-check/play devil's advocate to test each proposal.
- ☐ d. Is there a Plan B (contingency plan) in case something goes wrong?
- ☐ e. Are there penalties or consequences if parties do not keep their agreements?
- ☐ f. Ask "catchall" questions to make sure the agreement is complete.

Step 3. Conclude (p. 214)

- ☐ a. Write the agreement.
- ☐ b. Review the agreement. Read it out loud. Ask these questions:
 - ___ Is it clear? Is it in “plain English”? Does it use the active voice?
 - ___ Does it use *will*, *shall* and other terms of “obligation”?
 - ___ Is it specific? Does it answer who, what, where, when, how, and how much?
 - ___ Is it complete? Does it include all the concrete and abstract issues?
 - ___ Is it enforceable? Could a judge order a party to do exactly what it says?
 - ___ Can the parties paraphrase each term of the agreement to make sure it’s accurate?
 - ___ Are the parties willing and able to comply with the agreement?
- ☐ c. Revise and edit.
- ☐ d. Parties (not mediators) sign the agreement and give copies to all.
- ☐ e. End on good terms.

MUM 8: BEC Checklist (Detailed version)

Step 1. Brainstorm (p. 202)

Be creative. Be amicable. Think outside the box. No criticism.

- ☐ a. Create an agenda (a list of topics to discuss). Include below-the-line issues (emotions, interests, needs, and values) to create a sustainable agreement. Mediators may suggest topics (not solutions).
- ☐ b. Propose solutions for each topic on the agenda.
- ☐ c. Write down all suggestions. All ideas are welcome!

Step 2. Evaluate (p. 207)

Use the civil-assertive communication style (MUM 1). Look for win-win options to create a sustainable agreement. Think outside the box. Reality-check and play devil's advocate. Use techniques to overcome impasse. Select workable, doable (pronounced: DO abul) proposals that meet the parties' needs.

- ☐ a. Review all proposals. Which ones meet the parties' below-the-line needs?
- ☐ b. Consider packages, trade-offs, compromises, mutual gains, and global agreements.
- ☐ c. Reality-check/play devil's advocate to test each proposal. Does it meet the parties' needs? Will it actually work? Are the parties willing and able to keep these promises?
- ☐ d. Is there a Plan B (contingency plan) in case something goes wrong?

- ☐ e. Are there penalties or consequences if parties do not keep their agreements?
- ☐ f. Ask “catchall” questions to make sure the agreement is complete:

Did we cover everything? Did we miss anything? Let's make sure we've covered all the issues we need to resolve.

Step 3. Conclude (p. 214)

Concluding with a Full Agreement

- ☐ a. Write the agreement.
- ☐ b. Review the agreement. Read it out loud. Ask these questions:
 - ___ Is it clear? Is it in “plain English”? Does it use the active voice?
 - ___ Does it use *will*, *shall* and other terms of “obligation”?
 - ___ Is it specific? Does it answer *who*, *what*, *where*, *when*, *how*, and *how much*?
 - ___ Is it complete? Does it include all the concrete and abstract issues (interests and needs)?
 - ___ Is it enforceable? Could a judge order a party to do exactly what the agreement says?
 - ___ Can the parties paraphrase each term of the agreement to make sure that they have the exact same understanding?
 - ___ Are the parties willing and able to comply with the agreement?

- ☐ c. Revise and edit. Check verb tenses, subject-verb agreement, word forms, plurals, and sentence structure.
- ☐ d. Parties (not mediators) sign the agreement; and give copies to parties and mediators.
- ☐ e. End on good terms. Example: *It was a pleasure to work with you.*

Concluding with a Partial Agreement

- ☐ a. Write down the terms the parties have agreed to and follow the above steps.
- ☐ b. Write down the issues that are not resolved and discuss “next steps.”
- ☐ c. End on good terms. Example: *Thanks for working with me on this. I’m glad we reached an agreement on ____, and I hope we can keep talking about ____, but I’ll understand if you want a judge to rule on that.*

Concluding without an Agreement

- ☐ a. List the issues that still need to be resolved and discuss next steps.
- ☐ b. End on good terms. Example: *I’m glad we tried to work this out today. The discussion was useful even though we couldn’t reach an agreement. Let me know if you have any other thoughts about settling before the trial.*

For all negotiations and mediations regardless of the result: Parties may shake hands. Attorneys may shake hands with each other. Mediators may shake hands with everyone and congratulate the parties/attorneys and/or wish them well.

MUM 9: Settlement Agreements: Peer Review

Before finalizing agreements or *submitting* (presenting) them to a judge, negotiators often ask a colleague for feedback. You can use this activity to practice giving and receiving this kind of feedback after any negotiation or mediation role-play.

Instructions:

1. **Type your agreement.** Double space.
2. **Exchange agreements** with a partner. Choose to be A or B. (You'll play both roles during this activity.) Partner A is the judge. Partner B is the attorney who is asking the judge to approve the agreement.
3. **The judge reviews the agreement** using the BEC Checklist (MUM 8). The judge may ask the attorney questions and suggest improvements. If the agreement is enforceable, the judge may say, "Approved." If not, the judge tells the attorney what must be done to make the agreement enforceable.
4. **If changes are needed, the attorney revises** the agreement to satisfy the judge's concerns (solves the problems the judge described) and asks the judge to approve the revised agreement. The judge may or may not agree to do so.
5. **Switch roles**, so that B is now the judge reviewing A's agreement.
6. Optional: Ask an AI program to review your agreement and compare AI's responses to your own. What can you learn from this exercise?
7. Optional: Discuss how the BEC process compares to reaching and finalizing agreements in your country or culture.
8. Optional: Write about or discuss your thoughts about how this activity could help prepare you for real-world negotiations and mediations. What changes would you make?

MUM 10: Mediation Debriefing Questions

After the mediation, all participants should meet to discuss their session. Choose someone to *facilitate* (lead the discussion and encourage everyone to participate).

DEBRIEFING POINTS FOR THE PARTIES

1. Tell the mediators what they did well. What was most helpful to you in your role as a party? Give specific examples.
2. Was active listening helpful? Explain.
3. If you have questions for the mediators, ask them now.
4. Feel free to thank your mediators.
5. Share any questions or comments you have for the other party.

DEBRIEFING POINTS FOR THE MEDIATORS

1. Say anything you wish about the mediation or your participation. If you feel comfortable, describe a few specific things you think you did well and a few things you wish you had done differently or are not sure about.
2. Ask the other participants for feedback.
3. If you have questions for the parties, ask them now.
4. Describe at least one thing that your co-mediator did well or that you appreciate about them. If you have questions for them, ask them now.

DEBRIEFING POINTS FOR OBSERVERS

1. What did the mediators do well? Be specific.
2. What questions do you have for the mediators?
3. What questions do you have for the parties?

DEBRIEFING POINTS FOR ATTORNEYS

1. How did the mediation seem to you in your role as attorney?
2. Did you want to participate more? Why or why not?
3. If you are an attorney or law student, would you recommend this type of mediation to clients? Why or why not?
4. Share any feedback or questions you have for the mediator or parties.

QUESTIONS FOR ALL PARTICIPANTS

1. Discuss anything that surprised you about the mediation.
2. What are two or three specific things you learned about mediation from this session? Make notes of “takeaway” lessons.
3. How could the mediation process be improved?
4. Would you have to change anything about this mediation process for your own legal culture, business culture, or culture in general?
5. Did you learn any new words, phrases, or idioms that you would like to start using? List at least two or three new terms to practice. Also note any questions about English that arose during the session.

6. How did the mediators' word choices help them accomplish their goals? Consider vocabulary, modals, questions, or anything else. List examples.
7. Would a mediation like this be equally effective in person and online?
8. Do you think an AI program could provide a better mediation?
9. What questions do you have about mediation?
10. Would you like to serve as a mediator for real-world disputes?

Companion Site, Part 3:

Materials for The Teaching Guide for English for Dispute Resolution

Barrie J. Roberts

University of Michigan Press
Ann Arbor

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Published in the United States of America by the
University of Michigan Press

Manufactured in the United States of America

First published July 2025

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, or otherwise, without the written permission of the publisher.

CAVEAT (WARNING!): This book presents general principles about Alternative Dispute Resolution (ADR) for education and information. Readers should not use it as advice for specific cases. Instead, readers should seek legal advice from their own attorneys or carefully research the applicable laws and rules for their specific cases.

OTHER BOOKS BY BARRIE J. ROBERTS:

The “Getting to Yes”[©] Guide for ESL Students and Professionals:
Principled Negotiation for Non-Native Speakers of English

Conflict Resolution Training for the Classroom: What Every ESL Teacher
Needs to Know

For more information about English for Dispute
Resolution (EDR) visit www.learn-edr.com

Please note that some Companion Site materials were revised after the Teaching Guide was published, so there may be some differences in materials with the same section number.

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INTRODUCTION

Part 3 of the Companion Site is for instructors, especially ESL, ESP, and legal English and business English instructors. It will help you use the textbook to teach negotiation, mediation, or the field of Alternative Dispute Resolution (ADR) as units in current courses, stand-alone courses, or occasional activities.

The textbook and Companion Site are based on materials I created for high- intermediate to advanced-level students in the Summer English Language Studies (SELS) program at the University of California, Berkeley; for international LL.M. (Master of Laws) students at the Chapman University Fowler School of Law in Orange, California; and for colleagues at UC Berkeley, TESOL, CATESOL, and other conferences. I am delighted to share these materials with you and I hope you will find many ways to use them.

AI and ADR: As we all know, artificial intelligence is evolving before our very eyes, and this applies to AI in ADR, as well. A quick ChatGPT query for articles on “AI for negotiation training” produced many fascinating articles, including this one from the Harvard Project on Negotiation: “From Agent to Advisor: How AI is Transforming Negotiation” (March 12, 2025) <https://www.pon.harvard.edu/daily/negotiation-skills-daily/from-agent-to-advisor-how-ai-is-transforming-negotiation/>

This article describes how AI can help to train new negotiators and prepare both new and experienced negotiators for real-world negotiations. One especially useful approach for EDR purposes is practicing negotiation with a bot that transcribes the discussions and provides feedback. Instructors could use these transcripts for a variety of ESL purposes. Instructors could also use AI to help create simple role-play scenarios for their particular students.

The textbook often asks readers to consider how they could use AI for various purposes – and what they should be cautious about when doing so. The same questions apply to instructors, of course.

HOW TO USE THE TEXTBOOK AND THE COMPANION SITE

The textbook

The textbook aims to make complex information about ADR accessible to readers with at least high-intermediate ESL skills. It also aims to provide the content that instructors need to guide students through the materials and activities in that book. Each chapter provides a ready-made lesson plan with warm-up questions, hypothetical cases (hypos), background readings, follow-up questions, activities, and reflections.

You can use each textbook chapter in sequence for an ADR survey course, select chapters for a negotiation or mediation course or for units in your current courses, or use activities from any chapter to support your current lessons. For “Go-To” activities, see Chapter 12.

The Companion Site

Additional materials are provided in Parts 1, 2 and 3 of the Companion Site. Students have free access to all three parts, so you can simply tell students which materials they should—and should not—access. (For example, they should not look at role-plays until instructed to do so.)

Part 1 provides materials that support specific chapters in the textbook. Part 2 provides “Multi-Use Materials” (MUMs) that support more than one chapter or the book in general. This section, Part 3, is for instructors.

To guide students through each chapter, Part 3 provides teaching tips, lesson plans, additional activities, role-plays,¹ assessment suggestions, and resources. It also provides guidance for creating and assessing role-plays (Chapter 11); multi-purpose activities (Chapter 12); and sample syllabi (Chapter 13). Part 3 also contains the hand-outs for activities, the Confidential Fact Sheets for role-plays, and materials to keep handy for in-class and online teaching purposes.

To learn how to access Companion Site materials, see “Guide to the Numbering System,” p. 20.

LEARNING HOW TO TEACH ENGLISH FOR DISPUTE RESOLUTION (EDR)

As with any course that requires language instructors to become familiar with new content, there is good news—and “daunting”² news. The daunting news is that negotiation and mediation courses in the U.S. are challenging even when all students and instructors are native speakers of English. But there are four pieces of good news for instructors:

1. The textbook and Companion Site provide the content you need to teach EDR

The materials in the textbook and Companion Site are based on nearly 20 years of ESL/ESP classroom experience. They have worked for general ESL students, law and business students, and lawyers and other professionals from all over the world. The textbook’s Introduction and Note to Readers provide the foundations for both studying and teaching EDR, and each chapter provides the specific background information that instructors and students need for the activities provided. If you’d like to learn more about ADR, see *ADR Resources for ESL/ESP Instructors* for suggestions.

2. ESL and ADR share key values and pedagogy

Positive classroom environments for ESL and ADR

The second piece of good news for instructors is that an excellent way to teach negotiation and mediation is to model their key values—which you are probably already doing. Hallmarks of both ESL and ADR include communicating; asking questions; clarifying; empathizing; collaborating; problem-solving; creating rapport, trust, and a welcoming, respectful and supportive environment for learning and risk taking; encouraging all voices to be heard; being flexible and open-minded; and reflecting on what we have learned and applying it in new ways. For practical ways to implement some of these values into your ADR units or courses, see *Creating a Positive Classroom Environment for ADR Activities*.

Modeling collaborative values, not expertise

Many ADR instructors, from community mediation trainers to Harvard professors, share and model these same values. They are not “sages on stages” but “guides by our side.” They model key points about dispute resolution: We are always in the process of learning more about it and adapting it to new situations. We appreciate that others may have better ideas. When we don’t know how to answer a question, we model the ADR value of transparency by saying that we aren’t sure and asking for suggestions. Many ADR instructors also model another ADR value, humility, by telling a humorous self-deprecating story about losing negotiations with spouses, children, or used-car sellers.

If expert ADR instructors can teach negotiation and mediation in these open, relaxed, collaborative, and good-humored ways, so can we. For example, we might share a story about a former student who successfully negotiated an extension on a paper using the methods we had just taught her.

3. Experiential learning is key for both ESL and ADR

As we all know, it is not enough to study English. To become fluent, we must jump in the water and start kicking, and the third piece of good news is that the same is true for negotiation and mediation. Therefore, many ADR activities in this guide will seem like familiar communicative ESL activities, and many of your tried-and-true ESL methods will work just as well for ADR.³

In fact, my EDR lightbulb moment occurred during a mediation training that had nothing to do with ESL. At the time, I was a new ESL teacher still finding my way when I suddenly lost my way during an active listening activity for mediators. While paraphrasing the story my partner had just shared, and checking to make sure I had understood him correctly, for a split second I thought I was back in my TESOL training program and practicing an excellent

communicative activity for language learning. This momentary confusion led to a very clear thought: conflict resolution role-plays and ESL are a perfect match. My next thought was that if ESL instructors could take a mediation training, they would experience their own lightbulb moments, and the seeds for this book were planted.

4. Language and communication are key to both ESL and ADR

My students have appreciated the opportunity to learn about negotiation and mediation in accessible “plain English”⁴ and to apply this knowledge during discussions and role-plays. They have preferred to receive instruction on language points that directly relate to the tasks at hand rather than sit through language lessons that they may not need. The fourth piece of good news is that this is an authentic ADR approach, as well.

Authentic focus on understanding

At the heart of both ESL and ADR is understanding, from the plain meaning of a word to our deepest thoughts. Even native English speakers must focus on word choices and communication styles to study and practice ADR in English; communication is the tool of our trade. But the time to present these lessons is when they are needed, such as before or during an activity in which they will be relevant, or immediately after, while “debriefing” to assess how our word choices and communication styles helped or hurt our efforts. Therefore, you can present many of the language points and activities in the textbook as authentic ADR lessons. In other words, EDR language and communication activities can serve double duty for ADR and ESL. This is discussed more in the Note to Readers, p. xxiv.

Authentic need for sociolinguistics

ESL and ADR overlap in other ways, as well. Many topics for sociolinguistics and pragmatics⁵ are equally at home in ADR courses. Examples include apologizing (the subject of Chapter 7), asking for

clarification (Chapter 5, active listening), learning the Civil -Assertive Communication Style, an all-purpose communication style for professional purposes (MUM 1), and saying “no” (MUM 2). (Remember that “MUMs” are multi-use materials for more than one chapter, and they are in Part 2 of the Companion Site.) Crossover topics and bridges between ESL and ADR could be a rich source of research projects both in and out of the classroom.

Authentic need for explicit ESL lessons

Thus, integrating language lessons into ADR courses is an authentic and essential endeavor for native speakers of English.⁶ But even when you need to provide explicit ESL lessons, you can do so to serve ADR purposes. For example, if students will be brainstorming creative resolutions to a dispute, you could preface that activity with your customary lesson on modals, which students could then immediately—and authentically—apply to brainstorming. (“We could offer a payment plan.” “Would you consider a payment plan?”) If you are teaching paraphrasing or interviewing skills, the active listening scripts in Chapter 5 provide practice opportunities.

Likewise, when students are preparing to tell their side of the story or to serve as mediators in role-plays, you could integrate your customary lessons on rhetorical styles to help students persuade, inform, or motivate using logos, pathos, ethos, narration, description, exposition, and other styles. And for editing practice, students can apply the last part of the BEC Checklist (MUM 8) to the written negotiation and mediation agreements they create. (BEC stands for *brainstorming*, *evaluating*, and *concluding* and is the subject of Chapter 8.) The textbook and Companion Site provide many opportunities like these to focus on ESL points in the context of ADR. For additional ideas, see the resources listed in this endnote,⁷ the Note to Readers, p. xxiv in the textbook, and my short book on this subject.⁸

IDENTIFYING YOUR FOCUS

Three questions will help you identify your focus for EDR courses, units, or activities.

- Is your focus ESL or ESP?*
- Will you be teaching in person, online, or both?
- Will you be teaching negotiation, mediation, or both?

IS YOUR FOCUS ESL OR ESP?

Are you using ADR as a new and engaging way to teach English, or are you teaching ADR to non-native English speakers for academic or professional purposes? You can use the textbook either way: each chapter in this section of the Companion Site starts with a separate overview for ESL and ESP instructors described below:

FOR ESL INSTRUCTORS: LOOK FOR THE DOUBLE STRAIGHT BRACKETS []

[] The textbook and Companion Site will prepare you to use negotiation and mediation activities in high-intermediate to advanced ESL courses. This section (Part 3) of the Companion Site suggests chapters to use for your own background reading as well as activities to use or skip in each chapter.

ESL settings: Intensive English Programs (IEPs) are ideal settings for ADR courses. Conflict resolution courses have been a staple of the UC Berkeley Summer English Language Studies program for general ESL students for over a decade.⁹ ADR activities are also well suited to orientation sessions for academic programs, and for summer or semester-long courses for students in pre-law, business, social work, nursing, teaching, and other courses for professionals

* Although not ideal, I'm using "ESP" as shorthand for legal English, business English, and other types of English for Professional Purposes.

who need strong communication skills to prevent and resolve conflict. This book provides materials for lessons, units, or semester-long themes for all of these contexts. See the sample syllabi described in Chapter 13.

FOR ESP INSTRUCTORS: LOOK FOR THE DOUBLE CURLY BRACKETS {}

{ } The textbook and this section of the Companion Site (Part 3) prepare you to teach ADR, negotiation, and/or mediation in two ways. First, you can use selected chapters and activities in your current legal English, business English, or other courses to supplement texts that do not comprehensively cover ADR topics. You could also use this book for stand-alone negotiation, mediation, or ADR courses.

These courses could be designed for students from one discipline, such as business, law, social work, peace and conflict studies,¹⁰ or diplomacy,¹¹ or open to students from a variety of disciplines, including those that do not make explicit use of negotiation and mediation, as the “specific purpose” here is to develop communication, dealmaking, and dispute-prevention and resolution skills that students can apply to a wide range of disciplines and professional contexts. (See the sample syllabi described in Chapter 13.)

ESP settings: LL.M. and MBA (Master of Business Administration) programs and their orientation/pre-session programs are ideal settings for ADR activities and courses. Additional settings include IEPs (Intensive English Programs) and semester- or year-long elective courses during the regular academic year for law, business, international relations, and peace and conflict studies.

IN PERSON OR ONLINE?

Real-world negotiations and mediations take place both in person and online (as Online Dispute Resolution [ODR]), and most EDR activities can also be done in or out of class, in person or online. One

common real-world scenario that you are welcome to mirror is to start a negotiation or mediation in person and then, if the parties run out of time or can't reach an agreement, complete it by phone, online video conference, text or email. For a video that explains and demonstrates online mediation, see https://www.youtube.com/watch?v=i2hRCqfbb_g&ab_channel=ABASectionofDisputeResolution.

NEGOTIATION, MEDIATION, OR BOTH?

Students' needs

If you are in a position to choose to teach either negotiation or mediation—or both—how should you decide? As with any ESL/ESP course, the first step is to assess your students' needs. For example, will your students be participating in formal negotiation and mediation processes as attorneys, parties, or mediators in the context of ADR, or do they need these soft skills for professional communication in general?

Time

Instructors must be realistic about the amount of time that is available to meet these needs. We need time to learn new material, plan lessons, prepare handouts, provide in-class lessons and activities, review assignments, and provide assessments. We must also consider how much out-of-class work we can assign and review. As experienced instructors know, all of the above activities take more time than we plan (and hope) for, especially during our first few efforts.

The textbook was designed with instructors' time constraints and various student needs in mind. As mentioned above, it can be used either in sequence or "à la carte." If you use the textbook in sequence, you will notice some repetition to make it possible for the à la carte users to select individual chapters for stand-alone lessons. The following points should help you consider the best options for you and your students.

Negotiation Only

Time: It is certainly less time consuming to focus only on negotiation, and negotiation role-plays and active listening dialogues or interviews are familiar activities for ESL instructors and students alike.

Practical use: Negotiation, whether formal or informal, is a key practical soft skill that everyone needs for professional, academic, and personal communication. And, as discussed in Chapter 1 of the textbook, attorneys spend far more time negotiating with each other than arguing against each other in court. Additionally, an ESP negotiation course can prepare students for negotiation courses with native speakers of English.

Student engagement: For conflict-averse students, negotiation provides no buffer; students on opposite sides need to face each other and directly address difficult issues. This can be an exciting and motivating way for students to stretch themselves beyond their comfort zones, or it can be stressful and embarrassing, as there is nowhere to hide. To mitigate, students could negotiate in teams rather than as individuals, or you could focus on conflict coaching or on mediation, discussed next.

Mediation Only

Time: While it is certainly more time consuming to learn about and teach mediation, once you invest that time, the rest of the course is for practice, refinement, and application to more complex disputes and/or disputes of interest to students.

Practical use: Mediation lessons and activities are essential for law and business students who need to understand and possibly participate in formal mediation processes. For them,

there is no substitute for the experience of an actual mediation, even in the form of a classroom role-play. And classroom role-plays will prepare these students for mediation courses with native speakers of English and even for careers as mediators. ESP students who can serve as bridges in cross-cultural mediations have much to offer.

But mediation lessons and activities also have practical uses for ESL and ESP students in general. Mediation students gain key leadership,¹² teamwork, critical thinking, and language skills¹³ as they set up their mediation space and take charge of their mediation sessions, using English in authentic ways to solve problems in collaboration with co-mediators and parties. And as students play their roles as “disputants,” they are liberated to experiment with different conflict styles, get caught up in the emotion and drama of the situation, and take risks with English¹⁴ because they can rely on their mediators to serve as facilitators and buffers.

NEGOTIATION AND MEDIATION

As mediation is often described as facilitated negotiation (helping parties negotiate), these two processes are built on many of the same underlying skills. Ideally, instructors would present competitive and collaborative negotiation strategies (Chapters 3–5) and then build on this foundation to introduce mediation. However, given the realities of time constraints, if you only have time to focus on collaborative “win-win” negotiation (Chapter 5), consider adding the Mediation Script (Chapter 10) to show students how mediators build on the negotiation skills they have just learned. Likewise, if you only have time to focus on mediation, consider starting with a simple negotiation role-play, such as Role-Play 1 (4A) or a mini role-play (3C.1). This will help students understand when negotiators may benefit from mediation.

For both negotiation and mediation, consider frontloading the first part of the course to teach the process(es) and using the second part for role-play practice and special projects. The sample syllabi in Chapter 13 follow this approach.

Conflict Coaching and Attorney-Client Interviews

You could also focus on two authentic activities that allow students to use negotiation and mediation skills in stress-free, non-adversarial contexts.

Conflict coaches use active listening to help one person explore their dispute and options for resolving it. You could easily set up interviews or active listening sessions between a conflict coach and a party using Script 4 (MUM 4). This would allow students to focus on developing empathy and problem-solving skills without any conflict between the two participants. For more information about conflict coaching, see Other Dispute Resolution Methods, Companion Site, Part 1, 1.02.

Law and LL.M. students can easily modify this same active listening script to practice attorney-client interviews. For a sample activity, see activity 1.6, p. 32 in the textbook.

ASSESSMENT

Assessment options in this section (Part 3) of the Companion Site

For assessment options, see 11.7, 11.7(a), 11.7(b) and 11.7(c) and the sample syllabi in Chapter 13. Chapters 11 and 12 provide additional activities and tools for assessment. Which assessment tools are right for you? The first step is determining your reasons for assessing students on ADR lessons and activities, which probably fall into one or more of these categories: “assessment of learning” (tests), “assessment for learning” (feedback, guidance), “assessment as learning” (student self-reflection).¹⁵ This guide suggests ways to assess for all three purposes with an emphasis on the latter two.

ADR law school professors vary in their approach to grading. Some grade students based on the results they achieve in negotiation and mediation role-plays and on midterms and final exams. Others focus on participation, debriefing, reflections, journals, projects, and papers. When possible, instructors in the latter group may offer the course pass/fail or credit/noncredit.¹⁶ ESL/ESP instructors can tweak their current systems for assessing writing assignments, group projects, and oral presentations and can assess language points they have introduced, as well.

CREATING A POSITIVE CLASSROOM ENVIRONMENT FOR ADR ACTIVITIES

Instructors and students can co-create a positive classroom environment for both ESL/ESP and ADR instruction. The following activities may help:

1. Encourage students to use the tools they are learning in class to reflect on their experiences with ADR. Examples: Assign partners or small groups for the authentic ADR activity of “debriefing” with colleagues and regularly assign active listening practice and reflections to be done in or out of class.
2. Assign journals or reflections, in writing or via short videos, that students can share with each other and with you.
3. Create an email or other system for students to submit questions to you, anonymously if they wish.
4. Ask students to create a list of simple guidelines that everyone will sign. These could include “professional courtesy,” and other ideas from the “Civil-Assertive Communication Style” (MUM 1). If you are using Chapter 2, “Negotiation Ethics,” you can use the Ethical Rules for Negotiation and Mediation Role-Plays as a model. (See pp. 46–51 in the textbook or the summary in the Companion Site, Part 1, 2.02].)

Whether you use Chapter 2 or not, for law and business students and professionals this activity can be presented as creating an ethical code that mirrors codes of ethics in various professions, or as the “constitution” for the class. Guidelines could include principles that apply to ESL courses in general, such as respect and confidentiality, or points from the ethical rules in Chapter 2. You could also leave open the option to add more specific guidelines as needed.

5. Keep in mind that every misunderstanding, disagreement, and conflict that students experience in or out of class can be turned into an active listening or “FENS” (Facts, Emotions, Needs, Solutions) exercise as described in Chapter 5, p. 142), a group discussion, a journal entry, or even a role-play. In other words, in an ADR course, any problem can be grist for the mill.
6. Invite guest speakers, such as a campus ombuds or local mediators, to provide lessons, perspectives, role-play coaching, and mentorship. See p. 17 in this section for ideas.
7. When students inevitably feel disappointed about an activity or role-play, you may wish to offer these encouraging perspectives:
 - There is no perfect negotiator or mediator. We are always in the process of learning. All negotiators and mediators experience disappointment and embarrassment, but we can use every negative experience as a learning experience. Some negotiators and mediators keep logs to describe what went wrong and what they will try to do differently next time. Others debrief with trusted colleagues, classmates, or mentors. At some point, they may turn these bad experiences into funny stories to share with colleagues.
 - Students are fortunate to have the opportunities to learn hard lessons in class, rather than on the job, especially if they will be representing clients in negotiation and mediation.

ADR RESOURCES FOR ESL/ESP INSTRUCTORS

You may use the following resources for your own reference or to share with students. Also see Exploring ADR in the Companion Site, Part 1 (1.03).

BOOKS

- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (New York: Penguin, 2011): *Getting to Yes* (GTY) explains “principled negotiation,” the foundation of many key negotiation and mediation strategies. GTY is so well known among academics and professionals that if there is a single, unifying lingua franca for ADR, negotiation, and mediation, this is certainly it. But it is also a popular bestseller, written in an engaging, user-friendly style—for native speakers of English.¹⁷
- Barrie J. Roberts, *Conflict Resolution Training for the Classroom: What Every ESL Teacher Needs to Know* (Ann Arbor: University of Michigan Press ELT, 2023): This is a quick introduction to conflict resolution for ESL instructors.
- Mary Scannell, *The Big Book of Conflict Resolution Games: Quick, Effective Activities to Improve Communication, Trust, and Collaboration* (New York: McGraw-Hill, 2010).
- Natasha Costello and Louise Kulbicki, *Practical English Language Skills for Lawyers: Improving Your Legal English* (New York: Routledge, 2023): Chapters 9 and 10.

ARTICLES

- Barrie J. Roberts, “Using *Getting to Yes* to Teach English, Negotiation, and Other 21st Century Skills,” *Journal of Research Institute* 58 (2018): 77– 93, <http://id.nii.ac.jp/1085/00002259/>.

ADR TEACHING MATERIALS FOR NATIVE SPEAKERS OF ENGLISH

- American Bar Association—ADR Teaching Center, <https://sites.suffolk.edu/adrvideo/>
- Program on Negotiation, Harvard Law School, Teaching Materials and Publications, www.pon.harvard.edu/teaching-materials-publications/
- **Dispute Resolution Institute (DRI) Skills Lab:** DRI Skills Lab: Laboratory for Advancing Dispute Resolution Skills Teaching, Mitchell Hamline School of Law, (<https://mitchellhamline.edu/dri-skills-lab/>)

For more information about these materials, see 11.1B Role-Plays for Law/Business Students and Professionals.

ADR WEBSITES

- English for Dispute Resolution (my website) <https://www.learn-edr.com>
- William Ury, <https://www.williamury.com/>
- Mediate.com, <https://mediate.com/>
- Harvard Project on Negotiation, <https://www.pon.harvard.edu/>
- American Bar Association Dispute Resolution Section, https://www.americanbar.org/groups/dispute_resolution/
- Professor John Barkai's website, <https://www2.hawaii.edu/~barkai/>
- Court-connected ADR information for the general public. Example: <https://www.courts.ca.gov/programs-adr.htm>. In the United States, you can check online for your county court's ADR or mediation programs, or for statewide ADR programs. See Companion Site, Part 1, 1.03 for more information.

CAMPUS AND COMMUNITY RESOURCES

Instructors in the United States may find excellent ADR resources on campus and in their community. Campus resources may include ombuds, peer mediation, and other conflict resolution programs and negotiation and mediation instructors.

Off-campus community resources may include neighborhood or community mediation organizations, bar associations, and court-connected mediation panels. These organizations may offer live and online mediation training for non-lawyers and often provide a certificate and opportunities to serve as a volunteer mediator.

All of the above are promising sources of guest speakers and role-play participants and coaches, as well as mentors for instructors and students alike. See Companion Site, Part 1, 1.03 for more information.

Notes

1. In ADR trainings, the terms *role-plays*, *simulations*, and *role-play simulations* are used both interchangeably and to mean different things. For simplicity, we will use “role-plays” to refer to any negotiation and mediation scenario that students perform. This includes scenarios that are carefully designed to impart specific teaching points through confidential fact sheets as well as scenarios on topics suggested by instructors and students for any kind of negotiation or mediation practice.

2. Clarissa Reese Moorhead, “Teaching ESP When You Aren’t a Specific Purposes Expert,” TESOL Career Center, March 1, 2020, <https://careers.tesol.org/article/teaching-esp-when-you-aren-t-a-specific-purposes-expert>, citing Kevin Knight, Anne E. Lomperis, Margaret van Naerssen, and Kay Westfield, “English for Specific Purposes: An Overview for Practitioners and Clients (Academic and Corporate)” [PowerPoint], TESOL-ESP IS, April 2, 2010, <http://docplayer.net/49585522-English-for-specific-purposes.html>.

3. This is the main topic of my short book for ESL instructors, *Conflict Resolution Training for the Classroom: What Every ESL Teacher Needs to Know* (Ann Arbor: University of Michigan Press ELT, 2023).

4. Another piece of good news for ESL and ESP instructors is that “plain English” is favored by US law school professors, opposing counsel, juries, and judges. See Richard C. Wydik and Amy E. Sloan, *Plain English for Lawyers*, 7th ed. (Durham, NC: Carolina Academic Press, 2024); this book includes writing lessons for US law students that would be welcome in many ESL/ESP writing courses.

5. For example, see Noel R. Houck and Donna H. Tatsuki, *Pragmatics: Teaching Natural Conversation* (Alexandria, VA: TESOL Classroom Practice Series, 2001).

6. This point is discussed in two endnotes in the textbook: Introduction, Note 19 and Note to Readers, Note 28.

7. See Natasha Costello and Louise Kulbicki, *Practical English Language Skills for Lawyers: Improving Your Legal English* (New York: Routledge, 2023), chapter 9 (“Contract Negotiation”) and chapter 10 (“Alternative Dispute Resolution”). Also see Drew Rodgers, *English for International Negotiations: A Cross-Cultural Case Study Approach* (New York: Cambridge University Press, 1998); Charles Lafond, Sheila Vine, and Brigit Welch, *English for Negotiating*, Oxford Business English series (Oxford: Oxford University Press, 2010); Gillian D. Brown and Sally Rice, *Professional English in Use: Law* (Cambridge: Cambridge University Press, 2007); Patricia Friedrich, ed., *English for Diplomatic Purposes* (Bristol, UK: Multilingual Matters, 2016); Malcolm Goodale, *The Language of Meetings* (Boston: Heinle ELT, 1987).

8. Roberts, *Conflict Resolution Training*.

9. University of California, Berkeley, Summer English Language Studies, <https://writing.berkeley.edu/sels>

10. Similar topics include social justice, peacebuilding, and “reconciliation.” For an excellent example, see Jan Edwards and Cheryl Woelk, *Teaching English for Reconciliation: Pursuing Peace Through Transformed Relationships in Language Learning and Teaching* (Pasadena: William Carey Library, 2018).

11. See Friedrich, *English for Diplomatic Purposes*.

12. See Roberts, Profile 26, in Kevin R. Knight, *English for Specific Purposes Project Leader Profiles: The Leadership Communication of 55 ESP Project Leaders* (Hong Kong: Candlin & Mynard, 2022), 148, <http://candlinandmynard.com/espprofiles>.

13. Sybil Marcus, “Literature in ELT: Using Literature for Conflict Resolution,” TESOL Blog, available upon request from the author.

14. Marcus, “Literature in ELT.”

15. Liying Cheng, *Language Classroom Assessment*, 2nd ed. (Alexandria, VA: TESOL Press, 5 2023), 2–3.

16. Charles B. Craver, *Effective Legal Negotiation and Settlement*, Teacher’s Manual 7th ed. (New Providence, NJ: Lexis-Nexis (2012) , 8–9.

17. *Getting to Yes*, which is available in paperback, e-book, and audio formats, is also an essential book for serious ADR students, but it is not always user-friendly for non-native speakers of English. See Barrie J. Roberts, *The Getting to Yes Guide for ESL Students and Professionals: Principled Negotiation for Non-Native Speakers of English* (Ann Arbor: University of Michigan Press, 2024).

Guide to the Numbering System Used in the Companion Site, Part 3

REFERENCES TO THE TEXTBOOK

For references to specific sections in the textbook, you will see the textbook chapter, section number, and page number. Example: “(1.2, p. 3)” refers to Chapter 1, section 2, page 3 in the textbook.

REFERENCES TO TEACHING MATERIALS IN THIS COMPANION SITE, PART 3

For teaching materials that support a specific section in a textbook chapter, such as teaching suggestions for a particular section or sample responses to questions in the textbook, you will see the above-described textbook chapter and section. These numbers are linked to materials in this section, so just click on the items you wish to see or provide as student handouts. Example: Section 1.5 in the textbook contains “Questions to Consider.” Sample answers to these questions are at 1.5, in this section (Part 3 of the Companion Site).

For teaching materials that are not connected to a specific section in the textbook, you will see the textbook’s chapter number plus a capital letter. Example: “3A” refers to the first item that supports Chapter 3 in general. “3B” refers to the second activity in this category. When activities in this category have several parts, numbers are added to the letter: 3B.1, 3B.2, etc. Again, note that these numbers and letters are linked to the materials, so just click on the items you wish to see.

Also note that items will not always appear in consecutive numerical order, so you may see gaps in the numbering. This is because Part 3 does not contain activities for every section of the textbook. Thus,

a lesson plan may suggest starting off with an experiential activity that is not in the textbook, such as 5A, followed by an activity that relates to section 5.3, with no activity at all for section 5.1.

For Chapters 11, 12, and 13, which do not have counterparts in the textbook, you will simply see references to these chapters without capital letters. Just click on the items in these chapters that you wish to see.

REFERENCES TO MATERIALS IN THE COMPANION SITE, PARTS 1 AND 2

The numbering system for Parts 1 and 2 of the Companion Site is explained below. However, there is no need to memorize this information because the materials in Parts 1 and 2 are linked and accessible from Part 3 (where you are now). Simply click on the Companion Site items you wish to see. Additionally, each part of the Companion Site has its own Table of Contents, and from there you can also click on the materials you wish to see.

If you leave Part 3 to review items in Parts 1 or 2, and want to return to your place in Part 3, make a note of that section or page number so that you can find your way back. The detailed Table of Contents for Part 3 (starting on p. iv) will help.

Part 1 Materials

Remember that Part 1 of the Companion Site contains materials that support specific chapters in the textbook. For these materials, you will see the chapter number followed by a decimal point and a two digit number, starting with .01. For example, “Companion Site, Part 1, 2.02” refers to the second item for Chapter 2. For my fellow ESL colleagues who, like me, do not enjoy thinking about decimal numbers—or any numbers—remember that you can simply click on the items you wish to see.

Part 2 Materials

Remember that Part 2 of the Companion Site contains “MUMs” (Multi-Use Materials) that apply to more than one chapter. MUMs are linked and accessible from Part 3, so just click on the MUM you wish to see or look for it in the Table of Contents for Part 2. Again, if you leave Part 3 to review a MUM and want to return to your place in Part 3, make a note of the page number or section number so that you can find your way back, and you can use the detailed Table of Contents for Part 3 (starting on p. iv) to help.

Important reminders for all parts of the Companion Site

Remember that students have access to all three parts of the Companion Site, so you may instruct them to access materials on their own. Also remind them that they must not read confidential fact sheets for role-plays until instructed to do so.

CHAPTER 1

Introduction to Alternative Dispute Resolution (ADR)

This chapter introduces ADR, the context in which law and business students can expect to conduct negotiations and mediations in the United States and elsewhere.

[] **ESL Instructors:** This chapter will give you a good foundation for teaching negotiation and mediation, but your students may not need it for general ESL purposes.

{ } **ESP Instructors:** This chapter is important for law and business students and professionals. It describes ADR as a field, explains how it relates to litigation and trial, and describes the mandatory and voluntary ADR processes that attorneys and business professionals are likely to encounter throughout their careers.

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (1.02)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch.1 (where you are now)

Materials with a number and capital letter (3C)? Companion Site, Part 3; the number tells you the chapter number.

SAMPLE LESSON PLAN

Purposes

Introduce key ADR terms, concepts, and processes; show how several ADR processes may apply to a single case; encourage further exploration of ADR based on students' needs and interests.

Assign the following. Items 1–5 are in the textbook.

1. Warm-Up Questions (1.1, p. 2)
2. Background Reading: Introduction to ADR (1.2, p. 3)
3. Follow-Up Questions (1.3, p. 22)
4. Hypo: ADR Processes in Action: “Larry Landlord vs. Tom Tenant” (1.4, p. 23)
5. Questions to Consider (1.5, p. 29)
(Sample Answers for Questions to Consider (1.5) are provided here.)
6. Other Dispute Resolution Methods (Companion Site, Part 1, 1.02)
7. Exploring ADR (Companion Site, Part 1, 1.03)

Teaching suggestions for items 6 and 7 are in 1A, here.

1.5. Sample Answers for Questions to Consider

1. Why couldn't Larry and Tom negotiate an agreement on their own? Possible answers:

They lacked communication skills. They didn't understand their legal rights and duties. They were too emotional (they were angry and frustrated with each other; they were afraid: Tom was afraid to be evicted, Larry was afraid about losing income from his business, they were both nervous about going to court). They had strong egos and didn't want to give in to the other person. Although they were arguing about their positions on the rent payments, sofa, and roof repairs, they were actually motivated by issues below the surface, such as survival needs (home; business income, and being treated fairly and respectfully), which we will explore in later chapters.

2. What are some other examples of cases in which parties may not be able to negotiate agreements on their own?

Any case in which the parties have strong emotions, don't trust each other, feel that the other person has treated them unfairly or has abused them, and when they cannot communicate calmly and rationally with each other, or when there is a power imbalance (one party has more power than the other, such as when one is represented by an attorney and the other is not). Cases involving family (divorce, custody, wills, conservatorships), business partnerships, labor-management, doctors-patients or attorneys-clients in malpractice cases.

Note to instructors: Students with no prior background in mediation are not expected to come up with the answers provided for Questions 3–6. These questions aim to stimulate thinking and discussion about mediation, not to test students on the “right” answers. Students should simply discuss their guesses and ideas, which they will be asked to revisit after reading Chapter 9 (mediation). You may share the responses provided—or not—as you wish. Note that experienced mediators may have very different ideas about these questions and may disagree with some of the responses, which is all grist for the mill.

3. Why was Mediator Marv unable to help Larry and Tom reach an agreement? Consider these possible reasons and explain your answers:
 - a. The type of mediation Marv provided
 - b. The timing of the mediation (before the lawsuit was filed)
 - c. The place of mediation (online)
 - d. Other:

All of these are likely reasons. Marv didn't help them negotiate together. Instead, he started the mediation with his idea for the solution—a schedule of rent and repairs—rather than listening to Tom and Larry and trying to help them understand each other and create their own solutions. They couldn't focus on a narrow solution with Marv for the same reasons relating to their emotions and interests discussed above. Marv didn't change the dynamic of their working relationship or poor communication skills. As for timing, they didn't have the pressure of a pending lawsuit and Marv didn't provide reality checks about what could happen at trial and after trial.

4. Why was Mediator Maria able to help Larry and Tom reach an agreement? Consider these possible reasons and explain your answers:
- a. The type of mediation Maria provided
 - b. The timing of the mediation (right before trial)
 - c. The place of mediation (the courthouse)
 - d. The judge's actions and statements
 - e. Other:

All of the above. Unlike Marv, Maria didn't start with a solution that she thought was best. Instead, she provided a structured process that allowed Tom and Larry to keep control over their dispute and decide for themselves what they wanted to do. This process included allowing each one to tell his story, think about what was most important to him, and brainstorm solutions together.

Maria also provided reality-checking about practical and legal matters that helped the parties negotiate an agreement that would actually work.

The judge's "imprimatur" or seal of approval also had a strong influence, as most parties would feel confident about a process the judge recommended, and in any event, they probably don't want to disappoint their judge.

Also, they wanted to get their case over and done with rather than waiting around for an MSC and/or trial later in the day or the next day.

5. What was the purpose of the “homework” assignment that Maria gave Larry and Tom? Although it did not relate to legal issues, did it help Larry and Tom reach an agreement? Why or why not?

Yes, the assignment helped them reach an agreement. It expanded their thinking about the problem, the other party, and their own contributions to the conflict. It helped them see the problem from the other person’s perspective, see that they shared some interests, create a better working relationship, and create solutions that worked for both of them to resolve the legal issues as well as their landlord-tenant relationship going forward. The assignment also gave them the power and freedom to create the solutions that made sense to them, not to the mediator.

6. Consider how Maria used legal issues during the mediation.
- a. What are three specific ways Maria used legal issues during the mediation?

Maria **asked** Larry if he was sure he had followed the legal procedures required for evictions; Maria **informed** Larry that he could lose the case if he had not done so; Maria **asked** Tom if he was sure the law allowed him to withhold rent before there was a habitability problem; Maria **informed** Larry about the various ways the judge could rule at trial. She **asked** them both to consider the unpredictability of trial and what they would do if they lost, **reminding** them that the trial was starting that afternoon or the next day and that they had no control over how the judge would rule.

- b. What impact did Maria's use of legal issues have on Tom? On Larry?

This information served as strong reality checks about why the judge might not agree with them and might rule against them, which caused them to consider what they would do if they lost the case that same day or the next day. This information also showed them that the only way to keep control of the case and avoid the gamble of losing at trial was to create a solution in mediation.

- c. Do you think Maria gave legal information or legal advice?

This is an important question because only lawyers who are representing clients may give legal advice to their clients, while others can provide information. Sometimes there are gray areas, and mediators do not always agree about what legal information or advice they can and should provide. Mediators should not act as the lawyer for either party; they should remain neutral about everything, including whether or not the parties should settle the case.

Some mediators would say that if the parties decide to settle on terms that are grossly unfair to one side, that's the parties' decision and the mediator should not intervene. Others strongly disagree and say that mediators should make sure that self-represented parties have "informed consent"—that they should make decisions about whether to settle, and if so, on what terms, based on knowledge of their legal rights and duties, which can be provided without crossing the line into providing legal advice.

d. Did Maria cross the line?

She gave Tom and Larry information and asked hard questions about legal matters. This caused them to wonder about their legal theories and the strengths of their positions and thus may have had the effect of advising them to settle the case. However, she did not apply the law to the facts of their cases or tell them how she thought the judge would rule. Nor did she advise them to do anything except think about the weaknesses of their cases and what they would do if they lost.

Some mediators would say that she acted appropriately for self-represented parties; others, like Mediator Marv, for example, would say that she crossed the line into providing advice and acted more like their lawyer than a neutral mediator. These points will be revisited in Chapters 9 and 10.

The remaining questions are for student discussion and reflection.

1A. Teaching Suggestions for “Other Dispute Resolution Methods” (1.02) and “Exploring ADR” (1.03)

Both sections are in the Companion Site, Part 1.

Select topics and activities for group discussions, research projects, essays, or presentations. Examples:

- Assign each student a county, state, or country to research and report on. For example, students could choose a topic from the Companion Site materials in 1.02 or 1.03 and research how it is used in the United States or elsewhere.
- Assign in-person or online interviews with ADR practitioners that students identify while working with these materials. For example, students could choose a topic from the Companion Site materials in 1.02 and 1.03 and interview people who work in that field.
- Ask students to identify potential local guest speakers, mentors, or role-play coaches. For example, students could contact local mediation panels or organizations, explain their interests, and ask to speak with mediators who might be willing to work with them.

The following are suggestions for research projects, essays, presentations, or group projects.

LEGAL ISSUES FOR ADR

Research federal and state ADR statutes and rules, court “local rules”, case law on ADR and settlement, and the Uniform Mediation Act. Students can also research hot topics, such as legal and ethical issues concerning AI in ADR and ODR; mediation confidentiality; mandatory, binding arbitration; mediator qualifications; and self-represented parties in ADR and ODR.

ADR AS A FIELD

- Ask students to research and report on one of the ADR methods described in 1.02.
- Ask students to visit the American Bar Association section on Dispute Resolution and report on what they learn https://www.americanbar.org/groups/dispute_resolution/.
- Students can research professional organizations for mediators and arbitrators and bar associations with mediation or ADR sections and identify professional or academic journals on dispute resolution or mediation.

CONTRIBUTIONS TO ADR FROM OTHER FIELDS

Students can research crossover issues with the following fields or contributions from these fields to ADR: anthropology, AI, communications, cross-cultural studies, diplomacy, game theory, neuroscience, peace studies, or psychology.

CHAPTER 2

Negotiation Ethics

This chapter introduces students to ethical issues they are likely to face during their negotiations and mediations. It also provides the ethical rules students will follow for role-plays and asks them to compare these rules to their own ethical beliefs and standards. Note that this chapter applies to parties and attorneys in both negotiation and mediation. Ethical rules for mediators are discussed in Chapter 9.

[] **ESL Instructors:** This chapter provides an important foundation for you, especially if you will be guiding students through negotiation and mediation role-plays. For general ESL purposes, it is enough to select some of the warm-up questions to raise students' awareness about ethical issues and, if you will be using role-plays, to provide the summary of the ethical rules (Companion Site, Part 1, 2.02). (You can skip "Confidentiality," Section C.) However, cultural differences in negotiation ethics can be a provocative topic, so this chapter may be of interest for group discussions, interviews, essays, and presentations.

{ } **ESP Instructors:** This chapter is essential for students who will be participating in real-world negotiations and mediations as parties, or as agents or attorneys for clients. It precedes the chapters on negotiation and mediation for a reason: to provide an ethical framework for the discussions, activities, and role-plays in upcoming chapters. As a full discussion of ADR ethics is beyond the scope of this book, and as there are many gray areas and differences of opinion on the topic, instructors are encouraged to consult the For Further Reading section as well as ADR mentors (see Tip 4, below).

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (2.02)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 2 (where you are now)

Materials with a number and capital letter (2A)? Companion Site, Part 3; the number tells you the chapter number.

TEACHING TIPS

Tip 1: Use the Warm-Up Questions in the textbook for whole-class or small-group discussions, interviews, surveys, writing, and presentations.

Tip 2: Apply the Ethical Rules (Companion Site, Part 1, 2.02; textbook, pp. 46–51) to classroom management issues. For example, several rules address “good faith” or “meaningful” participation in negotiation and mediation sessions. Students who are late, absent, or unprepared for a role-play may violate these rules. They should consider how such conduct affects their instructor and classmates/colleagues and their own reputations, and how it would affect their employers, clients, and counterparts in the real world. They should also consider how to mitigate the harm and make amends.

As courts may impose fines or other sanctions on attorneys or parties who operate in bad faith, instructors may authentically impose appropriate penalties as well. One class motto

could be “Everything counts, even if it’s ‘just’ in class.” See *Creating a Positive Classroom Environment for ADR Activities* for thoughts on using the Ethical Rules to encourage good faith conduct in class.

Tip 3: Use the For Further Reading section for research and writing assignments or individual or group presentations.

Tip 4: Consult colleagues and mentors about the issues raised in Chapter 2. Mentors may include campus ombuds, business or law professors, or people your students identify through activities you have assigned. Invite guest speakers to come to class or appear via video conferences to address students’ questions. (See Companion Site, Part 1, 1.02 for thoughts on finding ADR mentors.)

LESSON PLAN

Purposes

Introduce key ethical issues for negotiators; allow students to reflect on their own ethical standards and possible cultural variations in what is considered ethical in negotiations; provide ethical rules for classroom role-plays and opportunities to practice applying them.

Instructions

1. Introduce the topic of ethics through one or more of the following activities.
 - a. If there is a relevant ethical dilemma in current events, on campus, or in your curriculum, consider using that issue to start the discussion.
 - b. Use all or some of the Warm-Up Questions (2.1, pp. 37–41) for group discussions, freewriting, interviews, etc. For Question 13 (p. 41) on reputation, consider asking how students could begin cultivating their reputation in class.

2. Assign the Background Reading (2.2, pp. 41–45).
3. Assign the Ethical Rules for Classroom Role-Plays (2.3, pp. 46–51). (The Companion Site, Part 1 (2.02) contains a summary of these rules.)
4. Discuss the Ethical Rules (2.3, pp. 46–51). Consider using the questions and activities in 2.3 to guide the discussion. You may provide this page as a handout or select items for discussion or activities such as the following:
 - a. Ask students to comment or reflect on the rules through freewriting or discussion.
 - b. Ask students if they want to formally adopt these or revised rules as official class rules for all activities and role-plays. If so, you can provide a “signature page” for each student to sign.
5. Discuss the Follow-Up Questions (2.4, p. 52).
6. Assign these activities to practice applying the ethical rules:
 - Applying the Ethical Rules to the Hypo (2.5, p. 52).
 - Applying the Ethical Rules to Other Activities (2.6, p. 54).
7. Refer students to Strategies for Protecting Ourselves from Unethical Conduct (Companion Site 2.03, Part 1). Ask students to discuss these and other strategies.
8. See the “Spoiler Alert”. If it does not apply to you, assign Activity 2A Ethical Issues for Negotiators: Applying the Ethical Rules to a Used-Car Sale. If it *does* apply to you, come back to this activity after you complete Chapter 4.

2.3. Ethical Rules: Questions and Activities

1. Paraphrase the rules.
2. Describe any experience you have had with these or other ethical rules.
3. Do these rules make sense for real-world negotiations and mediations?
 - a. How could these rules improve negotiations and mediations?
 - b. How could they interfere with or harm negotiations and mediations?
 - c. How could they be enforced if someone violates them?
 - d. If these rules can't be enforced, should negotiators be allowed to do whatever they want?
4. Do the Ethical Rules reflect US cultural values? Your own values?
5. Would the Ethical Rules have to be modified for your legal or business culture?
6. Do the Ethical Rules apply to any ethical issues on campus or in current events?
7. Should we use the Ethical Rules for classroom role-plays activities? If not, what changes should we make?
8. Interview attorneys, business professionals, or others who negotiate as part of their jobs about these rules. You may use the above questions or you may create your own. Prepare a report for your instructor or report your findings to the class.
9. Ask AI to respond to some of the Warm-Up Questions (2.1, pp. 37–41) or some of the Follow-Up Questions (2.4, p. 52). How do AI's responses compare to yours?
10. Is AI a useful tool for ethical issues in ADR? How could AI be helpful? What concerns would you have about using AI for ethical issues in ADR?

2A. Ethical Issues Activity for Negotiators: Applying the Ethical Rules to a Used-Car Sale (Teaching Instructions)

INTRODUCTION

In this activity, students will grapple with a series of ethical dilemmas that could arise in a negotiation over a used car. They will read a Confidential Fact Sheet for their role (buyer or seller), review statements and actions that their character is considering, and use the Ethical Rules and their own ethical standards to analyze these statements and actions.

Spoiler alert: This activity is based on Role-Play 1, which is the focus of Chapter 4 (Competitive Negotiation). If you will be using Role-Play 1 to introduce competitive negotiation, do this ethics activity **after** students complete the role-play. If you use this activity now, you will not be able to use Role-Play 1 to teach competitive negotiation because the Debriefing activity reveals each party's confidential information.

INSTRUCTIONS

1. Divide the class into two groups: Buyers and Sellers.
2. Instruct students to access the materials described below. Or you can provide these materials to your students. You might want to instruct students to access all the materials on their own except for the Confidential Fact Sheet, which you can provide to reduce students' temptation to peek at the other party's confidential information.

The materials for this activity are described on the next page.

Materials for all students:

- 2A.1. Ethical Issues Activity for Negotiators: Applying the Ethical Rules to a Used-Car Sale (Guide for Students)
- 2A.2. Ethical Issues Activity: Chart
- 2A.3. Ethical Issues Activity: Sample Phrases for Discussing the Ethical Rules

Additional item for SELLERS only:

- 2A.4a. Ethical Issues Activity: Confidential Fact Sheet and Ethical Issues for SELLERS

Additional item for BUYERS only:

- 2A.4b. Ethical Issues Activity: Confidential Fact Sheet and Ethical Issues for BUYERS

Students will also need the Ethical Rules, which they can access in the book (2.3, pp. 46–51) or in the Companion Site, Part 1 (2.02). Instruct students to work on their Ethical Issues Chart (2A.2) individually or in pairs or small groups, but only with people playing the same role. (Sellers may work with other Sellers; Buyers may work with other Buyers.)

3. Debrief. You can use the Sample Responses in 2A.5 to guide whole-class discussions or to distribute to students for their own discussions and reflections. Note that these responses are not necessarily the “right” answers, as ADR experts may disagree with some of them, so encourage different points of view. (Again, note that this activity will ruin Role-Play 1 for purposes of practicing competitive negotiation, so if you want to use that role-play to teach competitive negotiation in Chapter 4, be sure to complete the role-play for that purpose before using it here.)

The materials for students begin here:

2A.1. Ethical Issues Activity for Negotiators: Applying the Ethical Rules to a Used-Car Sale

Guide for Students

NOTE TO SELF-STUDY READERS:

This activity uses Role-Play 1 for Chapter 4, Competitive Negotiation. If you are planning to use Role-Play 1 for that purpose, come back to this activity after you complete Chapter 4. If you continue with this activity now, you will not fully benefit from the lessons and experiences that Chapter 4 provides.

INTRODUCTION

You will receive a Confidential Fact Sheet with information about your role as the buyer or seller of a used car. At the end of the Confidential Fact Sheet, you will see a list of statements that you have made or are thinking about making. Each statement presents an ethical *dilemma* (problem without an easy solution). Your job is to analyze each statement and decide if it violates any ethical rules and/or your own ethical standards.

This activity asks you to consider what *crosses the line* from ethical to unethical according to the rules provided in Chapter 2 and according to your own beliefs. This activity also asks where you would *draw the line* (what you would not do) even if a rule allows you to do something that violates your “gut.”

Sometimes the answers will be *black and white* (clearly allowed or prohibited). Other times you will be in an uncomfortable gray area without clear answers. That’s life. As you will see in later chapters, and as you may already know, the more you can develop good, collaborative working relationships with your counterparts, the less you will have to deal with ethical gray areas.

INSTRUCTIONS

1. **Read your Confidential Fact Sheet.** Do not discuss the information you learn with anyone who has the opposite role! (Buyers may work with other buyers, and sellers may work with other sellers.)
2. **Review 2.3.** “Ethical Rules for Negotiation and Mediation Role-Plays” (pp. 46–51 in the book) or use the Summary of Ethical Rules for Negotiation and Mediation Role-Plays (Companion Site 2.02).
3. **Review the Ethical Issues** at the end of your Confidential Fact Sheet.
4. **Use the Ethical Issues Chart** (2A.2, p. 4 of 6 in this section) to analyze each statement.
 - a. **Notice your first reaction** to each statement. Did it seem like something that you would - or would not - say or do?
 - b. **Try to find an Ethical Rule** that relates to the statement. Write the rule number in the chart in Column A.
 - c. **Circle the “-”** for statements that violate the rules (Column A) and/or your own ethical standards (Column B). If the statement violates both, you would not say it and you would consider it an ethical violation if your counterpart said something similar.
 - d. **Circle the “+”** if the statement does not violate an ethical rule and/or your own ethical standards. If the statement complies with both standards, you would consider saying it and you would not consider it an ethical violation if your counterpart said something similar.

Note: You may decide that a statement violates a rule but does *not* violate your personal standards. Or you may decide that a statement does not violate a rule but *does* violate your personal standards.

- e. **Circle the “?”** for gray areas. If your answer is “It depends,” what does it depend on?
 - f. **Use Column C** or a separate page to keep notes.
5. **Tip:** For each statement, ask:
- Is the statement about a **fact**? If yes:
 - Is the fact “material”? (See pp. 46–48 in the book.)
If yes, is the statement true or false?
6. **Discuss your responses** with people on your side (buyers work with other buyers; sellers work with other sellers). **You can use the Sample Phrases** to help you explain your responses. (See 2A.3, p. 5 of 6 in this section.)
7. **After completing the chart**, write a statement for your role (Buyer or Seller) that
- a. clearly violates an Ethical Rule.
 - b. is in a gray area. It may or may not violate an Ethical Rule.
8. **Exchange statements** with classmates and use the chart and Sample Phrases to analyze these new statements. Discuss agreements, disagreements, and questions.

2A.2. Ethical Issues Activity: Chart

Table 2.1. Ethical Issues Chart

	Column A	Column B	Column C
Statement	Rules	My Ethical Standards	Explanations
1	Rule #__ + - ?	+ - ?	
2	Rule #__ + - ?	+ - ?	
3	Rule #__ + - ?	+ - ?	
4	Rule #__ + - ?	+ - ?	
5	Rule #__ + - ?	+ - ?	
6	Rule #__ + - ?	+ - ?	
7	Rule #__ + - ?	+ - ?	

2A.3. Ethical Issues Activity: Sample Phrases for Discussing the Ethical Rules

These sample phrases will help you discuss ethical issues.

1. For statements or actions that violate the rules:

Describe the statement or action. Then use the following statements or create your own statement, and end with your conclusion.

*That is a clear violation of Rule # __ because Rule # __
requires/prohibits _____.
According to Rule # __, _____.
Therefore, _____.*

2. For statements/actions that do not violate the rules:

Describe the statement or action. Then choose one or more of the following statements or create your own statement and end with your conclusion.

*The relevant rule is # __. OR The rule that seems applicable is # __.
However, the statement does not violate that rule because _____. OR
That statement is within the rule because _____.
Therefore, _____.*

3. For violations of your own personal ethical standards:

Describe the statement or action. Then choose one or more of the following statements or create your own:

*That violates my own ethical standards because _____.
I would not say/do that because _____. Informal: That
violates my gut test because _____.
Therefore, _____.*

4. For violations of your ethical standards that do not violate the rules:

Describe the statement or action. Then say the following or something similar:

Although that doesn't violate a rule, it violates my own ethical standards. It doesn't violate a rule because _____.

But it violates my own ethical standards because _____.

_____.

Therefore, _____.

5. For gray areas:

Describe the statement or action. Then choose one or more of the following statements or create your own:

This is a gray area. It violates Rule # ____ if _____, but not if _____.

[OR] *I'm not sure if this is permissible within Rule # ____ . It depends on _____ . If _____ then _____ .*

If _____ , then _____ .

But, whether or not it violates a rule, I would/would not consider it an ethical thing to say/do because _____ .

For me, this crosses the line because _____ .

OR

I don't think this crosses the line because _____ .

2A.4a. Ethical Issues Activity: Confidential Fact Sheet and Ethical Issues for Sellers

Last year, you bought a beautiful new car for \$25,000, but you need to sell it today because you lost your job and you have no money saved up. You need \$15,000 in cash by tomorrow at 5:00 p.m. to pay your rent (or you'll be evicted) and utilities (or your electricity and gas will be shut off). You must pay other delinquent (late) bills, as well.

You hope to get more than \$15,000 for the car because you need to buy another form of transportation, such as a motorcycle, and pay for your living expenses while you're looking for a new job. Based on your online research, the car's current value is about \$19,000–20,000, but you think it's worth more. You didn't follow the manufacturer's maintenance specifications exactly, but you never had a problem with the car. Additionally, you spent \$1,000 to install a high-quality security alarm.

Your cousin has offered you \$15,000 in cash for the car. You told him that you'd think about it and then you advertised the car online. Here's your ad:

*Used car for sale. Just one year old. In great shape—almost like new.
Blue. Price negotiable.*

Only one person responded to your ad. They came over yesterday to do a test- drive. You had a pleasant meeting and they said they'd think about it.

They just contacted you to schedule a time to discuss the price. Before meeting with them, think about the following ethical issues.

ETHICAL ISSUES FOR SELLERS

Analyze each statement that you, as Seller, are thinking about making to the Buyer. Use the chart (2A.2) and the Ethical Rules (pp. 46–51 in the book or Companion Site, Part 1, 2.02).

1. *I maintained the car according to the manufacturer's specifications.*
2. *I paid \$50,000 for this car last year.*
3. *I don't think you'll find a better car than this for \$30,000.*
4. *My bottom line is \$25,000. I cannot accept less than that.*
5. *My brother's a police officer and he says that red cars get more speeding tickets than any other color and that blue cars get the least. (You don't have a brother.)*
6. *I'm in no hurry to sell this car. I can wait until a more serious customer offers me a better price.*
7. During the negotiation, the Buyer offers you \$18,000. You send this text to your cousin: *I'm negotiating with a potential buyer right now; they just offered \$18,000.*

2A.4b. Ethical Issues Activity: Confidential Fact Sheet and Ethical Issues for Buyers

You just lost your job and need to find a new one immediately. The jobs you want require employees to own a reliable car. You don't own a car, but if you could buy one tomorrow, you could go on job interviews the next day. Your brother will loan you up to \$18,000 to buy a car today if you promise to pay him back in six months. That promise will be very hard to keep, so you hope to find a good car for a few thousand dollars less.

Yesterday, you saw this online ad: *Used car for sale. Just one year old. In great shape—almost like new. Blue. Price negotiable.*

The seller lives close by, and yesterday you test-drove the car. During your test-drive, you took it to your mechanic for a quick check, and he didn't see any big problems. The car seems like a good solution and the seller seems like a nice person, but you think it will be too expensive, and you're worried about car thieves breaking into such a nice car. You told the seller that you'd think about it. They replied, "Okay, but don't delay because my cousin wants to buy it tomorrow."

Based on your online research, you think the car is worth about \$19,000–\$20,000. As a back-up, you test-drove another car. That seller is only asking for \$15,000, but the car is five years old, made a strange sound, and is red, a color you do not want. You don't have time to explore other options. The blue car is your first choice, and you hope to drive it home today if you can get it for less than \$18,000; you can't pay more than that and you hope to pay a few thousand dollars less.

Before meeting with the Seller, think about the following ethical issues.

ETHICAL ISSUES FOR BUYERS

Analyze each statement that you, as Buyer, are thinking about making to the Seller. Use the chart (2A.2) and the Ethical Rules (pp. 46–51 in the book or Companion Site, Part 1, 2.02).

1. *I took the car to my mechanic during the test-drive, and he said the brakes need to be replaced.*
2. *I test-drove a better car, and that seller is only asking for \$14,000.*
3. *I don't think anyone will pay you more than \$15,000 for this car.*
4. *My bottom line is \$15,000. I cannot pay more than that.*
5. *I was hoping to buy a red car.*
6. *I'm in no hurry to buy a car. I can wait until I find a better car for a better price.*
7. *During the negotiation, the Seller tells you that their cousin offered to pay \$20,000 for the car. You realize that you know the Seller's cousin. You send him this text: Your cousin said you offered to pay \$20,000 for the car. Is this true?*

2A.5. Ethical Issues Activity for Negotiators: Sample Responses for Buyers and Sellers*

Statement 1

Seller: I maintained the car according to the manufacturer's specifications.

Buyer: I took the car to my mechanic during the test-drive, and he said the brakes need to be replaced.

These statements violate Rule A1 for classroom role-plays because they change the facts in the Confidential Fact Sheets. For real-world negotiations, they also violate Rule A2 because they are “misrepresentations” (lies) about material facts. Both parties will base their decisions about price on facts about the car's condition; the Buyer will also decide whether or not to buy the car based on information about the car's condition.

Statement 2

Seller: I paid \$50,000 for this car last year.

Buyer: I test-drove a better car, and that seller is only asking for \$14,000.

These statements violate Rule A1. You cannot change the facts in the Confidential Fact Sheets. Do they also violate Rule A2, on material facts? It's a gray area. Some negotiators think these kinds of lies are skillful persuasive tactics, like advertising. And they think it is their counterpart's job to research the value of this and similar cars and to figure out if the information is accurate. Other negotiators think that these types of lies influence key decisions on price and that there are more skillful ways to negotiate a fair price than intentionally deceiving their counterparts.

* Note that these responses are not necessarily the “right” answers. You are encouraged to do your own research and to consult experienced attorneys and negotiators for alternative views.

Statement 3

Seller: I don't think you'll find a better car than this for \$30,000.

Buyer: I don't think anyone will pay you more than \$15,000 for this car.

These are opinions and attempts at persuasion, so they do not violate Rules A1 or A2. However, there are more skillful ways to negotiate, such as using objective facts and standards to determine the car's value and what people might reasonably pay for it, instead of opinions.

Statement 4

Seller: My bottom line is 25,000. I cannot accept less than that.

Buyer: My bottom line is \$15,000. I cannot pay more than that.

These statements relate to negotiation strategy about bottom lines. According to Rule A3, it is not unethical to lie about bottom lines. However, there may be better options, such as not asking or answering questions about bottom lines as we probably could not trust the answer. And it's going to be hard to save face and look like a trustworthy and skillful negotiator if we later accept less or pay more based on our actual bottom lines.

Statement 5

Buyer: I was hoping to buy a red car.

Seller: My brother's a police officer and he says that red cars get more speeding tickets than any other color, and that blue cars get the least.

These statements seem to violate Rule A1 for classroom role-plays because they change or add information to the Confidential Fact Sheets. However, the Buyer's "hope" is not a fact. Whether or not the Seller has a police officer brother, this isn't a material fact for this

negotiation. The statement about speeding tickets—assuming there was a police officer brother who made such a statement—is not a trustworthy statement of facts (although it could be, if the Seller had data to support it). Both statements are “hot air” (they have no value) but are intended to influence the other party’s thinking.

Remember that just because these statements are not prohibited does not mean that they are ethical or skillful. The purpose of this discussion is not to encourage you to make statements like these but to remind you to be aware that your counterparts may say things like this to try to influence you, and it is your job to assess their reliability and relevance.

What if we change the Seller’s response as follows?

Buyer: I was hoping to buy a red car.

Seller: Are you sure that’s a good idea? Aren’t red cars more likely to be stopped by police?

Now the Seller’s response is more *squarely* (clearly) *within the rules* (permissible) for both classroom role-plays and real-world negotiations. There is no rule against asking questions to try to influence the other party to consider the situation in new ways that benefit one party.

Statement 6

Seller: I’m in no hurry to sell this car. I can wait until a more serious customer offers me a better price.

Buyer: I’m in no hurry to buy a car. I can wait until I find a better car for a better price.

These statements do not violate the rules. Although they change the facts in the Confidential Fact Sheets, they relate to each party’s private, internal motivations, not to material facts like the car’s value or condition. These statements are examples of the parties’ negotiation strategy: They don’t want to appear desperate to make a deal, even

though they are. These statements are also examples of persuasive techniques to influence the other party. However, other negotiators would take a different approach. If they felt they could trust the other party, or could develop that trust, they would start the negotiation by learning about each other's interests and needs. Then they would discuss ways to satisfy each party's needs. Without that kind of trust, it would not be a good strategy for the parties to explain why they desperately need a deal "today," as this could cause the seller to demand a higher price and the buyer to refuse to pay it. However, with this kind of trust, the parties may be able to create a win-win agreement that would be even better than the best price they could have imagined.

Statement 7

Seller: During the negotiation, you send this text to your cousin:
I'm negotiating with a potential buyer right now; they just offered \$18,000.

Buyer: During the negotiation, you send this text to the Seller's cousin: *Your cousin said you offered to pay \$20,000 for the car. Is this true?*

The issue is whether or not the parties violated the confidentiality rules because each party is revealing information from their private negotiation. According to Rule C1, there is no violation unless they made an agreement to keep their discussions confidential. Without such an agreement, a party in a negotiation cannot expect the other party to keep their discussions private. However, whether it is ethical to reveal private discussions is another question. Consider damage to the relationship and to your reputation before sharing what happened during negotiations with people other than the parties. How would you feel if the other party revealed information you considered private, even if it isn't technically required to be kept confidential?

For Further Reading

- Art Hinshaw, “Teaching Negotiation Ethics,” *Journal of Legal Education* 63, no. 1 (August 2013), <https://jle.aals.org/cgi/viewcontent.cgi?article=1095&context=home>
- Chapter 8 of Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd. ed. (New York: Penguin, 2011)
- Art Hinshaw, Peter Reilly, and Andrea Kupfer Schneider, “Attorneys and Negotiation Ethics: A Material Misunderstanding?” *Negotiation Journal* 29, no. 3 (October 7, 2013), Marquette Law School Legal Studies Paper No. 13–20, <https://ssrn.com/abstract=2337060>; and
- Holly A. Schroth, “Helping You Is Helping Me: Improving Students’ Ethical Behaviors in a Negotiation by Appealing to Ethical Egoism and the Reputation Effect,” *Negotiation and Conflict Management Research* 1, no. 4 (October 2008): 389–407, <https://doi.org/10.1111/j.1750-4716.2008.00023.x>

For a brief article about the limitations of the American Bar Association’s ethical standards, see Art Hinshaw, “On Professional Practice: Ethics and Negotiation,” *Dispute Resolution Magazine*, September 12, 2019, https://www.americanbar.org/groups/dispute_resolution/publications/dispute_resolution_magazine/2019/summer-2019-new-york-convention/summer-2019-on-professional-practice/.

CHAPTER 3

Negotiation Styles

This chapter introduces the main negotiation styles that students will use and respond to during negotiations and mediations. It also introduces the “civil-assertive” communication style that is recommended for all negotiation styles. This chapter applies to parties and attorneys in negotiation and mediation; mediator styles are discussed in Chapter 9 in the textbook.

[] **ESL Instructors:** This chapter provides engaging activities for general ESL purposes. You could also use these activities to prepare students for negotiation and mediation activities in later chapters. These activities were originally created for high-intermediate ESL students in conflict resolution courses and are tried and true for that audience.

{ } **ESP Instructors:** ADR courses for lawyers, business professionals, and mediators often begin with the foundation this chapter provides. This includes the Thomas-Killian Conflict Modes, a framework that students can use in at least four ways: to understand their own approaches to conflict, to experiment with new approaches that might be more effective, to understand the approaches their opponents are using, and to analyze virtually any type of conflict.

This chapter is highly recommended for business and law students, especially if you only have time to focus on one negotiation style (competitive or cooperative) or if you are focusing on mediation. With this chapter, students will at least get an overview of the main conflict styles they will use and encounter, and they can experiment with all of them.

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (3.03)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 3 (where you are now)

Materials with a number and capital letter (3C)? Companion Site, Part 3; the number tells you the chapter number.

TEACHING TIPS

Tip 1: The lesson plan starts with experiential activities to give students a fresh, authentic experience with the negotiation styles described in this chapter. Starting with activities allows students to reflect on the negotiation strategies they actually use, not the ones they think they use or think they should use. It will also allow students to discover, first-hand, the range of other strategies that are available to them—and to their counterparts.

Tip 2: Another way to introduce conflict styles is to give students the Thomas-Killian Conflict Mode Assessment ([Kilmanndiagnosics.com/assessments/Thomas-killmann-instrument-one-assessment-person](https://kilmann-diagnosics.com/assessments/Thomas-killmann-instrument-one-assessment-person)). This tool purports to assess our main or “default” conflict style. Whether or not the assessment is accurate, it can be an engaging and thought-provoking activity with opportunities to build vocabulary. Students can complete their assessment in or out of class.

Tip 3: The Background Reading refers to ethical and unethical behavior. If you have not used Chapter 2, review the background reading for that chapter.

Tip 4: Take a look at the Word Forms activity in the textbook (Table 3.3, p. 72), and decide if and when to use it. You can also access it in the Companion Site Part 1 (3.03).

LESSON PLAN

Purposes

Introduce students to the main negotiation styles they will use and respond to in negotiations and mediations; provide word forms and idioms to help students discuss and apply these styles; raise awareness about the communication style needed to use these styles effectively; give students opportunities to reflect on their own default conflict styles and to experiment with all of the styles; prepare students for more in-depth exploration of the two main styles, compete and collaborate, in later chapters.

Instructions

1. Introduce this chapter with one or both of the experiential activities: Arm Wrestle (3.A) and/or Locked Horns (3.B). Or use the Warm-Up Questions in the textbook (3.1, pp. 58–59), if you prefer.
2. Ask students to read the Background Reading (3.2, pp. 59–70).
3. Put students in pairs or groups to complete the Conflict Styles Chart (Table 3.2, p. 71). For teaching suggestions, see 3.2 in this section. The chart is also provided as a fillable form in the Companion Site Part 1 (3.02).

4. Put students in groups to discuss “Exploring Conflict Styles: Language, Concepts, Culture” (3.3, pp. 72–74). They can also access a fillable version of the Word Forms activity in the Companion Site, Part 1, 3.03.
5. Ask students to do the idioms activity (3.4, Table 3.4, pp. 74–75 in the book or Companion Site, Part 1, 3.04).
6. Use the mini role-play activity (3C in this section) to practice the negotiation styles described in this chapter.
7. Ask students to read the Civil-Assertive Communication Style (MUM 1) and to practice using it for some of the mini role-plays, in 3C.1.

3A. Arm Wrestle Activity (Teaching Instructions)¹

PURPOSE

This simple activity works well as an experiential introduction to the two main conflict styles, *compete* and *collaborate*. It's best to do the activity without any warm-ups or explanations and to debrief immediately afterward.

If this activity is not appropriate for your students, substitute the “Locked Horns” cartoon activity (Activity 3B).

INSTRUCTIONS

Announce

1. This is a completely silent exercise; there is no need to speak.
2. If you don't want to do the exercise, that's fine; just observe.
3. The goal is to get as many points as you can.

Note: In #3 above, whether “you” is singular or plural is intentionally ambiguous. How students interpret “you” is the whole point of the exercise. This is a key point for debriefing after the activity, so do not address it now. If you get a direct question about this, just respond, “That's for you and your partner to figure out during the activity—without talking about it.”

¹ Based on the Arm Wrestle activity in Barrie J. Roberts, *Conflict Resolution Training for the Classroom: What Every ESL Teacher Needs to Know* (Ann Arbor: University of Michigan Press ELT, 2023), Activity 1A (e-book).

Demonstrate

4. Demonstrate how to get a point. Ask a student to demonstrate the exercise with you or ask two students to demonstrate it together. From the arm wrestle position allow the student to push your arm down. Then ask the student to allow you to gently push their arm down. Each time one student's arm touches down, the other student gets a point.

Give Instructions

5. Instruct students to find a partner without talking. Or, taking culture and other factors into consideration, assign students to work together as appropriate.

Note that this activity has nothing to do with physical strength, but it is fine to allow students to think that it does.

6. Tell students to keep score in their heads without speaking.
7. Give this simple instruction: "Get as many points as you can; no talking!" Tell them to begin.

Observe

8. Are some students ...
 - fighting hard for each point?
 - stuck in a deadlock and not moving?
 - taking turns so that each partner gets the same number of points?
9. Check in after about 30 seconds of arm wrestling ...
 - a. For students who are fighting hard for each point:
 - Ask how many points they have.
 - State that everyone should have at least ten points.

- Ask them to try again.
 - If they can't stop competing, ask them to observe students who are taking turns, if there are any.
 - b. For students who are taking turns
 - Ask them to explain their strategy.
 - Ask them to experience competing against each other for a few points.
10. **Use the Debriefing Questions** (3A.1) for whole-class or small group discussions. See how many of the following “Key Insights” your students realize on their own during debriefing. Then guide students to key insights that they may not have considered.

Key Insights from the Arm Wrestle Activity

- Sometimes we achieve more success for ourselves when we work *with*, rather than *against*, our negotiation counterparts. This is counterintuitive for many of us.
- If we are satisfied with the outcome we achieved for ourselves, are we harmed if our counterparts are equally satisfied? In fact, we may benefit in ways we hadn't considered, by forming new friendships, partnerships, or joint ventures, for example.
- When we compete, we may feel physical sensations of tightness and stress—or an exciting adrenaline rush. When we collaborate, we may feel loose, relaxed, and open—or tense and nervous if we don't fully trust our counterpart. It's important to pay attention to these physical sensations because they may affect our ability to think clearly, effectively, and creatively during negotiations and mediations.
- Sometimes we can show our counterparts how to play our preferred negotiation game without saying a word. For example, some students probably convinced their partners to switch from the competitive to collaborative style by their actions.

3A.1. Debriefing Questions for the Arm Wrestle

1. What did you learn from this exercise? Did anything surprise you?
2. Describe any physical sensations you felt during this exercise. How did it feel to compete? How did it feel to collaborate?
3. The instruction was: “Get as many points as you can.”
 - a. Did you consider the “you” to be plural or singular?
 - b. Did you interpret the instruction to mean, “Get **more** points than your partner?”
 - c. If you got as many points as you could, and your score turned out to be same as your partner’s, are you satisfied with the outcome? Did you achieve the goal of getting “as many points as you can”?

Review the “Conflict Styles Word Forms Chart” (p. 72 in the book or in the Companion Site, Part 1, 3.03, p. 22.). Practice using the correct forms of the words to discuss the remaining questions.

4. What was the best way to get the most points in this activity?
 - a. For you? For your partner? Why?
 - b. Is this always the best way to accomplish your goals? Why or why not?
5. When is *competing* the most skillful negotiation style? *Collaborating*?
6. If one partner tried to compete and the other tried to cooperate, how did you work out which style to use without speaking to each other?
7. Does this exercise remind you of anything in your own life? In current events? History? Literature? Film?
8. Does this exercise raise any cultural or cross-cultural issues? Gender issues?

3B. Locked Horns Activity (Teaching Instructions)

PURPOSE

This simple activity is an engaging introduction to the two main conflict styles, compete and collaborate.

- If you are using this activity instead of the Arm Wrestle, it's best to do so without any warm-ups or explanations and to debrief immediately afterward.
- If you are using this activity in addition to the Arm Wrestle, it's best to do the Arm Wrestle first so that students can experience the lessons kinesthetically before applying them with paper and pen, or keystrokes.
- The activity is in 3B.1, a two-page handout starting on the next page. Simply provide 3B.1 or instruct students to access it themselves.
- For debriefing ideas, see 3A.1, and the Key Insights for the Arm Wrestle Activity.

3B.1. Locked Horns Activity

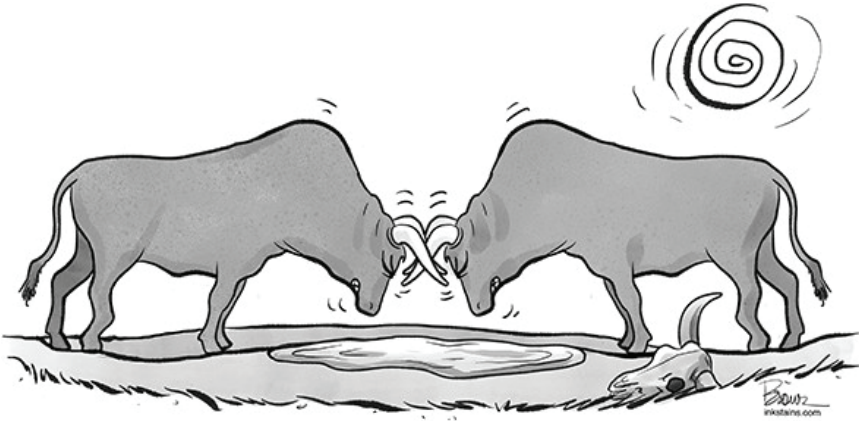


Figure 3.1. Locked Horns¹ (Jonathan Brown, inkstains.com)

INSTRUCTIONS

1. Review the drawing. Note the puddle of water, the hot sun, and the skull.
2. What happens next? Create as many endings as you can think of. You may draw or write your story endings.
3. Discuss your stories with a partner or in small groups.
4. List all the possible outcomes.
5. For each outcome, note which conflict style it most closely matches. We will study the five main conflict styles later, so for now you can describe the style in your own words or try to match it to one of these styles: *compete, collaborate, compromise, accommodate, avoid.*

¹ This activity was inspired by the classic mule or donkey cartoon that is often used for conflict resolution purposes. The source of that cartoon is not clear, but for an early version, see “Let’s Get Together!,” Wisconsin Historical Society, n.d., accessed May 18, 2024, <https://wisconsinhistory.org/Records/Image/IM91646>.

6. Do you know the idiom “locked horns”? If not, look it up and explain how it applies to your drawings or stories.
7. Write about or discuss these questions:
 - a. Which bull wins or loses in each outcome? What does winning/losing mean in these situations?
 - b. Can the bulls choose their outcome—do they have the power to choose among different outcomes? Do we?
 - c. Which outcome do you think is most realistic? Try to convince your group that this is probably what would actually happen between the bulls.
 - d. How could external factors (factors other than the two bulls themselves) impact the bulls’ choices, decisions, and outcomes? Examples: the bulls’ families and neighbors, other species who live nearby, the environment, politics, economics, scarce resources (e.g., water, land, food).
 - e. Which outcomes remind you of situations in your own life? In current events? In history? In business? In law? In literature? In film?
 - f. What can you learn about conflict styles from this activity?
 - g. Revise your story based on your discussions or reflections. Present your new story in one of these ways: an essay, a presentation, a panel discussion, a video, a role-play with another student, or another way.
 - h. Describe this activity to an AI platform and ask it to provide options and select the best one. How does AI’s response compare to yours?

3.2. Teaching Suggestions for the Conflict Styles Chart¹

Table 3.2. Activity: Conflict Styles Chart

Conflict Style	Definitions	Synonyms	Idioms
COMPETE Pros/effective: Cons/ineffective: Examples:			
COLLABORATE Pros/effective: Cons/ineffective: Examples:			
COMPROMISE Pros/effective: Cons/ineffective: Examples:			
ACCOMMODATE Pros/effective: Cons/ineffective: Examples:			
AVOID Pros/effective: Cons/ineffective: Examples:			

This chart is on p. 71 in the book. Students can access a fillable version in the Companion Site, Part 1, 3.02 or they can create their own chart. The “Examples” sections are for examples of effective and ineffective uses of each style.

¹ This activity is based on Roberts, *Conflict Resolution Training*, Figure 3.1. The chart is based on the Thomas-Kilmann (1974) Conflict Mode Instrument (TKI) in “Take the Thomas-Kilmann Conflict Mode Instrument (TKI),” Kilmann Diagnostics, n.d., accessed November 1, 2023, <https://kilmanndiagnostics.com/overview-thomas-kilmann-conflict-mode-instrument-tki>. Contributors to this chart include Michael Clark, Melody Noll, and Jen Burton.

INSTRUCTIONS

1. Introduce the Conflict Styles Chart. This is a chart of the negotiation styles described in the Background Reading. Ask students to work with the chart in the book (p. 71), or to download it from the Companion Site Part 1, 3.02, or to create their own chart.
2. Ask students to complete the chart in pairs or small groups.
3. Select some or all of the questions in “Exploring Conflict Styles: Language, Concepts, and Culture” in the book (3.3, pp. 72–74).
4. Debrief with the whole class. You can simply ask students to share the most surprising or important points they’ve discovered about negotiation styles or themselves. You may wish to incorporate the following teaching points into the discussion.

TEACHING POINTS

- Each style has skillful/unskillful uses depending on the context. All of the styles belong in every negotiator’s toolbox even if only to recognize the styles our counterparts are using.
- Raising awareness about conflict styles, naming them, and identifying them in ourselves and others can be empowering to negotiators. Because many people just react naturally according to what’s comfortable and familiar (their default style) during a conflict or negotiation, learning that there are different styles and that we can choose among them depending on the situation can give us control and allow us to be proactive instead of reacting to what our counterparts are doing.

- Ask students to explain the differences between *avoid* and *accommodate* on the one hand, and *collaborate* on the other. Some students think that “avoiding” and “accommodating” are good ways to achieve “harmony,” which may or may not be true, while the purpose of collaborating is to create true and long-term harmony even though it requires us to discuss problems openly so that *both* sides can get their needs addressed.

APPLY THE CHART

1. Use videos of conflicts (that you and/or your students find) and ask students to identify the styles they observe. They can also suggest more effective styles for the characters to try in these situations. Clips from television situation comedies or social media work well.
2. Ask students to create a list of conflicts that everyone knows about (e.g., from current events, popular culture, campus events, classroom discussions, videos shared in class) and then use the chart to (a) analyze the conflict styles used by the participants in the conflict and (b) suggest styles that would have been more effective. Students can also use new idioms (see 3.4, p. 75 in the book) to describe these conflicts.
3. Ask students to identify their preferred negotiation style and then
 - meet in groups with others who have selected the same style. They can discuss any of the debriefing questions you assign as well as these questions:
 - What do you wish others would understand about this style?
 - What questions do you have about the other styles?
 - create new groups, ideally with one person from each style, to discuss the above questions together.

3C. Using Mini Role-Plays to Explore Conflict Styles

PURPOSE

This activity gives students the opportunity to practice with all of the conflict styles. Each student should

- perform each conflict style and be on the receiving end of each conflict style at least once. You can encourage students to exaggerate the styles as if they were actors in a movie. This is usually a lot of fun.
- experience various combinations of negotiation styles. For example, both parties can be competitive or one can be competitive while the other is trying to compromise.
- practice matching *communication* styles to negotiation styles.
- practice using the idioms and word forms introduced in prior lessons.
- For ESP students in law, business, and similar professions: ask students to review the “problem-solving” style described in the book (p. 69) and the discussion of the “civil-assertive” communication style (MUM 1) and apply these styles in some of their role-plays.

TEACHING INSTRUCTIONS

1. Review the list of scenarios (3C.1, starting on the next page). Provide your choice of scenarios to students in one of these ways.
 - a. Hand out the list and ask students to role-play each scenario or scenarios you select; or
 - b. Cut the list into strips. Put scenarios in a hat for students to select at random.
2. Assign conflict styles in one of these ways.
 - a. Students select their own conflict style for each scenario.
 - b. Students write the five conflict styles on five strips of paper and each student selects a strip at random for each scenario. For law and business students, add “problem-solving” as a sixth style.
3. Assign partners in one of these ways.
 - a. Students work with one partner for all scenarios.
 - b. Put students in groups of four or five. Students take turns role-playing scenarios while the observers guess which styles they are using.
4. You may wish to give students one to two minutes per scenario.
5. Ask students to perform scenarios for the whole class.
6. Debrief. See 3C.2 in this section for debriefing questions.

3C.1. Conflicts Styles: Scenarios for Mini Role-Plays¹

1. **College Roommates:** *A* and *B* share a small room. They want to use the room in different ways on weekends. *A* wants to socialize with friends; *B* wants to study.
2. **Pizza Delivery:** *A* ordered a vegetarian pizza. *B* delivered a pizza covered in pepperoni.
3. **Family business:** *A* (the parent) wants *B* (the adult child) to take over the family business. *B* wants to move out of the country and become a musician.
4. **Family celebration:** *A* and *B* are adult siblings who are planning a birthday celebration for their elderly mother. *A* wants to throw a big surprise party. *B* wants to arrange a quiet family dinner at a restaurant.
5. **Coworkers:** *A* and *B* must submit joint reports to their supervisor each Friday. *A* wants to submit the reports on Thursday and take Fridays off. *B* has other commitments on Thursdays and wants to submit the reports on Fridays.
6. **Friends:** *A* loves action movies. *B* loves comedies. Choose a movie.
7. **Next-door neighbors:** *A* has a dog that barks all day and night. *B* works at home and is constantly annoyed by the barking.
8. **Business Partners—Running the company:** *A* wants to appoint loyal, trusted relatives as vice-presidents in the company even though they have no experience with the work the company does. *B* is willing to hire them, but only for entry-level jobs.

¹ This activity is based on Paulette Dale and James C. Wolf, *Speech Communication Made Simple*, 3rd ed. (Upper Saddle River, NJ: Pearson, 2006) (Ch. 10, “Understanding Interpersonal Communication,” 188–195).

9. **Siblings:** *A* and *B* are siblings. Their father gives *A* \$100 and says that *A* must split (share) the money with *B* in any way or amount that *A* chooses. If *B* rejects the amount that *A* offers, *A* must return the full \$100 to their father, and neither sibling will receive even once cent.
10. **Business Partners—Closing or expanding the company:** *A* wants to completely close the business and sell the property so that the company does not exist anymore. *B* wants to expand the company.
11. **Attorneys—Divorce and child-custody case.** Attorney *A*'s client wants to move 3,000 miles away to *A*'s home country and raise the children with their family there. Attorney *B*'s client does not want the children to leave the country they've lived in their whole lives with *B*'s side of the family. If they can't reach an agreement, the judge will decide based on what's best for the children.
12. **Attorneys—Personal-injury case:** Attorney *A* represents a truckdriver. Attorney *B* represents a motorcycle driver. The two drivers crashed into each other in January and both were injured, the motorcycle rider much more severely than the truckdriver. The attorneys must agree on a date to start their trial. The issues at trial will be who caused the accident and how much compensation the injured driver(s) should receive. Attorney *A* wants to start in March before the witnesses forget what they saw. Attorney *B* wants to start in December to see if the injuries are temporary or permanent. Choose a trial date.

13. **Attorneys—Will contest (dispute):** Attorney

A represents the 20-year- old son of a wealthy businesswoman who recently died. The son has a physical disability that requires him to use a wheelchair. Attorney *B* represents a non-profit organization that the businesswoman supported throughout her life to rescue abandoned dogs. The businesswoman's will (document stating who should inherit her money and property) seems to have left 100% to either the son or the organization, but it is not clear. If they can't reach an agreement, the judge will choose one of them to receive it all.

3C.2. Debriefing Questions for Mini-Role-Plays

1. Which styles did you use for each scenario? Were these the best choices? If not, which styles might have been more effective?
2. Did you use any new styles for the first time? If so, what was your experience?
3. Which styles were most comfortable for you to use? Which were least comfortable?
4. Which styles were most comfortable for you to respond to when the other party used them on you? Which styles were least comfortable for you to respond to?
5. Are there any styles you'd like to cultivate (practice and improve)?
6. Did anything surprise you about conflict styles or yourself during this activity?
7. What have you learned about conflict styles or yourself through this activity?
8. Write down two to three takeaway lessons for yourself.
9. Write your own mini-role-play to explore conflict styles and ask colleagues to role-play it with you.
10. Choose one of the mini-role-plays or the one you created in #9, and ask an AI platform to use various combinations of conflict styles to resolve the dispute. Compare AI's approaches to your own. Repeat for as many role-plays as you wish. What can you learn about using AI for ADR from this exercise?

3D. Additional Exercises for Exploring Conflict Styles

For more practice with conflict styles, assign students to use particular conflict styles as they work together in groups to solve a problem or reach a decision. You can ask students to propose topics or use standard problem-solving activities that you create or find online, such as *Who gets a seat in the lifeboat? Who gets the heart transplant? Who should we hire? Which non-profit organization should receive our donation? What five items should we bring to start life on a new planet?*

For Further Reading

Negotiation Styles

- Kenneth Cloke and Joan Goldsmith, *Resolving Conflicts at Work: Ten Strategies for Everyone on the Job* (San Francisco: Jossey-Bass, 2011)
- Katie Shonk, “Conflict-Management Styles: Pitfalls and Best Practices,” Program on Negotiation, Harvard Law School, Teaching Materials and Publications, March 21, 2024, <https://www.pon.harvard.edu/daily/conflict-resolution/conflict-management-styles-pitfalls-and-best-practices/>

Communication Styles

- Paulette Dale and James C. Wolf, *Speech Communication Made Simple*, 3rd ed. (Boston: Allyn & Bacon, 2006): Chapter 10, “Understanding Interpersonal Communication”
- “Women Know Exactly What They’re Doing When They Use ‘Weak Language,’” *New York Times*, July 31, 2023, <https://www.nytimes.com/2023/07/31/opinion/women-language-work.htm>

CHAPTER 4

Competitive Negotiation

For competitive negotiators, negotiation is a contest that they intend to win. This chapter provides the basic tools that students need for competitive negotiations and for mediations in which the parties use competitive methods. Students will benefit from learning these strategies along with standard terms of art, idioms, and common phrases for this negotiation style. They will also benefit from experimenting with these strategies as they plan and carry out a simple competitive negotiation role-play (Role-Play 1). Learning the concepts and skills with reference to a simple but specific scenario and then using that information to negotiate this same scenario will provide a strong foundation for more challenging competitive negotiations in the future.

[] **ESL Instructors:** This chapter provides an introduction to competitive negotiation through detailed background readings and a simple negotiation role-play. It builds on the competitive approach that was presented in Chapter 3 and provides key terms, concepts, and strategies for the classic competitive negotiation style. For general ESL purposes, you may wish to focus on the warm-up questions and the role-play.

{ } **ESP Instructors:** This chapter introduces students to the classic competitive negotiation style. Although law, business, and other ESP students may have considerable experience with competitive negotiations, they are at a disadvantage if they have never studied the terms of art for this style or the standard strategies or “steps” in the classic negotiation “dance.”¹

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (4.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 4 (where you are now)

Materials with a number and capital letter (4A)? Companion Site, Part 3; the number tells you the chapter number.

TEACHING TIPS

Tip 1: While competitive negotiation is exhilarating for some students (and instructors), it can be intimidating for others. However, students who avoid competition may learn that by focusing on the steps of the competitive dance, there is less to fear than they think. The steps do not require students to harm their counterparts, and they provide protections when others try to harm them. Even if students are not inclined to use competitive strategies, they will benefit from having competitive tools in their toolbox to draw on when needed, such as when they are negotiating on behalf of clients and when their counterparts are using competitive methods against them.

Tip 2: Students must follow the Ethical Rules for Classroom Negotiation and Mediation Role-Plays during Role-Play 1. These rules are explained in Chapter 2 (pp. 46–51) and summarized in the Companion Site, Part 1. (2.02). If you haven’t used Chapter 2, you can provide the summary along with a brief explanation based on pp. 46–51 in the textbook.

Tip 3: ADR role-play scenarios prioritize negotiation skills and teaching points over realistic fact patterns. Focusing on the content—in this case, a used car—will lead to frustration. Do not get sidetracked into discussions about the Blue Book value or the depreciation rate of new cars. Do not allow students to add information from their own experience or research during their role-play. If students point out that the facts don't make sense or that "this would never happen in real life," you can certainly agree and then focus on how students can nevertheless use the role-play to improve their negotiation skills. The content of the role-play may not be authentic, but the process is.

Tip 4: Just for fun: Find a time to show this entertaining video clip about haggling from *Monty Python's Life of Brian*.² Ask students to explain why it is so funny.

Tip 5: How to get started: Review Chapter 4 in the textbook and the materials in this section and decide what will meet your students' needs and what you have time for. The lesson plan assumes that you are using Chapter 4 to build up to Role-Play 1. If you only want to introduce the concepts without doing the role-play, you can simply assign selected Warm-Up Questions (4.1, pp. 80–82) and Background Readings (4.2–4.6, starting on p. 82).

Tip 6: The role-play itself should take about 30–45 minutes from start to finish, including debriefing. Students may need two–three hours to prepare for it if you follow all of the suggestions below, but this preparation can be done out of class. Note that this preparation is a good investment as it will prepare students for competitive negotiations well beyond Role-Play 1.

LESSON PLAN

Purposes

- Introduce the fundamentals of the classic competitive negotiation style and the terms of art used to discuss it and carry it out
- provide an authentic opportunity for students to prepare for and participate in a competitive negotiation
- invite students to reflect on their experience in a competitive negotiation
- introduce ESP students to the role-play procedures they would encounter in ADR courses with native speakers of English: reading and analyzing a Confidential Fact Sheet, using a checklist and framework to prepare for their negotiation, following a negotiation process with a partner playing the opposite role, and debriefing the experience.

4A. Role-Play 1: Preparation (Teaching Instructions)

1. **Assign selected Warm-Up Questions** (4.1, pp. 80–82).
2. **Assign the Background Reading** (4.2, p. 82). (Do not assign sections 4.3–4.6 at this time.) Optional: You may wish to give a mini-lesson based on the Background Reading instead of, or in addition to, assigning it for out-of-class reading.
3. **Divide the class into Buyers and Sellers.** Provide the Confidential Fact Sheets to students in each group: Sellers (4A.1), Buyers (4A.2. If you trust that your students will not read their counterpart's fact sheet, you can instruct them to access their own fact sheet. If you are providing hard copies, use different colors, such as blue for the Sellers and green for the Buyers.
4. **Assign the Negotiation Planning Checklist** (4.3, pp. 85–87) and the explanations that follow it (4.4, pp. 88–96). Students can use the form in the textbook or the fillable form in the Companion Site, Part 1 (4.01).
5. **Instruct students to prepare for the role-play** by reading their Confidential Fact Sheet and completing their Negotiation Planning Checklist. Students may complete the checklist on their own or with a partner playing the same role. (Buyers may work with Buyers; Sellers may work with Sellers.) Optional: You may wish to walk students through the checklist as an interactive lecture (being careful not to reveal confidential information for either side) or to meet privately with Buyers and Sellers to answer questions about the facts and their planning checklists. Limit discussions to explaining the plain meaning of words; everything else is grist for the mill and should be worked out during the negotiation.

6. **Assign negotiation partners** (a Buyer and a Seller).

Students can use their own names or choose any name they wish. Partners should not discuss the negotiation until the role-play, but they should discuss logistics beforehand as discussed in #7. If you have an uneven number of students, or if you have students who would be more comfortable working with a partner on the same side, you may assign two people to one side. You can also assign silent observers who should keep notes on their observations.

Here is one way to assign roles in class: If there are 20 students, number the green and blue sheets 1–10. Hand out copies to students at random, or any way you wish. Then say something like, “*1s raise your hands and nod to each other. 2s raise your hands.*”

7. **Logistics.** Tell students when the role-play will take place (if in class) or when they must complete it (if out of class or online). The Confidential Fact Sheets instruct the Buyer to contact the Seller to set up a time for the negotiation. Buyers should contact their counterparts (the Seller who is their assigned partner) to schedule the negotiation or to confirm the date, time, and place of the negotiation if it will be done in class. They may do so in person or by phone, text, or email.

Remind students that in real-world negotiations, this communication sends important messages to the other party about what kind of negotiator they will be dealing with (e.g., aggressive, easygoing, weak, serious, reasonable). Each fact sheet encourages students to review pp. 71–72 in MUM 3 to help them “Schedule the Negotiation.” However, this communication should be limited to logistics and not veer off into the substantive matters for the negotiation itself.

8. **Negotiation Procedures:** MUM 3 also provides step-by-step procedures for students to follow for Role-Play 1. It also includes sample language. These procedures are recommended for law and business students but may not be necessary for general ESL purposes.
9. **Language Activities:** Assign the following for self-study, review, or mini-lessons to prepare for Role-Play 1, and ask students to apply these activities during their role-play:
 - a. Conflict Styles Idioms (3.4, p. 75)
 - b. The Civil-Assertive Communication Style, MUM 1
 - c. Saying and Hearing 'No,' MUM 2
10. **Remember to save time for debriefing after** the role-play. (See 4A.3).

ROLE-PLAY 1: PROCEDURES FOR IN-CLASS ROLE-PLAY

1. To provide the best experience for students who have carefully prepared for the role-play, ask students to show you their completed checklists or find another way to determine who is and is not prepared. Unprepared students can observe and take notes. To deal with changes in partners that may result or with absences, you can assign two students to work on the same side.
2. Tell students that they have 15–20 minutes to negotiate. Write the deadline on the board. Give a two-minute warning before time is up.
3. Instruct students to find their counterpart and start negotiating. Circulate and listen in.
4. Debrief. After the role-play, instruct students to use the debriefing questions in MUM 4, Section F. Then conduct whole-class debriefing with the questions in 4A.3 in this section.

4A.1. Role-Play 1: Confidential Facts for the SELLER

Last year, you bought a beautiful new car for \$25,000, but you need to sell it today because you lost your job and you have no money saved up. You need \$15,000 in cash by tomorrow at 5:00 p.m. to pay your rent (or you'll be evicted) and utilities (or your electricity and gas will be shut off). You must pay other delinquent (late) bills, as well.

You hope to get more than \$15,000 for the car because you need to buy another form of transportation, such as a motorcycle or cheaper car, and pay for your living expenses while you're looking for a new job. Based on your online research, the car's current value is about \$19,000–20,000, but you think it's worth more. You didn't follow the manufacturer's maintenance specifications exactly, but you never had a problem with the car. Additionally, you spent \$1,000 to install a high-quality security alarm.

Your cousin has offered you \$15,000 in cash for the car. You told him that you'd think about it and then you advertised the car online. Here's your ad:

*Used car for sale. Just one year old. In great shape—almost like new.
Blue. Price negotiable.*

Only one person responded to your ad. They came over yesterday to do a test-drive. You had a pleasant meeting and they said they'd think about it.

They just contacted you to schedule a time to discuss the price. Think carefully about how you want to respond. How do you want the first contact *to go* (to be, to proceed)? Read "Schedule the Negotiation" (MUM 3, pp. 71–72 in the Companion Site, Part 2), and then respond to confirm the meeting or to propose a change. Use the Negotiation Planning Checklist (pp. 86–87 in the book or in the Companion Site, Part 1, 4.01) and MUM 3 to prepare for the negotiation. Try hard to reach an agreement, but you are not required to do so.

4A.2. Role-Play 1: Confidential Facts for the BUYER

You just lost your job and need to find a new one immediately. The jobs you want require employees to own a reliable car. You don't own a car, but if you could buy one tomorrow, you could go on job interviews the next day. Your brother will loan you up to \$18,000 to buy a car today if you promise to pay him back in six months. That promise will be very hard to keep, so you hope to find a good car for a few thousand dollars less.

Yesterday, you saw this online ad:

*Used car for sale. Just one year old. In great shape—almost like new.
Blue. Price negotiable.*

The seller lives close by, and yesterday you test-drove the car. During your test-drive, you took it to your mechanic for a quick check, and he didn't see any big problems. The car seems like a good solution and the seller seems like a nice person, but you think it will be too expensive, and you're worried about car thieves breaking into such a nice car. You told the seller that you'd think about it. They replied, "Okay, but don't delay because my cousin wants to buy it tomorrow."

Based on your online research, you think the car is worth about \$19,000–\$20,000. As a back-up, you test-drove another car. That seller is only asking for \$15,000, but the car is 5 years old, made a strange sound, and is red, a color you do not want. You don't have time to explore other options. The blue car is your first choice, and you hope to drive it home today if you can get it for less than \$18,000; you can't pay more than that and you hope to pay a few thousand dollars less.

Think about your first contact with the seller. How would you like it *to go* (to be, to proceed)? Read "Schedule the Negotiation" (MUM 3, pp. 71–72 in the Companion Site, Part 2), and then contact the seller to schedule the negotiation. Use the Negotiation Planning Checklist (Companion Site Part 1, 4.01) and MUM 3 to prepare for the negotiation. Try hard to reach an agreement, but you are not required to do so.

4A.3. Role-Play 1: Whole-Class Debriefing (Instructor's Guide)

Note: Remember that debriefing questions for the negotiation partners in Role-Play 1 are in MUM 3, Section F, in the Companion Site, Part 2.

1. Ask students to report on their agreements or write them on the board. Ask students to reflect on the numbers. If there is a wide range, discuss possible reasons, since everyone had the same facts. (Some students may be more persuasive; some may have violated an ethical rule; some may have used a very competitive or very accommodating negotiation style.) If the amounts cluster around the same number, discuss why.
2. Ask each pair to describe their agreement or explain why they couldn't agree.

Note: Questions 3–5 may also work as out-of-class written reflections.

3. What ethical issues did you grapple with?
4. How does your Negotiation Planning Checklist compare to what actually happened? Was there any value in completing the checklist?
5. What are some takeaway lessons from the role-play?
Examples.
 - a. What did you learn about yourself as a negotiator?
 - b. What did you learn about negotiation?
 - c. What skills do you want to practice?
 - d. What do you want to learn more about?

6. Consider an out-of-class assignment to find videos or movies that demonstrate skillful/unskillful versions of the negotiation moves the students have just worked with. Or ask students to use AI to negotiate this role-play and compare AI's process and results to their negotiation.

Recommended: Review the Ethical Issues Activity for Negotiators (2A in Chapter 2 in this Companion Site, Part 3). Now that students have completed Role-Play 1, this would be an excellent time for them to think about the ethical issues raised in that activity.

For Further Reading

- Melissa L. Nelken, *Understanding Negotiation* (Cincinnati: Anderson Publishing, 2001).
- Charles B. Craver, *Effective Legal Negotiation and Settlement*, 7th ed. (New Providence, NJ: LexisNexis, 2012).
- Natasha Costello and Louise Kulbicki, *Practical English Language Skills for Lawyers: Improving Your Legal English* (New York: Routledge, 2023). This is an excellent source of ESL activities for negotiators. Chapter 9, "Contract Negotiations," will benefit lawyers and non-lawyers alike.

Notes

1. Negotiators often refer to competitive negotiation as "the dance" because they take small steps toward and away from each other and toward each other again as they try to reach an agreement. This style is also called "the game." Negotiators may say, "This is how the game is played." Or "He has no idea how to play the game."

2. "Haggle scene" with Graham Chapman and Eric Idle in *Monty Python's Life of Brian*, directed by Terry Jones, produced by HandMade Films and Python (Monty) Pictures, UK, 1979. YouTube video, 2:05, uploaded November 18, 2013, https://www.youtube.com/watch?v=8iQ7nr8xEPo&ab_channel=BusinessandEnterprise.

CHAPTER 5

Collaborative Negotiation and Mediation

This chapter introduces students to the collaborative “win-win” style in which parties work together as partners rather than against each other as adversaries. Collaborative methods include active listening, emotional literacy, brainstorming, and identifying underlying interests. These are essential tools for negotiators and mediators and important soft skills for everyone. This chapter helps students cultivate these tools through interactive step-by-step activities followed by reflections on their experiences. In the final activity, Role-Play 2, students will apply their new tools as they negotiate a win-win solution to a bitter dispute.

[] ESL Instructors: This chapter provides several engaging activities that work well for general ESL purposes and/or as preparation for negotiation and mediation role-plays: the Orange Exercise (5A) (small group brainstorming and problem-solving) and Active Listening Exercises (5.4, pp. 145–153). These activities build on the collaborative style presented in Chapter 3 but may be used without that background. Depending on your students’ level and needs, you may want to try additional activities in this chapter as well.

{ } ESP Instructors: This chapter introduces students to the collaborative style they will use and respond to during negotiations and mediations. It provides key strategies along with terms of art, idioms, and skills that all negotiators and mediators need in their toolboxes, especially if they plan to use the very effective “problem-solving” style discussed in Chapter 3 (pp. 69–70).

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (5.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 5 (where you are now)

Materials with a number and capital letter (5A)? Companion Site, Part 3; the number tells you the chapter number.

TEACHING TIPS

Tip 1: This chapter presents numerous opportunities to increase vocabulary and idioms for emotions, needs, and values. Students can access lists of emotions, needs, and values in the Companion Site, Part 1 (5.02 and 5.03). Consider integrating new vocabulary and idioms into the activities and role-play in this chapter.

Tip 2: Use the active listening scripts (5.4, pp. 145–153, and MUM 4) and the FENS form (Table 5.2, p. 142, and Companion Site, MUM 5) as regular, standing activities so that they become second nature for students. (FENS stands for Facts, Emotions, Needs, Solutions; see pp. 142–143 in the book.) For example, start the first class of the week with a five-minute paired active listening activity in which students simply describe the best or worst thing they’ve experienced since the last class meeting. During the last class of the week, assign a FENS form as an out-of-class activity to analyze a dispute that you assign or that students select. For additional FENS form activities, see 5.3 in this section.

Tip 3: The readings and activities in this chapter provide building blocks to prepare students for Role-Play 2 (a guided collaborative negotiation), and for the mediation readings and activities in Chapters 9 and 10. If you prefer to start with Role-Play 2 or with mediation, you could fold in the building blocks from this chapter as you go along.

Tip 4: Just for fun: Consider finding time to show these entertaining videos about active listening:

- “Teaching Dwight Active Listening,” *The Office*, season 9, episode 2, 1.19 minutes, posted Aug. 5, 2014, <https://www.teachertube.com/videos/the-office-season-9-episode-7-teaching-dwight-active-listening-343198>.
- “Please Pass the Butter,” *The Big Bang Theory*, season 7, episode 19, 1.54 minutes, posted April 4, 2014, https://www.youtube.com/watch?v=p1jzdSzGHnA&ab_channel=NetodelToro
- “Ray learns active listening,” *Everybody Loves Raymond*, season 2, episode 2, 2.58 minutes, posted February 21, 2013, https://www.youtube.com/watch?v=4VOubVB4CTU&ab_channel=ParentEffectivenessTraining. This episode is filled with active listening scenes and is well worth watching in full.

LESSON PLAN

1. Start with the Orange Exercise (5A).
2. Assign selected Warm-Up Questions (5.1, pp. 111–114).
3. Assign the Background Reading (5.2, pp. 114–144).
Consider providing a mini-lesson to summarize the chapter, discuss the hypos, and to encourage student feedback on key points, or ask students to make presentations on the ten collaborative methods described in this chapter, starting on p. 120 in the book.
4. Assign one of the FENS form activities (5.3 in this section).
5. Introduce the active-listening exercises (5.4, pp. 145–153, and MUM 4).
6. Assign Role-Play 2: Paradise Peak (5B in this section).

Items 1–6 are the core activities for Chapter 5. Time permitting, consider these additional activities in this section.

7. Creating a Dramatic Monologue to Inspire Empathy (5.2.2).
8. Activities for Emotional Literacy (5.2.4).
9. For additional active listening practice, select some of the mini role-plays for Chapter 3 (3C.1). Negotiators or mediators can use the active listening script in MUM 4 to help the parties in those disputes reach agreements.

5A. The Orange Exercise (Teaching Instructions)

In this activity, students work in small groups to brainstorm solutions to the following problem: Each group has one orange, and everyone in the group wants it. But instead of competing against each other as adversaries to win the orange, they will work together as partners to brainstorm many possible solutions.

PURPOSE

Students will create and experience a structured collaborative process for resolving a dispute, including brainstorming, evaluating, and selecting solutions. This activity will help to prepare them for collaborative negotiations and mediations in role-plays and real life. If you have introduced the language and communication points from Chapter 3, you may ask students to apply those lessons to this activity.

TEACHING TIPS

Tip 1: This activity also works well as an icebreaker, or as an introductory activity for Chapter 8, “Reaching Agreements.”

Tip 2: This activity presents an opportunity to review the conflict styles described in Chapter 3. The debriefing questions in 5A.1 provide sample questions for this review.

Tip 3: Read the entire activity before starting. Decide how much of it to use and how much time to allow for each step.

LOGISTICS

Time: 30–70 minutes, depending on your goals. Example:

- (5–10 min) Set up and explain the activity
- (15–30 min) Activity
- (10–30 min) Debrief

MATERIALS

- Oranges (one orange for each group). Real oranges work best, but you can use lemons, photos of oranges, or your creative substitutions.
- Paper and pens or laptops to take notes.
- Flip chart, board, or laptop and screen for whole-class debriefing.
- Optional: BEC Checklist (MUM 8).

PROCEDURES

1. Assign 3–5 students to each group.
2. Give each group one orange or your substitution.
3. Tell students how much time they have to complete their brainstorming.
4. Assign roles (described on the next page) as you wish. It's not necessary for each student to have a specific role, and you can combine roles depending on the number of students per group. All students should contribute their ideas in addition to performing their other duties.

- **Facilitator:** Guide the discussion. Make sure everyone is invited to speak.
 - **Questioner:** Ask questions if group members run out of ideas. (See #7 for sample questions.)
 - **Rule enforcer:** Keep the discussion focused on the instructions. Point out the “no commenting” rule during brainstorming.
 - **Timekeeper:** Keep track of time. Give five-minute and two-minute warnings of the deadline.
 - **Recordkeeper:** Repeat each group member’s idea; check to make sure you understand it correctly, and then write it down.
5. Tell students that each member of their group wants the orange. But their job is not to decide who gets it. Instead, their job is to brainstorm as many ways as possible to solve this problem. They must follow these rules:

RULES

(Consider summarizing these on the board)

- Think “quantity not quality” of ideas.
- Every idea is accepted and recorded without criticism or comments.
- Students are encouraged to “piggyback.” Examples: “Maria’s idea just gave me this idea ...” “To piggyback on Adam’s idea, I’d like to suggest ...”
- Include wild ideas that could not possibly work.
- Groups will be recognized for generating the most ideas and the largest range of ideas, from most practical to most impractical.

6. Introduce communication styles for brainstorming (informal, open, encouraging; use modals, softeners, hedges, questions, and sample phrases). See Chapter 8, pp. 205–206 in the book for suggestions. Examples:
How about X? We could try Y. Z might work. Could we add something like W to the list? I wonder if B is a possibility. I'd like to suggest C even though it would never work.
7. Sample questions that you or the Questioner can ask if groups are stuck:
Who else has an idea?
How about some wild ideas that could never work? How would this problem be handled...
 - *in other countries/cultures? By AI?*
 - *in a movie (examples: science fiction/romantic comedy/action)?*
 - *by children? Attorneys? CEOs? Doctors? Parents? ESL instructors?*
 - *by various animals (dogs, wolves, chimpanzees, bears)?*
8. Another way to help students generate responses if they get stuck is for you to review the sample solutions that students have brainstormed over the years and nudge your students toward some of these. See 5A.3 in this section for ideas.
9. To stir things up...
 - Note that students rarely think beyond their group. You could quietly ask one group to count how many oranges they see in the room. Remind them that the instructions did not require them to stay seated in their groups.

- Casually walk over to a group and ask for their orange. When they hand it to you, ask why they did so if everyone in their group wants it. Does their answer give them any new ideas? (Hint: Students could consider how hierarchy and power [yours] relate to disputes over scarce resources. You can save this point for debriefing.)

10. Next steps

TO END THIS ACTIVITY NOW

- a. Ask students to agree on one option or list a few options they would seriously consider.
- b. Students thank each other and may end with handshakes, fist bumps, or another ritual or action.
- c. Debrief (Whole-Class Debriefing, 5A.1).
- d. Select questions from Orange Exercise: Questions for Small Group Discussions or Written Reflections (5A.2). You can also provide these questions as a handout.

TO USE THIS ACTIVITY TO PREPARE FOR CHAPTER 8, REACHING AGREEMENTS

- a. Tell students that they have just completed the first step of the three-step process for reaching agreements. Now they will move on to Steps #2 and #3. Optional: Review the BEC Checklist (MUM 8) and review communication styles and sample phrases for each step in Chapter 8.

Step 1: Brainstorming (done).

Step 2: Evaluation. Students use the BEC Checklist to evaluate their proposals and select the best one(s). They may combine ideas as described in the checklist.

Step 3: Conclude.

- b. Students write their agreement. This can be very short, even just a sentence or two.
- c. Students use the BEC Checklist (MUM 8) to make sure their agreement meets their needs and is clear and specific. Assign editing tasks as you wish.
- d. Peer Review: Groups exchange agreements and use the BEC Checklist or other criteria to provide feedback.
- e. Students revise, sign, and submit their final draft to you.
- f. Students thank each other and may end with handshakes, fist bumps, or another ritual or action.

5A.1. Orange Exercise: Whole-Class Debriefing (Instructor's Guide)

Ask each group to share one idea at a time. Ask volunteers to write the ideas on the board so you can focus on the discussion. You may wish to ask for responses in one of these ways:

PRACTICAL VS. IMPRACTICAL

- Obvious practical ideas that could really work.
- Creative ideas that could really work.
- Creative ideas that could not work in their current condition but could possibly lead to workable solutions.

PROCESS VS. SUBSTANCE

- Which solutions are about the *process* for deciding who gets the orange? (Examples: a lottery, contest, or lawsuit)
- Which solutions are about the *outcome* (who gets the orange or parts of it)?
- How do you feel about the outcome if you don't receive the orange ...
 - if you helped create the process?
 - if you did not help create the process?
- If the process is fair, can the outcome be unfair?
- Which is more important for negotiators—process or outcome? Or are they both important? Which is more important for mediators?

CONFLICT STYLES

If you have used Chapter 3 (“Negotiation Styles”) or if you can quickly present the five styles, ask students to match their proposed solutions to these styles:

- **Competitive/adversarial:** Win/lose. The focus is on an individual, not the group. One person defeats everyone else and gets the whole orange.
- **Compromise:** Win some/lose some. The goal is keeping the peace. Everyone gets something, but no one gets the whole orange.
- **Accommodating:** Lose/win. Some people give up their share of the orange so others can have all or some of it.
- **Avoid:** Lose-lose. Some people choose not to participate or pretend that there’s no problem to solve and they don’t get any of the orange.
- **Collaborative:** Win-win. Everyone agrees on a solution that meets everyone’s needs.

5A.2. Orange Exercise: Questions for Small Group Discussions or Written Reflections

1. What did you learn from the orange exercise?
2. What was most surprising or interesting about this exercise?
3. What were your favorite solutions from your group or other groups?
4. How could you apply the orange exercise to making deals, resolving conflicts, or just understanding a particular conflict in the world today?
5. What could the orange represent or symbolize? Does this exercise remind you of anything in real life (e.g., scarce resources, such as water, land, or oil)? How is scarcity handled in real life (e.g., war, theft, buy-outs, trades, alliances, lawsuits, new inventions)?
6. Did culture influence this activity? Imagine doing this exercise in your first language with people from your own culture. What would be the same/different?
7. Did gender play a role during this activity? Did you notice any differences in participation based on gender? How might gender have affected you, other group members, or the group overall during this activity?
8. Describe your group's process during this activity. Describe the roles, your participation, and the tone (such as serious, friendly, encouraging, stressful, formal, or informal).
9. Reflect on your participation and contribution to the group. What were your strengths? What would you like to improve on?

10. Would the same approach work for real-world business or political disputes or lawsuits? In other words, would it work to start by freely brainstorming with the people on the other side before evaluating and selecting ideas?
11. Evaluate this activity. What were its strengths and weaknesses? How could it be improved?
12. Ask an AI platform to brainstorm solutions for the orange exercise and to choose the best one. Compare AI's approach to yours.

5A.3. Sample Solutions from the Author's Students

- Give each member an equal share of the orange.
- One member gets the whole orange based on criteria to be determined by the group.
- One member pays the other members for the whole orange.
- Hold a lottery or play rock, paper, scissors or another game of chance.
- One or more members sue the others to ask a judge to decide who has the legal right to the orange.
- Transform the orange into another product (juice, a candle, perfume, soap, ingredient in a cake) and share it equally or sell it.
- One person gets the orange rind (skin), another gets the fruit, another the seeds.
- Sell the orange and split the money equally among group members.
- Nobody gets the orange now, but the seeds are planted so that everyone will have many oranges in the future.
- Steal as many oranges as possible from other groups to increase everyone's share.
- Make deals with the other groups to buy their oranges or trade their oranges for something they value.
- Make deals with other groups to plant orchards to increase the number of oranges for everyone.
- Donate the orange and share the happiness—or the tax write-off.

5.3. FENS Form Activities (Teaching Instructions)

FENS stands for “facts, emotions, needs, solutions.” (I created this term for my students; it is not a term of art for ADR.) This is a handy framework for analyzing disputes in general and before, during, and after role-plays. The FENS framework also helps students engage in more advanced levels of active listening, guiding them as they move beyond paraphrasing facts to exploring emotions and needs, and to creating solutions based on satisfying those needs. FENS is discussed in the textbook in 5.2.8 (p. 142), and 5.3 (p. 144).

A sample form is provided in MUM 5. Suggested activities for using the FENS form are provided below. Assigning a few activities with the form will prepare students for Role-Play 2 and for any collaborative negotiation or mediation.

Students can use a FENS form with:

- **Videos:** Show a clip from a movie or television show or let students choose their own. Situation comedies work well for this assignment. Students simply complete a FENS form for a conflict or disagreement between two people in the video.
- **Readings:** Assign readings from history, current events, or literature that reveal conflicts between people and their different needs and values. Don’t use readings that are only about abstract issues because students need to analyze the facts, positions, emotions, needs, and values of specific people.
- **Students’ professional or personal lives:** Again, choose specific conflicts with stories that can be analyzed in a FENS form.

Students can also use the FENS form in these ways:

- Students can reflect on what they have learned from completing the form.
- Students can use the FENS form as an outline for an oral presentation or essay.
- Students can edit their completed FENS forms for selected grammar points (verb tenses, plurals, subject-verb agreement, word choice).
- Students can use new vocabulary and idioms in their FENS forms.

Assess FENS forms: You can quickly assess FENS forms for language issues and provide individualized feedback or mini-lessons for the whole class.

5.4. Active Listening Scripts (Teaching Instructions)

The four scripted active listening exercises (5.4, pp. 145–153 in the book) are like training wheels to help students learn by doing. They require participants to stick to active listening without veering off into more familiar types of conversations. The more students practice active listening, the more it will become a routine communication skill that they will naturally start using both in and out of class. To encourage this, you can ask students to try active listening with family or friends or with someone with whom they have a disagreement or conflict, and either report back or submit written reflections on the experience.

In Script 1 (pp. 148–149), the active listener, “A,” simply paraphrases the facts that “B” has provided and checks to make sure that he or she understands B correctly. You can use this scripted activity to practice interviewing or paraphrasing skills for any purpose.

In Script 2 (pp. 149–150), A again paraphrases and checks the facts and also tries to identify and validate the emotions that B might have experienced. It’s fine for A to use general statements (*This seems upsetting/frustrating/challenging/difficult*) and to let B choose more specific terms, if B wishes to do so.

In Script 3 (p. 151), A focuses only on B’s needs and values.

In Script 4 (pp. 152–153), A “puts it all together” to provide active listening on the facts, emotions, needs, and values in B’s story and to use that information to help B consider possible solutions. Because Script 4 can be used for many purposes, it is also in MUM 4 with additional features. For example, you can use Script 4 for attorney-client interviews, practice mediations, and conflict coaching (as discussed on the next page).

As students become more familiar with the purpose of active listening, they can remove the training wheels and improvise without scripts. The mediation script (Chapter 10) is filled with examples of more advanced-level active listening exchanges that students can practice.

Depending on your students' needs, you can supplement active listening activities with mini-lessons on question formation with a focus on open-ended, closed, and hypothetical questions. (See Sample Questions for Negotiators and Mediators, MUM 6.)

Conflict Coaching

It's easy to turn an active listening script into a conflict coaching activity. Conflict coaches use active listening to help one party consider ways to deal with problems they are having with another person, such as a boss, coworker, spouse, neighbor, or roommate. The coach acts like a mediator (helping the party determine the best outcome without counseling, advising, or judging). Conflict coaching sessions are always non-adversarial, so they work better than negotiation role-plays for conflict-averse students. Conflict coaching is also a relatively stress-free way for student mediators to practice their active-listening skills compared to doing so in a group mediation role-play. And conflict coaching can be done in person, by phone, or by videoconference.

To try conflict coaching, simply assign Active Listening Script 4 (MUM 4) and instruct students to role-play a coach (the active listener) and a client who has a problem with another person. To learn more about conflict coaching, consult the sources in this endnote¹ or research it online.

Additional activities

5.2.2. CREATING A DRAMATIC MONOLOGUE TO INSPIRE EMPATHY (TEACHING INSTRUCTIONS)

This activity is based on an activity Peter Dyer created for his “teaching with drama” courses at Pilgrim’s Teacher Training in Canterbury, England. I observed a class session in which Peter’s students (ESL instructors from around the world) presented monologues based on a portrait of a character in a painting, and it was one of the most moving experiences I’ve ever had in a classroom.

This activity gives students an opportunity to experience empathy for a person and to tell that person’s story in a way that makes others empathize with him or her as well. These skills are essential for negotiators and mediators. Law students and attorneys can use this activity to practice telling their clients’ stories in ways that make the other party empathize with them. Mediators can use it to practice telling a party’s story with empathy—while remaining neutral and attentive to the other party’s needs. All students can use it to practice empathizing with another person and to answer questions like, “What’s your story?” or “How do you see the situation?” at the start of negotiations and mediations to help others empathize with them.

Instructions

1. Students select a painting or photograph that shows at least one person. Or you could provide images for students to select. Consider instructing students to select images of characters that seem to have negative or unsavory qualities, or who are mysterious and “hard to read.” In other words, choose people with whom we do not immediately empathize.

2. Students should closely observe the details of the artist's/ photographer's choices (colors, textures, perspectives, backgrounds, clothing, objects, relationships, facial expressions, body language) and use these factors to empathize with the character and to explain what is going on in the image "now" as well as the character's history, hardships, disappointments, passions, and hopes for the future.
3. To plan their monologue, students can do some or all of the following:
 - Use a FENS form (MUM 5) to analyze their character.
 - Give their character a name and tell their story in the first or third person.
 - Use any rhetorical style they wish, such as ethos, pathos, and/or logos, or classic storytelling techniques.
 - Imagine a dispute that this character is involved in, and describe how he or she would like to resolve it.
 - Law students can research opening statements by attorneys to see how they use storytelling techniques to appeal to juries, and present their monologue as their opening remarks for a mediation or negotiation on behalf of their client (the person in the photo or painting).
4. Students should present their monologues as follows:
 - a. Ideally, students will present their monologues live, in class, accompanied by the image. Depending on your class size and time, this can be done for the whole class or in small groups. Students should tell their story as they would during a negotiation and mediation; in other words, they should not read their monologue aloud. Optional: At the end of the

presentation, presenters can ask the audience if they have any questions for the character and then respond to the questions “in character.”

- b. In the alternative, students could present their monologues by video or in writing.
5. Feedback: Students in the audience (or readers) should
 - a. Provide active listening, to demonstrate that they have understood the facts, emotions, needs, and values presented in the monologue.
 - b. Share the experience they had while listening. For example, they can describe what was most moving, convincing, or surprising; compare their first impression of the person in the image to their feelings about the person after hearing the monologue; describe what they have learned from this experience; and share any questions they have.
6. Self-reflections: Presenters/writers should provide written reflections about what they have learned from their own presentation, from their classmates’ feedback, and from their classmates’ presentations—and how they can apply what they’ve learned to negotiation or mediation.
7. Instructors should provide feedback and/or assessment.

Another activity that expands active listening skills and deepens empathy is Narrative 4’s “story exchange” <https://narrative4.com/> In a story exchange, Partner A (Ann) shares her story and then hears Partner B (Bob) tell that story in the first person, as if it were his story, and then they switch roles, so that Ann listens to Bob’s story and then tells his story in the first person, as if it were her own.

5.2.4. ACTIVITIES FOR EMOTIONAL LITERACY (TEACHING INSTRUCTIONS)

This section provides suggested activities for the discussion of emotional literacy in the textbook (5.2.2, pp. 128–134) and the list of emotions in 5.02 in the Companion Site, Part 1, or any list of emotions that you wish to use.

1. Ask students to find idioms that match selected emotions.
2. Ask students to choose an emotion and then write a story or sample sentences showing when they would use different levels of intensity for that emotion. Ask students to choose or create emojis to match the emotions they identify.
3. Discuss non-verbal ways to express various emotions through body language (facial expressions, gestures, postures) or sounds.
4. Discuss cultural differences in verbal and non-verbal expressions of emotion.
5. Ask students to share an emotional song, video, poem, photo, or short article in a presentation or group discussion, focusing on vocabulary and idioms to discuss the emotions it provokes.
6. Ask ESP students to research emotional literacy in business or other professional contexts. For example, students could research how it is used in leadership, management, or human resources.
7. Mini role-plays.
 - a. Select role-plays from Activity 3C.1 or ask students to suggest emotional scenarios for role-plays. Examples: asking an instructor for a letter of recommendation, going on a job interview, meeting your new boss on your first day of a new job, meeting the parents of

your new girlfriend/boyfriend, calling for help after a car accident, being wrongly accused of shoplifting and trying to convince a police officer that you are innocent, preparing for your first conversation with your negotiation counterpart in an important deal.

- b. During the role-play, students should discuss the emotions they are experiencing using new vocabulary and idioms. Or, students can discuss their emotions after the role-play.
8. You may find ways to use the film, “Inside Out” to explore emotions.

5B. Role-Play 2. Paradise Peak: Guided Role-Play for Collaborative Negotiators and Mediators²

Teaching Instructions

In this guided, step-by-step activity, students will play the role of Ray Redwood (the last homeowner on Paradise Peak) or Kelly Kirk (a real estate developer who needs to buy—and demolish—Ray’s home). ESL instructors may wish to think of this as an information gap or interviewing activity. ESP instructors may use this as a culminating activity for Chapter 5 to help students to “put it all together” by using what they have learned to resolve a specific dispute. Both sets of instructors may use this activity to prepare students for collaborative negotiation or mediation role-plays.

At the end of the activity, students will submit two documents to you: (1) a FENS form for both parties, and (2) a document signed by both parties, either a settlement agreement or a paragraph explaining why the parties could not reach an agreement.

PURPOSES

- Guide students through all the steps of a collaborative negotiation from start to finish.
- Prepare students for more challenging collaborative negotiation role-plays.
- Prepare students for mediation.
- Introduce ESP students to the role-play procedures they would encounter in ADR courses with native speakers of English: read and analyze a fact sheet describing their role; use a framework to prepare for their negotiation; follow a negotiation process with a partner playing the opposite role; brainstorm, evaluate and select settlement options; write an agreement; and debrief the experience.

TEACHING TIPS

Tip 1: This activity provides opportunities to focus on these ESL and academic skills:

- Vocabulary, idioms, grammar (questions, modals, verb tenses), pronunciation, tone
- Reading, summarizing, analyzing, speaking, listening, interviewing, problem-solving, collaborating, brainstorming, evaluating, writing, revising, and editing.

Tip 2: Review the Paradise Peak Guide for All Participants (5B.3) before starting this activity.

MATERIALS

Materials to Give Students

Students can access these materials on their own, but remind them not to access—or even peek—at their counterpart’s Confidential Fact Sheet. You can also remind students that they will learn all about the information in their counterpart’s fact sheet during and after the activity. Or you can provide the materials to students.

- Confidential Fact Sheet for RAY REDWOOD (5B.1) OR Confidential Fact Sheet for KELLY KIRK (5B.2).
(If you are providing hard copies, try to use a different color for each role, such as blue for Ray and green for Kelly.)
- Paradise Peak Guide for All Participants (5B.3)
- Paradise Peak: Debrief with Your Counterpart (5B.4) and Reflections for Discussion or Writing (5B.5)

Additional that Materials Students Can Access on Their Own

- FENS form (MUM 5)
- Active Listening Script 4 (MUM 4)
- BEC Checklist for Agreements (MUM 8)

Teaching Materials in This Section

- Paradise Peak: Whole-Class Debriefing (Instructor's Guide) 5B.6

PROCEDURES

Review the Paradise Peak Guide for All Participants (5B.3).

1. **Divide the class in two.** Half the class will play Ray Redwood and the other half will play Kelly Kirk. Each role can be played by any gender.
2. **Give each student their materials,** or instruct them to access the materials on their own.
3. **Instruct students to access the FENS form** (MUM 5) or to create their own form.
4. **Explain** that the scenario is designed to help students learn the collaborative approach to negotiation and mediation. It is not meant to serve as a realistic fact pattern for this type of dispute. There is no need for outside research; students should stick with the facts provided and focus on developing collaborative skills.
5. **Explain** that this activity has three parts. The first two parts are preparation for a collaborative negotiation. In the third part, they will meet with their counterpart (the other party, the person who has the opposite role) to try

to reach a win-win solution that works for both of them. If you used the Orange Exercise (5A) explain that they will be collaborating in the spirit of that exercise even though they might not feel particularly collaborative immediately after reading about their role.

6. **Optional: Instruct students to look up the idioms** listed at the end of their Confidential Fact Sheet before or while they are reading. Or provide a lesson on these idioms. Each party has the same idioms list.
7. **Assign Part 1.** Each student will read their Confidential Fact Sheet and complete a FENS form for their own role. They should try guessing the information for the other party but should not discuss this with anyone playing the other role. Part 1 may be done in or out of class. It's best for students to work on their own for Part 1. You may collect and review the FENS forms or not, as you wish.
8. **Assign Part 2.** Parties on the same side meet in pairs or small groups (Rays meet with Rays; Kellys meet with Kellys). They will follow the instructions in their Guide (5B.3) to review and revise their FENS forms and prepare for the negotiation. Parties may meet in class, out of class, or online. You may collect the fruits of their labor, or not, as you wish.
9. **Assign Part 3.**
 - a. Put students in pairs with a counterpart playing the opposite role (or let them choose a counterpart). Or, you can have groups of four, with two students on each side. Students can meet with their counterparts in class, out of class, or online.

- b. Students will negotiate and conclude the negotiation according to the step-by-step instructions in their Guide (5B.3). To help them negotiate, they can use Active Listening Script 4 (MUM 4) and the BEC Checklist (MUM 8).
 - c. To debrief with their partner(s), they will use the questions in 5B.4.
10. **Conduct whole-class debriefing:** (Paradise Peak: Whole-Class Debriefing (Instructor’s Guide) 5B.6.
11. **Language activity:** Ask students to edit their FENS forms and written agreements (or paragraphs explaining why there was no agreement) for the language points of your choice. Examples: verb tenses, subject-verb agreement, modals, idioms, word forms, sentence structure.
12. **Collect the FENS forms and written agreements** (or paragraphs explaining why there was no agreement). Be sure that the names of both students in each pair appear on these documents.
13. **Optional expansion activities:** These activities will help students practice matching communication styles to different negotiation or mediation goals. In their role as Kelly or Ray:
- a. Persuade a jury that their character should “win.”
 - b. Demonstrate empathy by telling the story of the dispute from the other party’s perspective.
 - c. Demonstrate mediator empathy and neutrality by telling the story of the dispute from both parties’ points of view. The mediator will empathize with both parties without agreeing with either one.

5B.1. Confidential Fact Sheet for RAY REDWOOD

You have lived in your mountain cabin on Lulu Lane in Paradise Peak for over 40 years. Your spouse died ten years ago, and now your beloved Golden Retriever, Arlo, is your only companion. You spend your days hiking mountain trails with Arlo, collecting wild berries and wood. Some of the wood goes into your old pot-belly stove for heat, but you use most of it to carve chairs and other furniture. Your cabin is filled with your creations, along with the organic vegetables you grow, the smell of the whole wheat bread you bake fresh every day, and the photographs you've taken of bears and other wildlife on the mountain. You keep photos and other precious memories of your spouse in every room.

You have had a full and satisfying life on Paradise Peak. You planned to live there for the rest of your life, but things are changing. All of your neighbors have moved away and their cabins were torn down. Now Lulu Lane is just a dirt road, except for your cabin. The post office stopped delivering mail; the shops in the nearby village closed; and all the doctors have moved to the city. It takes 30 minutes to drive to the nearest town along narrow mountain roads, so you only pick up your mail and groceries once a month. You don't know how you'll survive the next snowy winter without any neighbors nearby. And you've developed a serious cough.

Although life in your mountain cabin is hard, and you can see that it doesn't make sense to stay there, you love mountain life and you have nowhere else to go. Your only relative is your nephew, Donny, who lives in a tiny condo in a downtown high rise. You two are always hurting each other's feelings. You want to share your knowledge of mountain life with young people like him, but he's not interested. He criticizes your way of life, especially your wood-burning stove, which he claims is harming your health—and the environment. He set up cell phones and laptops for you and showed you how to text and email, but you've thrown them all in a closet. Your tech skills are stuck in the 1990s.

But the worst thing of all is that a company named GDC is trying to force you to move out. GDC paid your neighbors a lot of money to buy their cabins, which GDC immediately tore down. GDC offered you a million dollars to do the same, but you refused to *give in*. It would *break your heart* for GDC to tear down your cabin even though it isn't even worth \$10,000. GDC must be planning a huge development that will make them billions in profits while they destroy the mountain and your way of life. You're *dying of curiosity* to know what they're building.

As for the money, you live on a monthly income of \$1,000, so a million dollars sounds pretty good, but you're going to *hold out*. You don't want to make it easy for GDC to destroy Paradise Peak or your cabin. And how long would a million dollars last? How much would it cost to buy a new home? And what if you had big medical expenses or had to move into a nursing home? What if the money runs out?

Last week, GDC construction trucks started barreling up and down the mountain from dawn to dusk. Their trucks say, "Green Development Corp," but they are more "greedy" than *green*. And this morning, a very rude person from GDC called your landline. They said that you must move out within two weeks! They said they'd *go up to* \$1.5 million if you do. Then they screamed: "You have no choice!" You got them to admit that they have no legal right to force you out. But they do have the legal right to build whatever they want all around your cabin.

Now someone's banging on your front door! It must be that same *pain in the neck* from GDC. You and Arlo run out the back, but they find you and start talking even though you are coughing and Arlo is barking. You don't want to just *give up*, but you don't know what your options are. You want to get GDC *off your back*, but you tell yourself to try to create a *good working relationship* with this person even though they sounded *hard as nails* on the phone. If they drove all the way up the mountain, maybe they want your cabin so much

that they brought a *blank check*. Or maybe this person is just a GDC employee without any real power—maybe you should find out who this person is before you start talking about money. You're not sure how much money to ask for—it would need to be more than \$1.5 million, though.

But no matter how much money they offer, they also need to offer things other than money if they want to persuade you to leave your mountain home. You will not agree to move out if the only thing GDC offers is money. You decide to *hear them out* and to try to get them to understand the situation from your point of view. Maybe you can work something out and move out on terms that are better for you than staying.

Idioms from the fact sheets for both parties

Blank check

Break your heart

Dying of curiosity

Give in

Give up

Go up to/go down to

Good working relationship

Green (good for the environment)

Hard as nails

Hear them out

Hold out

Off your back

Pain in the neck

5B.2. Confidential Fact Sheet for KELLY KIRK

Today is your first day of work at Green Development Corporation (GDC), but it might be your last. This is your dream job: You've always wanted to develop great projects that protect the environment. And you need this job to pay off your school loans, buy a house (you and your spouse are living in a small apartment with your two-year-old son), and get your parents *off your back*. You are determined to prove to them that you don't need a JD or MBA to succeed. Someday you'll host them in your huge backyard with room for the Golden Retriever you've always wanted. Your parents never let you have a dog, and you want your son to grow up with one. But your inbox just pinged with a memo from your boss, so it's time to stop daydreaming.

To: Kelly Kirk, GDC Acquisitions Agent (On probation)

From: Vincent Pincher, GDC Vice President for Acquisitions

Re: Acquiring the Ray Redwood Cabin—Today!

Kelly, we've just started construction on Paradise Peak, our newest *green* luxury mountain-top resort. Guests will stay in mountain cabins that look authentic but will be solar heated, built with *green* materials and filled with first-class comforts. The cabins will be surrounded by hiking trails, hot springs, dog parks, a lake, a golf course, and a 5-star restaurant serving organic vegetables from our own gardens. We're also building a small museum displaying local history and customs, starting with the Native Americans who lived there first. We'll keep the children happy with swimming, hiking, exploring, crafts, games, stories and more. We're trying to hire staff, but we haven't found even one person who has the authentic mountain-life experience our guests will expect.

Your problem is Ray Redwood, who's a *pain in the neck*. Ray lives on Lulu Lane, where we're building a new Condominium Community (CC) for staff. CC will provide free staff housing just a 5-minute walk from the resort. CC is essential to our brand, as it will be *green*, include a medical clinic; eliminate hundreds of daily polluting drives up and down the mountain and promote *good working relationships* among staff. We need to start building CC immediately, but we can't, because of Ray. We bought all the other old cabins on Lulu Lane for \$50,000 each, except for one that we had to pay \$1 million for. Those cabins were worthless, and those folks were sick and coughing from their old pot-belly wood-burning stoves, so they were happy to accept.

But Ray is *holding out*, greedily waiting for us to offer more money. Three GDC agents emailed, texted, called, and sent letters offering \$500,000, \$1 million, and then \$1.5 million for a cabin that's worth \$0. Ray has been *hard as nails*, not even responding to these offers. And for your information, I fired those agents.

We have no legal right to force Ray to sell to us, but we do have the legal right to surround that old cabin with bulldozers while we build CC. But we don't want to *give up* on our plan to demolish that cabin. CC is a 21st-century project, and Ray's old cabin will hurt our brand. And the smoke from Ray's old stove will harm our staff and the environment.

If you can't get Ray to *give in*, we'll have to build CC 5 miles away, costing us an extra \$5 million plus the vans we'd have to buy to transport staff back and forth all day and night. We don't want to pay Ray more than \$3 million, but you can *go up to* \$5 million if Ray moves out within 2 weeks. You can also offer anything else—literally anything, without any limitation, including things that have nothing to do with money—to persuade Ray to sell us the cabin and move out. You don't need to check anything out with me first: Just do it! So, get creative and drive up there today with a *blank check*. If you fail, you're fired.

The drive up the curvy mountain road was terrifying—and beautiful. When you knocked on Ray's door, no one answered, but you heard a dog barking. You peaked inside the window and saw amazing wooden furniture, photos of bears, and piles of vegetables, and you smelled bread baking. You are *dying of curiosity* about Ray. Suddenly you see Ray and a beautiful Golden Retriever walking toward you. Ray is coughing and the dog is barking but you decide to try to have a conversation. Your plan is to *hear Ray out* and try to see the situation from Ray's point of view before talking about money. You hope you can find a way to work something out because it would *break your heart* to be fired on the first day of your dream job.

IDIOMS FROM THE FACT SHEETS FOR BOTH PARTIES

Blank check

Break your heart

Dying of curiosity

Give in

Give up

Go up to/go down to

Good working relationship

Green (good for the environment)

Hard as nails

Hear them out

Hold out

Off your back

Pain in the neck

5B.3. Paradise Peak Guide for All Participants

This guide provides step-by-step instructions for a collaborative, win-win negotiation. There are many ways to conduct collaborative negotiations; this activity introduces you to one way, just for practice. You will certainly find your own ways to negotiate in the future.

This activity has three parts. The first two parts help you prepare for the negotiation in the third part.

In Part 1, you will work on your own. In Part 2, you will work with people who have your same role. In Part 3, you will meet with a counterpart who has the other role to try to negotiate an agreement.

At the end of the activity, you will submit (give) two documents to your instructor: (1) a completed FENS form and (2) a document signed by both parties, either a written agreement or a paragraph explaining why you could not reach agreement.

Tip: The secrets to completing both documents are to create a good working relationship with your counterpart and to use the strategies described in Chapter 5.

Part 1. Prepare to Negotiate: Analyze the problem

Instructions

1. Read your Confidential Fact Sheet.
2. Fill in a FENS form:
 - Use the information in your Confidential Fact Sheet to fill in the information for your role. Imagine that your character, Ray or Kelly, is filling out the form.
 - Make guesses about the information for the other party.
 - This is only a first draft. You will revise it before submitting it to your instructor.
 - You can create your own form based on the one in the book (p. 142) or you can use the fillable one in the Companion Site, MUM 5.
 - Use the boxes on the next page to guide your responses.

Facts: What are the basic facts from each party's point of view?

Summarize the most important facts in a few sentences. Include "positions" (each party's goals for the negotiation; what each party wants).

Emotions: What emotions are you and your counterpart experiencing?

Examples: fear, anger, sadness, frustration, excitement. For more examples, see 5.02 in the Companion Site, Part 1.

- You can just list the emotions you select; there is no need for complete sentences here.
- Rate the intensity level of your emotions (Mild 1–2, Medium 3–4, Extreme 5+).

Needs/Interests/Values: Why do you and your counterpart want the things you listed in "Facts"?

- Why are they so important to each of you?
- Why do you both feel the emotions you listed?
- To help answer these questions, review the Iceberg of Conflict (p. 66 in the book) and the list of needs and values in the book (pp. 135–138) and in the Companion Site Part 1 (5.03).
- Again, you can just list a few words; there's no need for complete sentences.

Solutions: How could each party's needs and values be satisfied?

- Brainstorm ideas.
Ray could...
Kelly/GDC could...

Part 2. Prepare to Negotiate: Plan the negotiation with people on the same side

1. **Discuss each section of your FENS form** with others who are playing your role. Your answers do not have to match; people playing the same role may have different ways of thinking about the situation. Make any changes you wish to your FENS form.
2. **Discuss the following questions** and create your own system to record your responses:
 - a. What questions will we ask the other party during the negotiation? List at least four questions. Include broad, open-ended questions as well as narrow questions for specific information.
 - b. What are the 3–4 most important things we want the other party to understand about us? Practice explaining these things.
3. **Is there any information we do not want to share** with the other party?
4. **Conflict styles** (review the chart on p. 71 in the book):

Ray: Which conflict styles have you used with GDC employees?

Kelly: Which conflict styles have GDC employees used with Ray?
5. **Communication styles** (examples: aggressive, amicable, civil, assertive, passive):

Ray: Which communication styles have you used with GDC?

Kelly: Which communication styles have GDC employees used with Ray?

6. **Which conflict and communication styles**
 - a. will you use during your negotiation with your counterpart?
 - b. do you think your counterpart will use during the negotiation?
7. **What's the worst** thing that could happen during the negotiation?
8. **What's the best** thing that could happen during the negotiation?
9. **What's an "okay" outcome**—a result that may not be ideal but that's good enough?
10. **What will you do** if you are not able to negotiate an agreement that's good enough to accept?
11. **How will you start** the conversation with the other party? Prepare topics for small talk. For ideas, review Companion Site, MUM 3.
12. **Imagine that the other party starts** the negotiation by saying something like, "I'd like to hear your thoughts about the situation." Practice responding to them in one to two minutes.

Part 3. Negotiate with your counterpart

1. **Start with introductions and small talk** in your role as Kelly or Ray. Try to set a positive, collaborative tone.

Examples: *Hello, I'm Ray/Kelly. It's nice to meet you. I'm glad we have this chance to talk.*

RAY: *How was the drive?*

KELLY: *Well, the drive was_____.*

2. **Ask questions** that Ray and Kelly might really ask to get to know each other before “getting down to business” (learn a little about each other and try to feel comfortable talking together before discussing the subject of the negotiation).

Help them understand what's important to you. Try to understand what's important to them. Examples:

KELLY: *How long have you lived here? What's it like to live up here? What do you like to do?*

RAY: *What's GDC? How long have you worked there? What's your job? Do you like it?*

KELLY: *What a beautiful dog. What's his name?*

RAY: *Arlo. Do you like dogs?*

3. **Transition** to discussing the problem. Example:

RAY: *Can you tell me why you drove all the way up here today?*

KELLY: *Do you know why I drove up to meet with you today?*

4. **Use active listening** throughout the negotiation to paraphrase what the other person has said and to check to make sure you understand them correctly. It may feel awkward and unnecessary at first, but give it a try, and later you can discuss whether it was helpful or unhelpful.

Examples:

RAY: *So, Kelly, you're saying that you drove up here today because _____. Have I understood you correctly?*

KELLY: *Ray, I think you've said that _____. Is that what you meant?*

5. Try to use some of the **new idioms** in your Confidential Fact Sheets during your negotiation. You both received the same list of idioms.
6. **Use active listening** to get the information you need to complete the **Facts, Emotions, and Needs** sections of the FENS for the other person. Help them complete this information for you. Notice that you may have some of the same facts, emotions, needs, and values.

Hint: The details in your Confidential Fact Sheet are there for a reason. If you hear your counterpart say something that sounds familiar, **don't ignore** it. If you are curious about something, ask them about it. If you're not sure why something is in your Confidential Fact Sheet, try talking about it and see if it gives your counterpart any ideas. These are ways for you to build rapport (raa-POUR) (build a good working relationship).

7. **Work with your partner to create a new FENS form**, as follows: Put emotions, needs, and values that you both share in the center. Put the ones that are different on opposite sides. Discuss whether any of your needs and values are *complementary* (different but not in conflict). You may use this format or any other format you wish when you submit your FENS form to your instructor.
8. **Ask if your counterpart is ready to discuss possible solutions.** Brainstorm as many ideas as possible. Be sure to include ideas that do not relate to money. Be creative! The ideas do not have to be practical or make sense right now. Use open, encouraging phrases like, “*How about _?*” “*Maybe we could try _.*”
9. **Review the ideas.** Choose the solutions that meet both parties’ needs and that might actually work. The agreement has to work for each one of you individually. Don’t compromise or give up on anything that is important to you. See if your counterpart has any ideas that could help you meet your needs. Try to help them meet their needs.

Tip: To make sure your solutions satisfy the needs you identified, draw lines from your proposed solutions to the needs you listed.
10. **Write your agreement.** This can be very simple, but it should answer these basic questions: *who, what, when, where, how, how much?*

Kelly/GCD will:

Ray will:

If you can’t reach an agreement, write a short paragraph to explain why. If you can reach a partial agreement on some points, write that agreement and explain why you couldn’t reach a full agreement.

11. **Exchange Confidential Fact Sheets** and read your counterpart's story very carefully. Feel free to discuss any new ideas and to ask each other questions. If you see new shared or complementary needs and values, revise your FENS form, discuss new ideas for agreements, and revise your written agreement. When you submit your agreement to your instructor, make it easy for your instructor to see which items you added after reading each other's Confidential Fact Sheets. Or submit both your first agreement and your revised agreement.

12. **Closing:** Thank your counterpart. Examples:

It was a pleasure to work with you. I'm glad we were able to work out an agreement / come up with some good ideas / understand each other better.

I hope things go well for you in the future.

5B.4. Paradise Peak: Debrief with Your Counterpart

1. **Exchange positive feedback.** Tell the other party what they did well. Be specific. Examples:
 - *You did a great job of listening to me and trying to understand what I was saying about _____.*
 - *Thank you for keeping an open mind about _____.*
 - *Your questions helped me understand _____.*
 - *I'm glad you told me about _____ so that we could clear up that misunderstanding.*
 - *Thanks for apologizing about _____.*
2. **Request feedback. Examples:**
 - *Do you have any suggestions for me?*
 - *I wasn't sure if I should have asked you about _____. How did that question seem to you?*
3. **Discuss questions.** Example: *I'm wondering why _____.*

5B.5. Paradise Peak: Reflections for Discussion or Writing

1. Do you consider the Paradise Peak activity a negotiation? Why or why not?
2. Describe your guesses or assumptions before Part 3
 - a. about the other party
 - b. about achieving a good result (were you optimistic or pessimistic about this?).
3. Did your ideas change during your meeting with the other party? If yes, what exactly caused the change? Include statements, questions, tone, body language, or anything else.
4. Was it helpful to plan for the negotiation with the FENS form on your own? Was it helpful to plan the negotiation with a partner or small group? Explain.
5. Did you try active listening? Did your counterpart?
 - a. How did it feel to provide active listening? Was it helpful? Explain.
 - b. How did it feel to receive active listening from your counterpart? Was it helpful? Explain.
6. Was this a successful negotiation? Why or why not?
7. What have you learned about yourself as a negotiator?
8. What skills would you like to learn about or improve?
9. What lessons from this activity could you apply to real-world negotiations?
10. What questions do you have about collaborative negotiation?

5B.6. Paradise Peak: Whole-Class Debriefing (Instructor's Guide)

1. Put a FENS chart and Venn diagram on the board or flip chart. Ask pairs of Rays and Kellys to come up and discuss
 - a. how they felt about each other before the negotiation and how they feel about each other now; if their feelings changed, what caused the change?
 - b. the emotions, needs, interests, and values they discovered during the negotiation.
 - c. the solutions they brainstormed and selected.
 - d. how the solutions addressed emotions, needs, and values.
 - e. if it was important to build a good working relationship before and during the negotiation. Why or why not? Describe how they did this.
2. Did anyone discover any complementary needs (needs that were different but not in conflict)?
3. Which agreements were win-win?
4. How does this activity relate to ...
 - a. other activities we've done in class?
 - b. your own negotiation experience?
 - c. negotiations in current events? Negotiations in movies? Negotiations in books?
5. What lessons could you apply from this activity to real-world negotiations?
 - a. In the real world, we won't have access to the other party's confidential information and they won't have access to ours. Could we still achieve win-win outcomes? How?
 - b. When would you use this collaborative approach? When would you use a different approach?
6. What questions do you have about the collaborative approach?

For Further Reading

Empathy

Research “This I Believe,” “<https://www.npr.org/series/4538138/this-i-believe>, to find short essays and broadcasts on empathy. Examples:

- Azar Nafisi, “Mysterious Connections that Link Us Together,” *Morning Edition*, NPR, July 18, 2005, <https://www.npr.org/2005/07/18/4753976/mysterious-connections-that-link-us-together>
- Brett Green, “I Believe in Empathy for WPSU’s This I Believe,” Brett Green at Penn State (blog), n.d., accessed April 30, 2024, <https://sites.psu.edu/brettgreen/empathy/i-believe-in-empathy-for-wpsu-this-i-believe/>

Empathy/Compassionate Listening

- “Thich Nhat Hanh on Compassionate Listening,” *Super Soul Sunday*, Season 2, Episode 210, aired May 6, 2012, OWN, <https://www.oprah.com/own-super-soul-sunday/thich-nhat-hanh-on-compassionate-listening-video>

Emotional Literacy

- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd. ed. (New York: Penguin, 2011), Chapter 2, “Separate the People from the Problem”
- Edward J. Kelly and Natalija Kaminskienė, “Importance of Emotional Intelligence in Negotiation and Mediation,” *International Comparative Jurisprudence* 2, no. 1 (September 2016): 55–60, <https://doi.org/10.1016/j.icj.2016.07.001>
- Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate* (New York: Penguin, 2006)

Communication/Active Listening

- Marshall Rosenberg, *Nonviolent Communication: A Language of Life*, 2nd. ed. (Encinitas, CA: PuddleDancer Press, 2005)

Interests and Needs

- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd. ed. (New York: Penguin, 2011), Chapters 3 and 4

Collaborative Methods in General

- William Ury, *Getting to Yes with Yourself: How to Get What You Truly Want* (New York: HarperOne, 2016)

Notes

1. See Robin Amadei, “Conflict Coaching,” Mediate.com, February 21, 2017, <https://www.mediate.com/conflict-coaching/>; and Barrie J. Roberts, *Conflict Resolution Training for the Classroom: What Every ESL Teacher Needs to Know* (Ann Arbor: University of Michigan Press ELT, 2023), p. 42.

2. Many thanks to Louise Kulbicki for generously taking the time to provide incisive feedback on an early draft of this activity.

CHAPTER 6

Using the Collaborative Approach with Confidence: Tit for Tat

“Tit for tat” is an important tool for every negotiator’s toolbox. Its purpose is to encourage negotiators to use collaborative methods while protecting themselves from negotiators who *play hardball* (use aggressive tactics). This requires negotiators to use both competitive and collaborative methods to adapt to changing conditions during a negotiation.

Whether or not students use this specific strategy, learning about it will expand their thinking about negotiation and help them become more flexible negotiators. Students will also benefit from learning the idioms this chapter presents, as these are commonly used by negotiators and mediators to plan, carry out, and reflect on their sessions.¹

This chapter builds on concepts and activities you may have covered in Chapter 3, especially the Arm Wrestle (3A) and Locked Horns (3B) activities. If you have used these activities, you can remind students of their experiences while they learn about tit for tat. If you haven’t used them, you can follow the lesson plan suggestions to use them to introduce this chapter.

[] ESL Instructors: This chapter raises an engaging question for general ESL purposes: Should negotiators compete *against* each other or cooperate *with* each other? If you already covered this question in Chapter 3, you can build on those lessons by introducing tit for tat as a way to use *both* methods. You may also want to introduce the idioms this chapter provides to help students discuss these methods (see Warm-Up Question 5, pp. 160–161). However, as the Background Reading was written with legal English and business English students in mind, it may work better as a mini-lecture than as a reading assignment.

{ ESP Instructors: This chapter introduces law and business students to concepts and terms they would encounter in negotiation courses in the United States and elsewhere. These courses often begin by posing a core dilemma for negotiators: Should I act only in my own self-interest or should I act in ways that benefit both sides? As the Background Reading explains, students are often asked to explore this dilemma through a classic game theory exercise called Prisoners' Dilemma: the winning strategy for that game was tit for tat.

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (6.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 6 (where you are now)

Materials with a number and capital letter (6A)? Companion Site, Part 3; the number tells you the chapter number.

TEACHING TIPS

Tip 1: Familiarize yourself with tit for tat through the Background Reading (6.2, pp. 161–172) and some of the Additional Resources for Tit for Tat (6.01, Companion Site, Part 1). The *Radiolab* podcast is particularly accessible and engaging. The *Golden Balls* video clips are breathtaking examples of the Prisoners' Dilemma exercise in the context of a British television game show.

Tip 2: This chapter presents many options for student research, writing, and presentations. Prisoners' Dilemma and tit for tat have been studied and applied in a wide range of fields, including psychology, economics, social science, evolutionary biology, international relations, and, of course, mathematics and game theory. The creator of tit for tat, Anatol Rapoport, was a fascinating, multi-dimensional scholar who sought to use game theory to promote world peace.² He would be an excellent topic for research and presentations as well.

Tip 3: Note that tit for tat uses the terms “compete” and “cooperate” in ways that do not always match their use in this book or in negotiation in general.

In tit for tat, “compete” is shorthand for selfish conduct that aims to win at any cost. In tit for tat, this conduct is described as “mean.” However, in this book and in negotiation generally, “competition,” although focused on self-interest, is a perfectly reasonable negotiation strategy that can be used in a professional and ethical manner, as discussed in Chapters 3 and 4.

Likewise, in tit for tat, “cooperate” is shorthand for conduct that seeks to achieve the best results for both parties, which is boiled down to “nice.” However, in this book and in general, this cooperative/collaborative style refers to the interest-based approach, which, while certainly based on amicability, involves a lot more than simply being “nice,” as discussed in Chapters 3 and 5.

Students do not need any particular training in competitive or cooperative negotiation to learn and practice tit for tat; general understandings of what it means to be “selfish” and “mean” or “nice” and “cooperative” are sufficient. Depending on your students' needs, it may be helpful to explicitly point out the different uses of the terms “compete” and “cooperate” in tit for tat and general negotiation theory.

LESSON PLAN

1. Choose one of these ways to introduce tit for tat:
 - a. **Start with an engaging activity**, such as the Arm Wrestle (3A) or Locked Horns (3B) or with the *Golden Balls* video (See the materials in 6.01, Companion Site, Part 1). If you have already done the Arm Wrestle and Locked Horns activities, ask students what they remember about them. Explain that they will be applying these lessons to the negotiation strategy called “tit for tat.” Leave it at that for now so that students can make these connections on their own, but when the time is right, you may wish to remind students of these points:
 - **During the Arm Wrestle activity**, students realized that they could win the most points possible by collaborating with their partners instead of competing against them. They did so by establishing a pattern of cooperation that both parties could rely on. This is the strategy that, according to game theory, produces the best possible outcome for both parties.
 - **During the Locked Horns activity**, students explored the possible consequences of competition (deadlock; one bull lives, the other dies; both die) and collaboration (both bulls live).
 - b. **Start with the Warm-Up Questions** (6.1, pp. 160–161) to introduce students to the general concepts and idioms for tit for tat. Students can work through the questions on their own or in small groups or you may guide them through the questions and idioms in a whole-class activity.

- c. **Consider starting with the Prisoners' Dilemma** exercise. The textbook book does not provide the exercise, but it is easy to find online.
2. **Assign the Background Reading** (6.2, pp. 161–172) or provide a mini- lecture to summarize it.
3. **Assign “Reflections on Tit for Tat”** (6.3, p. 172) for discussion or writing.
4. **Assign “Applying Tit for Tat”** (6.4, pp. 172–177) and the Follow-Up Questions in 6.5 (p. 177). This is a good activity for partners or small groups. Or instructors could walk students through the activity and Follow-Up Questions.

ADDITIONAL ACTIVITIES

- **Expansion and application:** Assign tasks based on the Additional Resources for Tit for Tat in 6.01, Companion Site, Part 1. The *Radiolab* episode is especially useful for content as well as listening comprehension practice.
- **Assign “Write a Negotiation Script” to Practice Tit for Tat** (6A). Be sure that students have worked through the Drone Dialogues in the textbook (“Applying Tit for Tat,” 6.4, pp. 172–177) before assigning this.

6A. Write a Negotiation Script to Practice Tit for Tat

1. **Choose a topic** for a negotiation.
2. **Choose goals** for each party.
3. **Choose negotiation styles** for each party.
4. **Write a dialogue** in which these parties do or do not follow the five rules for tit for tat. (See “How to Use Tit for Tat: The Five Rules,” pp. 166–170 in the book.)
5. **Number each statement** in the dialogue. Example:
 1. Dara: *I could meet at 9 a.m. at my office. Would that work for you?*
 2. Sharon: *No! 3:00 p.m. MY office.*
6. **Write at least five lines of dialogue** for each party so that you have at least ten lines.
7. **Exchange dialogues** with a partner and evaluate the dialogues using the chart (Table 6.1 on p. 3 of 4). An example is provided on p. 4 of 4. The following symbols are provided on the chart so you don’t have to memorize them:
 - Mark each statement that applies the tit for tat strategy with a check mark (✓) and explain the strategy.
 - Mark each statement that violates tit for tat with an X and explain the problem.
 - Mark “gray areas” with a question mark (?) and explain why it may or may not follow the Five Rules.
 - **Review all the statements.** Which ones would lead to the best possible outcomes for each party in a real-world negotiation or mediation?

- **Revise statements** that don't comply with tit for tat to help each party achieve the best possible outcome in a real-world negotiation or mediation.
 - **Ask an AI program** to do this exercise or to analyze your dialogues and compare its responses to yours.
8. **Write about or discuss** this question: Would you use ideas from tit for tat in your own negotiations or mediations? Why or why not?

Table 6.1.

Statements	Complies with the Five Rules?	✓ X ?	Revise

Sample chart: Divorcing parents. Read Statements 1–4 and then consider the explanations and revisions.

Table 6.1.

Statements	Complies with the Five Rules?	✓ X ?	Revise
1. Husband: I hope we can reach a fair agreement on visits with the kids.	Yes. H begins amicably.	✓	
2. Wife: Me too.	Yes. W responds in kind.	✓	
3. H: I want the kids on all holidays and birthdays, except yours.	No. H switches to a competitive style.	X	I'd like to discuss holidays and birthdays. I have some ideas and want to hear yours.
4. W: Absolutely not! See you in court!	No. She escalates the conflict.	X	I have some strong opinions about holidays and birthdays, too. I hope we can try to have a civilized discussion about this so we can do what's best for the kids.

For Further Reading

See the materials in the Companion Site, Part 1, 6.01.

Notes

1. Many thanks to Daniel Edelson and Stephen Horowitz for this observation and for many practical suggestions that improved this chapter for both both instructors and students.

2. Erika Simpson, “The Contributions of Anatol Rapoport to Game Theory,” *Political Science Publications*, 135, May 27, 2016, <https://ir.lib.uwo.ca/politicalsciencepub/135>.

CHAPTER 7

The Power of Apologies in Negotiation and Mediation¹

This chapter presents four types of apologies for students to consider using in their negotiations and mediations. It also asks students to consider how culture may influence their beliefs about providing and expecting apologies.

[] **ESL Instructors:** Apologizing is an engaging topic for general ESL purposes with many options for language lessons and activities as provided in the textbook chapter and this section.

{ } **ESP Instructors:** Apologizing is an important issue in ADR. Although it may not be included in introductory ADR courses, it is included here because it presents cross-cultural challenges that can make or break working relationships and outcomes in real-world negotiations and mediations. A full exploration of the topic is beyond the scope of this book, but students will benefit from grappling with the concepts in this chapter before confronting them in the real world.

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (7.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 7 (where you are now)

Materials with a number and capital letter (7A)? Companion Site, Part 3; the number tells you the chapter number.

LESSON PLAN

1. Start with a discussion about apologies in current events, on campus, or in students' own lives. Or ask students to discuss why apologies might be an important topic for negotiators and mediators.
2. Assign selected Warm-Up Questions (7.1, pp. 180–182).
3. Assign the Background Reading (7.2, pp. 182–192).
4. Review the “Four Types of Apologies and How to Offer Them” (pp. 186–192). Each apology type is introduced with a hypo and ends with questions. This is a good activity for partners or small groups, or for an interactive whole-class activity led by the instructor.
5. Select “Follow Up Questions About Apologies” (7.3, pp. 193–194).
6. Select activities from 7A, 7B, and/or 7C in this section to help students apply the information in this chapter.
7. Consider introducing language points along with the activities you select (see the Sidebar on pp. 185–186 in the textbook and the Companion Site, Part 1, 7.01 and 7.02).

7A. Apology Role-Plays (Teaching Instructions)

1. **Choose one or more of the following readings/role-plays.**
 - Larry Landlord/Tom Tenant (textbook: full story pp. 23–29; hypo, p. 200)
 - Sally Seller/Barbara Buyer (textbook, pp. 52–54)
 - Kelly Kirk/Ray Redwood, Paradise Peak Role-Play 2
 - Harvey Heartless/Mountain Mary (textbook, p. 82)
 - Robin and Amy (textbook, pp. 141–142)
 - Professor Perry and Stanley Student (textbook, pp. 224–227)
 - Henry Husband/Wendy Wife (textbook, p. 114 and p. 236)
2. **Assign roles.**
3. **Give instructions:**
 - a. Each party chooses an apology type and writes an apology to the opposite party. Parties on the same side may work together.
 - b. Each party explains which apology they selected and why.
 - c. Each party explains why the apology they received was or was not satisfying.
4. **Optional:** Instruct students that one party has filed a lawsuit or has threatened to file a lawsuit against the other.
5. **Optional:** Before the role-play, provide a mini-lesson on vocabulary and word forms for apologies or instruct students to review the Companion Site, Part 1 (7.01 and 7.02) and the “Tips for Making Apologies” Sidebar on pp. 185–186 in the textbook.

7B. Public Apologies

1. Select videos of politicians or other public figures apologizing or not apologizing. For example, see: https://www.youtube.com/watch?v=MFGairdYUyA&ab_channel=WatchMojo.com

Ask students to analyze the videos according to the apology types presented in this chapter.

2. Ask students to research and discuss cases in which public figures or organizations apologized. Students should identify the type of apology provided and discuss whether or not it was successful. Examples: Sidney Powell, Kenneth Chesebro, and Jenna Ellis; Johnson & Johnson (Tylenol); Ford Motor Company (Pintos).

For a long list of political apologies throughout history, see “Political Apologies” at the Columbia University Institute for the Study of Human Rights website (<https://www.humanrightscolumbia.org/ahda/political-apologies?page=2>).

7C. Apologies: Research and Presentation Projects

1. Students research legal issues concerning apologies during negotiation or mediation in the United States.
2. Students research apologies in other cultures, including legal and business cultures.
3. Students select one type of harm (such as a defective product, physical injury, emotional injury, theft, act of corruption, slander, or defamation) and research a range of ways to apologize for it—or not—in the United States and in other cultures.

For Further Reading/References

- Carmella Lieske, “Oh, I’m So Sorry! Are You All Right? Teaching Apologies,” in *Pragmatics: Teaching Natural Conversation*, ed. Noel R. Hoeck and Donna H. Tatsuki (Alexandria, VA: TESOL Press, 2011)
- For an engaging, user-friendly, one-hour video on apologies in ADR, see “Apology and Forgiveness in Mediation: Presented by Prof. Peter Robinson for Will Work for Food,” Marketing Resolution with Natalie Armstrong-Motin, YouTube video, 59:08, posted January 8, 2021, <https://youtu.be/wRyJsGYfh4?si=nea6yxhw2S-wl04R>
- Peter R. Robinson, *Apology, Forgiveness, and Reconciliation for Good Attorneys and Other Peacemakers* (self-published, 2020)
- Diane Curtis, “Sometimes, an Apology Can Deter a Lawsuit,” *California Bar Journal*, n.d., accessed May 1, 2024, <https://www.calbarjournal.com/July2010/TopHeadlines/TH1.aspx>
- Clifton Smoot, “Defense Apologies at Trial: Too Little, Too Late: A Look at the Elements of Apology,” The Veen Firm, n.d., accessed May 1, 2024, <https://www.veenfirm.com/news- events/publications/defense-apologies-at-trial/>
- John Hicks and Courtney McCray, “When and Where to Say ‘I’m Sorry,’” TheCLM.org, Claims and Litigation Management Alliance, February 16, 2021, <https://www.theclm.org/Magazine/articles/apology-laws-medical-malpractice/2172>
- Jeffrey S. Helmreich, “Does ‘Sorry’ Incriminate? Evidence, Harm, and the Protection of Apology,” *Cornell Journal of Law and Public Policy* 21 (2012): 567–609, <https://www3.lawschool.cornell.edu/research/JLPP/upload/Helmreich-final.pdf>

- Maurice Schweitzer, Alison Wood Brooks, and Adam D. Galinsky, “The Organizational Apology: A Step-by-Step Guide,” *Harvard Business Review*, September 2015, <https://hbr.org/2015/09/the-organizational-apology>

Note

1. This chapter is inspired by Professor Peter Robinson’s passion for teaching apologies in ADR contexts and is based on his book, *Apology, Forgiveness, and Reconciliation: For Good Attorneys and Other Peacemakers* (self-published, 2019).

CHAPTER 8

Reaching Agreements in Collaborative Negotiations and Mediations

This chapter provides a collaborative three-step process for reaching agreements: brainstorming, evaluating, and concluding (BEC). This is a common approach in ADR, but ADR practitioners will not be familiar with the term “BEC,” which was created for this book.

[] **ESL Instructors:** This chapter provides valuable information for your own background and several activities that are suitable for general ESL purposes. If your students do not need detailed information about settlement agreements, focus on the Warm-Up Questions and the BEC Checklist (MUM 8) instead of the Background Reading.

{ } **ESP Instructors:** Your legal and business English students will need—and appreciate—this chapter’s approach to completing their negotiations and mediations with written settlement agreements. While learning about BEC, students should focus on the different types of thinking and language needed for each step, from creative, informal, and open to serious, clear, and precise.

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (8.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 8 (where you are now)

Materials with a number and capital letter (8A)? Companion Site, Part 3; the number tells you the chapter number.

TEACHING TIPS

Tip 1: The three steps, *brainstorming*, *evaluating*, and *concluding*, are probably similar to methods you already use to structure writing, presentations, and problem-solving activities.

Tip 2: Review the BEC Checklist (MUM 8) now to get an overview of the approach and to decide how to present it to your students.

Tip 3: The BEC approach is useful for collaborative negotiations and mediations and for many competitive negotiations, as well. However, simple competitive negotiations, such as Role-Play 1 (4A) can generally be resolved with the negotiation “dance” described in Chapter 4.

Tip 4: Students may come from business and legal cultures that do not use the methods described in Chapter 8. For example, they may focus on reaching general understandings rather than on specific written agreements that a judge could enforce. For these students, insisting on *dotting every i and crossing every t* could be insulting or a sign of mistrust, while in the United States, it’s “business as usual”: it’s intended to prevent and resolve problems that arise whether or not parties have a trusting working relationship—and it is required by the US legal system so that judges can *enforce* (require parties to comply/penalize them for not complying with) agreements they’ve made.

Students can explore these and other cultural variations in negotiated and mediated agreements in Warm-Up Question #3 (8.1, p. 200) and Follow-up Questions (8.3, p. 223).

Tip 5: Business and legal cultures may have customary practices or rituals to “seal the deal,” such as a handshake, signing ceremony, toast, or celebratory dinner. In the United States, negotiators usually simply shake hands. Consider asking

students to describe customary practices from their own cultures or other cultures and to suggest some to use in class after concluding role-plays.

Tip 6: Peer Review mimics the authentic tasks of reviewing, revising, and editing written agreements to make sure they are accurate and enforceable before submitting them to the court. The Peer Review Activity for Chapter 8 is in MUM 9.

Tip 7: Students must learn how to conclude a negotiation or mediation with or without an agreement. Either way, their communication style should be professional and courteous, as described in MUM 1, and in Chapter 8.

Tip 8: Each step of BEC requires different thinking and language skills, as described below. These points are presented to students throughout the chapter.

BRAINSTORMING

As with brainstorming for writing, planning oral presentations, or problem-solving, students need to generate, suggest, and record their ideas for resolving the dispute. Negotiators do these activities on their own; mediators facilitate the parties' brainstorming sessions.

Brainstorming requires these thinking and language skills: critical thinking (to create the agenda of topics to discuss), encouragement (to generate as many ideas as possible), the ability to keep an open mind (to generate creative ideas without risking criticism), paraphrasing (to confirm understanding), and summarizing (to boil down suggestions into a few key words to make sure everyone is on the same page about what has been said).

Communication styles for brainstorming can be clear and direct (*I want X*) or filled with modals, questions, and other softeners (*I'd like to suggest X; Maybe we could try Y; Could we consider Z? How*

about _____? What if we _____?). Mediators use open-ended questions (*What are some ideas for X? Who else has an idea about Y?*). And mediators should use active listening to check with the parties to make sure they “got it right.” (*Are you suggesting an installment payment plan? Did I get that right?*) Overall, mediators need leadership, facilitation, and active listening skills to guide parties through brainstorming.

EVALUATING

When the parties are satisfied with their brainstorming list, they select the best options. These will become settlement proposals. To discuss their proposals, they may continue to use modals, but these should now communicate more certainty: *I think we should choose X. I'd like to propose Y. My client wouldn't be able to accept A, but B is a possibility. C would work with the following changes.*

Evaluating also requires “reality-checking” to ask hard questions, not to attack or cross-examine but to ensure that the agreement makes sense and is doable. Reality-checking questions often use the present perfect and can be open-ended or specific, using W and H questions:

- *Have you considered X?*
- *You've offered to pay the full amount by tomorrow; how will you get the money by then?*
- *Exactly what time is the money due on Feb. 20th?*
- *You've said that you prefer trial; have you calculated all the costs, including the cost of closing your business during the trial and potential costs to your business reputation during and after trial?*

CONCLUDING

The last step varies depending on whether or not the parties have reached a complete agreement. If they have, they need to write it and review it carefully. Written settlement agreements require language that is clear and precise with as little legal jargon as possible, although as discussed in the chapter, US lawyers tend to include plenty of boilerplate “legalese.”

Students may come from legal cultures that expect and require “legalese” or other language that appears to be more sophisticated and complicated than the “plain English” you will be promoting. You can remind students that judges in the United States prefer plain English and the active voice because the goal is for the parties to understand exactly what they have promised each other and for judges to be able to enforce these promises based on what is written, with no room for interpretation. In other words, if one party claims that the other is not following the agreement and asks a judge to order her to do so, the judge must be able to understand, based on the words on the page (not what was discussed during the negotiation or mediation), exactly what needs to be ordered. “You had to be there, Your Honor,” will not work.

Example:

John Smith will send \$450 by Zelle to Gloria Gomez at mg2020@yoohoo.com on or before December 2, 2025, at 5:00 p.m. PST.

Notice how this sentence in the active voice answers *who*, *what*, *how*, *where*, *how much*, and *when*, leaving no guesswork for parties or judges.

LESSON PLAN

1. Start with an activity. Options:
 - a. Choose one or both of the introductory activities: Nine Dots (8A) or Paper Clips (8B).
 - b. Use the Orange Exercise (5A). If you have already used this activity, ask students to review their takeaway lessons.
 - c. Use a problem-solving activity you already use or could create. Examples: Who gets the heart transplant? Who gets a seat in the lifeboat? Which job candidate should we hire? Which charity should receive our company's annual donation? Which five items should we pack to start civilization on another planet? Which five people should we send to start civilization on another planet?
2. Assign the Warm-Up Questions (8.1, pp. 199–200) and the Background Reading (8.2, pp. 200–223).
3. Review the BEC Checklist (MUM 8) in class or have students review it in groups or on their own.
4. Assign “Applying BEC to a Professor – Student Dispute” (8.5, pp. 224–227).
5. Assign Role-Play 3, Riley Roofer vs. Larry/Lori Landlord (8C). This short role-play can be done as a negotiation or a mediation. For mediation practice, do not provide the Confidential Fact sheets to the mediator(s).
6. Ask students to select a hypo from any chapter in the textbook and use the BEC Checklist (MUM 8) to negotiate an agreement.

Note

Many thanks to Daniel Edelson for his excellent feedback and suggestions for this chapter.

8A. Think Outside the Box (Teaching Instructions)

This quick activity inspires creative brainstorming. Although many students are familiar with this activity and can complete it quickly, they may never have thought about applying it to negotiation or mediation.

INSTRUCTIONS

1. Draw three rows of three dots on the board or a piece of paper as follows:

...

...

...

2. Give students this instruction: Connect the dots using no more than four straight lines and without lifting up your chalk/pens.
3. Ask students to share their solutions. (For solutions, see <https://www.youtube.com/watch?v=LYGQ04wyshw> or look online for “solutions to the Nine Dots Problem.”)
4. Next, ask students to try again with a second set of dots using no more than *three* straight lines.
5. Ask students to discuss how this activity could apply to reaching agreements in negotiations and mediations. Ask them to use the phrase “think outside the box” to explain their answers.

8B. Paper Clips (Handout)

INSTRUCTIONS

Choose these roles (or your instructor will assign them). Depending on the size of your group, one person may have more than one role or some participants may not have a specific role.

- **Facilitator:** Encourage everyone to share ideas, including yourself.
- **Recorder:** Write down all ideas, including your own.
- **Rule-keeper:** Remind participants of the rules (explained below) as needed.
- **Reporter:** Share your group's best ideas with the class.

PROCEDURES

1. **Brainstorm** 20 to 30 ways to use one or more paper clips. All ideas are welcome, whether realistic or absurd. Do not discuss or criticize any suggestion. The recorder should write down every idea. Have fun with this activity.
2. **Evaluate** your proposals. Which ones are best? Feel free to demonstrate or test your ideas with real paper clips. Use any standards you wish for determining what is "best."
3. **Select** the top three proposals based on the standards you've chosen.
4. **Agree or vote** on one proposal.
5. **Discuss** how this activity could apply to negotiations or mediations. What are two or three *takeaway* (specific, practical) lessons you could use in real- world negotiations or mediations?
6. **Reporters:** Share your group's top three proposals with the whole class. Explain how you chose the best one. Share at least one takeaway lesson.

8C. Role-Play 3: Riley Roofer vs. Larry/Lori Landlord (Teaching Instructions)

This is a simple role-play to practice applying the BEC Checklist. It requires students to use both competitive and collaborative negotiation styles and includes an opportunity to apply Chapter 7 (“The Power of Apologies in Negotiation and Mediation”). If you are not using Chapter 7, students can apologize in any way that makes sense to them.

You can assign two students to work together on the same side as negotiators or you can set this up as a mediation with one or two mediators and one or two parties on each side. For mediations, only the parties (Riley and Larry/Lori) will receive the confidential fact sheets.

You may instruct students to access their confidential fact sheet on their own (if they promise not to peek at their counterpart’s fact sheet) or you may provide the facts sheets to the students on each side. If you provide printed fact sheets, consider using two different colors, such as yellow for Riley Roofer, and blue for Larry/Lori Landlord.

After the role-play, consider using the Peer Review activity in MUM 9 and/or the Debriefing and Reflection Questions in MUM 7.

MATERIALS

- Confidential Fact Sheet for RILEY ROOFER (8C.1)
- Confidential Fact Sheet for LARRY/LORI LANDLORD (8C.2)
- BEC Checklist (MUM 8)
- Settlement Agreements: Peer Review (MUM 9) and Debriefing and Reflection Questions for Negotiation Role-Plays (MUM 7).

8C.1. Confidential Fact Sheet for RILEY ROOFER

You own a roof-repair business. You agreed to fix the roof on a house owned by Larry/Lori Landlord for \$1000 and you agreed to finish the job by October 1. Unfortunately, the materials you needed did not arrive until November 20, so you could not complete the job until December 1. You worked hard and did a good job, but Larry/Lori has refused to pay you. And they posted a negative online review about you, which has caused you to lose clients and money. You were so angry about this that you posted a negative online review about them that wasn't fair or accurate.

You definitely want Larry/Lori to pay you for the materials (\$500) and you hope they'll also pay for your work (\$500), but you would offer a discount due to the delay (even though it wasn't your fault) if they immediately delete the negative review. You need the \$1,000, or at least \$500 for the materials, but protecting your reputation is just as important. You feel that they owe you an apology for that review, and you'd like to get one, but you care more about the money and your reputation.

If you can't reach an agreement, you will file a lawsuit against Larry/Lori for \$1,000 plus \$5,000 for the loss of business from clients who canceled after reading the negative review. But suing a client would take a lot of time and would harm your business reputation.

Try to negotiate an agreement with Larry/Lori. You want them to pay as much as possible of the \$1,000 and delete the negative review. You are willing to apologize for the delay and the negative review you posted if that seems important to Larry/Lori. You are also open to considering creative win-win solutions that would benefit you and Larry/Lori in the future. Use the BEC Checklist (MUM 8) to brainstorm, evaluate, and conclude an agreement. Write your agreement and then check it to make sure it is enforceable.

8C.2. Confidential Fact Sheet for LARRY/LORI LANDLORD

You own a home that you rent to Tom Tenant for \$2,000 a month. The roof leaked in April and you promised Tom that it would be fixed by October 1. You hired Riley Roofer to fix the roof by October 1 for \$1,000, but Riley didn't complete the job until December 1. When the rent was due on October 1, Tom withheld (didn't pay) it.

Although Riley did a good job on the roof, you were so angry about the delay and the loss of rent that you refused to pay, and you posted a negative online review about Riley. After that, Riley posted a negative online review about what a bad landlord you are. You know that Riley did not deserve the negative review about the quality of the work, but you don't think Riley should charge you the full \$1,000 due to the delay. And you are furious about the online review about you. This is very harmful to your reputation in the business community, and you need Riley to delete it immediately.

You are willing to pay some amount for the roof repair if Riley immediately deletes the negative review and apologizes for it and for the delay. If you can't work out a deal for a generous discount and removal of the online review, you will file a lawsuit against Riley for the loss of rent for October and November and damage to your business reputation. But a lawsuit would harm your business reputation even more. And it would take a lot of time and cause a lot of stress.

Try to negotiate an agreement with Riley. You want to pay as little as possible, you want the negative review deleted immediately, and you demand an apology. You are also open to considering creative win-win solutions that would benefit you and Riley in the future. Use the BEC Checklist (MUM 8) to brainstorm, evaluate, and conclude an agreement. Write your agreement and then check it to make sure it is enforceable.

CHAPTER 9

Mediation

The textbook offers two ways to introduce students to mediation. Chapter 9 provides background reading about the mediation process and the mediator's role. Chapter 10 provides a scripted mediation for students to read or perform. Depending on your students' needs and the amount of time you have for mediation, you can use both chapters or only one, and you can reverse the order by starting with the script in Chapter 10. The lesson plans for Chapters 9 and 10 provide various options for your consideration. If you might want to start with the script, review the script (Chapter 10 in the book) and the Part 3 Companion Site materials for Chapter 10 now.

[] **ESL Instructors:** Lesson Plan A provides activities that are tried and true for general ESL purposes. It introduces mediation as communicative ESL activity rather than as an ADR process. In other words, it gives students an authentic mediation experience without focusing on the details needed for ADR contexts. Of course, depending on your students' needs and interests, you may wish to add activities from the other lesson plans. To stay a few steps ahead of your students, watch this four-minute video: <https://www.mslmediation.com/>.

{ } **ESP Instructors:** Lesson Plans B, C, and D introduce students to the “facilitative” mediation style (see p. 251 in the book) that is commonly used in ADR contexts to resolve legal disputes. While Lesson Plans B and C start with concepts to prepare students for the script, Lesson Plan D starts with the script to put the language of mediation into students' mouths before they fully understand the process, the way training wheels allow us to ride a bike before we can ride on our own.

Either way, after working through the script, you can assign unscripted mediation role-plays (see Chapter 11).

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (9.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 9 (where you are now)

TEACHING TIPS

Tip 1: Review the mediation script in Chapter 10 now to decide how you wish to use Chapters 9 and/or 10.

Tip 2: The Background Reading (9.2, pp. 236–254) and Mediation Script (Chapter 10) assume that students are familiar with these building blocks for mediation:

- The collaborative style (Chapter 5) or at least Active Listening (5.4, pp. 145–153) and the FENS form (p. 142 and MUM 5).
- The three-step “BEC” process for reaching agreements (Chapter 8) or at least the BEC Checklist (MUM 8).

Tip 3: The following activities from previous chapters will help prepare students for Chapters 9 and 10 but are not required.

- The Orange Exercise (5A, full version)
- Paradise Peak (Role-Play 2, 5B)

Tip 4: Instructors who wish to learn more about mediation before introducing it to their students may consult these resources:

- Barrie J. Roberts, *Conflict Resolution Training for the Classroom: What Every ESL Teacher Needs to Know* (Ann Arbor: University of Michigan Press ELT, 2023).
- Kathy Isaacson, Heidi Ricci, and Stephen W. Littlejohn, *Mediation: Empowerment in Conflict Management*, 3d. ed. (Prospect Heights, Ill.: Waveland Press, 2020).
- Mediate.com: This site provides articles on a variety of mediation topics and announces mediation events and trainings.

To take a mediation training with the option to become a volunteer mediator, search online for “community” or “neighborhood” mediation trainings in your community or anywhere online. Example: San Francisco Community Boards: <https://communityboards.org/>

LESSON PLANS

Lesson Plan A: Introducing Students to Mediation for General ESL Purposes

Assign the following:

1. Selected Warm-Up Questions (9.1, pp. 233–235).
2. Background Reading (9.2, pp. 236–237) or provide a mini-lecture to cover key points from the rest of this reading.

3. Optional: Choose a mini role-play (3C.1) or a hypo from one of the textbook chapters. Assign two students to play the parties and one or two students to play mediators. Mediators will use Active Listening Script 4 (MUM 4) to help the parties resolve their dispute. Repeat this activity with different scenarios so that all students have the chance to practice serving as a mediator.
4. Read or perform the Mediation Script, Chapter 10. You can go straight to the script in the textbook without any pre-mediation activities.
5. Optional: To apply what students have learned from the script, repeat #3 above or use some of the ideas for unscripted mediation role-plays in Chapter 11.

Introduction to Lesson Plans B, C, and D

Through warm-up questions and the background reading, Lesson Plan B introduces the mediation process and the mediator's role in the context of ADR. It is designed to simply help students understand the basic concepts of mediation. Lesson Plan C helps students understand how these concepts come alive while performing the mediation script (Chapter 10). Lesson Plan D starts with the mediation script, allowing students to experience the mediation process first and then connect that experience to the concepts they will read about later. Both Lesson Plans C and D prepare students for unscripted role-plays described in Chapter 11.

Lesson Plan B: Introducing ESP Students to Mediation Concepts

Assign the following:

1. Selected Warm-Up Questions (9.1, pp 233–235).
2. Background Reading (9.2, pp. 236–252). Sections 9.3 and 9.4 are optional.
3. Read or review: Chapter 1 (“Mediation,” pp. 15–17), and “Hypo: ADR Processes in Action” (1.4, pp. 23–29).
4. Assign the activities in 9.5 (p. 254). Or ask students to discuss Questions 3–6 in “Questions to Consider” (1.5, pp. 29–30). Sample responses are provided here (1.5 in the Companion Site, Part 3).
5. Optional: Read or perform the Mediation Script (Chapter 10).

Lesson Plan C: Building on Mediation Concepts to Prepare for ADR Role-Plays

Assign the following:

1. Selected Warm-Up Questions (9.1, pp. 233–235).
2. Background Reading (9.2, pp. 236–254).
3. Read or review: Chapter 1 (“Mediation,” pp. 15–17), and “Hypo: ADR Processes in Action” (1.4, pp. 23–29).
4. Assign the activities in 9.5 (p. 254). Ask students to discuss Questions 3–6 in “Questions to Consider” (1.5, pp. 29–30). Sample responses are provided here (1.5 in the Companion Site, Part 3).
5. Select pre-mediation activities from Chapter 10 in the Companion Site, Part 3. For law students see Tips 8–12.

6. Students perform the Mediation Script (Chapter 10).
7. Assign the Mediation Debriefing Questions (MUM 10).
8. Show videos of different mediation processes (see Chapter 10 p. 171 in the Companion Site, Part 3).
9. Invite guest speakers to share their expertise in person or online. Experienced mediators can describe their mediation processes and experiences and coach role-plays. Attorneys can describe their experiences using mediation to resolve disputes for their clients. See the Companion Site, Part 1 (1.03) to help identify possible guest mediators.
10. Assign unscripted mediation role-plays (Chapter 11).

Lesson Plan D: Using the Mediation Script to Learn and Practice the Mediation Process

1. Follow your choice of Tips 8–12 and the procedures for the Mediation Script in Chapter 10 (Companion Site, Part 3).
2. Students perform the mediation script in whatever way you choose.
3. Students debrief (MUM 10).
4. Students discuss selected Warm-Up Questions (9.1, pp. 233–235).
5. Students read the Background Reading (9.2, pp. 236–254).
6. Students discuss how the Background Reading compares to their experience during the mediation script.
7. Read or review: Chapter 1 (“Mediation,” pp. 15–17), and “Hypo: ADR Processes in Action” (1.4, pp. 23–29).
8. Assign the activities in 9.5 (p. 254). Ask students to discuss Questions 3–6 in “Questions to Consider” (1.5, pp. 29–30). Sample responses are provided here (1.5 in Companion Site, Part 3).

9. Show videos of different mediation processes (see Chapter 10 in Companion Site, Part 3, p. 171).
10. Invite guest speakers to share their expertise in person or online. Experienced mediators can describe their mediation processes and experiences and coach role-plays. Attorneys can describe their experiences using mediation to resolve disputes for their clients. See the Companion Site, Part 1, 1.03 to help identify possible guest mediators.
11. Assign unscripted mediation role-plays (Chapter 11).

CHAPTER 10

Mediation Script: Pat and Lee (Teaching Instructions)

This guided mediation activity shows students how to conduct a facilitative¹ mediation from start to finish. It does so by guiding students through a script that they can read aloud in small groups or on their own. The script includes a narrator to provide explanations and guide transitions, opportunities for students to create their own dialogue, and questions to highlight key points along the way or at the end. Terms that may be new for students are in italics and explained in the script.

This activity requires an investment of time, but the return on investment is significant: depending on your students' needs, you may use the script as the culminating activity that you have built toward or as an introduction to mediation role-plays that they will carry out on their own. After working through the script, students should be able to conduct simple mediation role-plays without additional instruction. In other words, after this activity, you can simply assign mediation role-plays as described in Chapter 11, and instruct students to carry them out using the script as their template.

[] **ESL Instructors:** This is an engaging and valuable activity for ESL students. It introduces them to key soft communication skills² by literally putting appropriate words and phrases in their mouths. Instructors will certainly find creative ways to use the script for ESL lessons in reading, speaking and listening, pronunciation, vocabulary, critical thinking, and problem-solving, as well.

{ } **ESP Instructors:** For students who need to understand mediation in the context of ADR (to resolve legal disputes before trial), this activity is a picture—or experience—that paints a

thousand words. To learn the language, process, and spirit of mediation there is no substitute for participating in one, even in a role-play. To enhance this activity's authenticity for law students, see Tips 8–12 (starting on p. 175 in this section).

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (10.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 10
(where you are now)

TEACHING TIPS

Tip 1: If you are new to mediation, consider watching videos of mediators applying the style that is used in this script. This will show you how mediators find their own unique ways to express the spirit of mediation while performing their essential tasks. You may wish to share these videos with students before or after they read the scripted mediation. Examples:

- “MWI Opening Statement,” Harvard Mediation Pedagogy Project, posted February 25, 2012, <https://www.youtube.com/watch?v=xmZyztC9PCU>
- “The Four Phases of the Mediation Process,” Jean Munroe and Tennessee-Mediation.Com, 2010, <https://www.youtube.com/watch?v=heUcre2d9wg>
- “Mediation: A Neighbor to Neighbor Conflict Role Play—The Mediation Process,” One World Community Productions at Marblehead TV, August 30, 2013, <https://www.youtube.com/watch?v=KS-ykB7nYiY>

- “Resolve Your Case,” video series, Judicial Branch of California, <https://courts.ca.gov/programs/alternative-dispute-resolution-adr/resolve-your-case-video-series>. Look for “Civil Harassment”: this video explains the benefits of using mediation for civil harassment cases, the subject of the mediation script. Note that the video is available in several languages.

Tip 2: There are several ways to prepare students for the script.

- a. **No preparation:** Simply assign roles and instruct students to read the script. See Tip 3 for options.
- b. **Instructor prep:** You could read the material for the parties, Pat and Lee, and summarize it in separate meetings with “Pats” and “Lees.”
- c. **Student prep:** Assign roles and provide the materials in 10.1a, b, and c.

Tip 3: There are several ways to use the script.

- a. **Silent reading:** Students can simply read the script on their own.
- b. **Small groups:** Students read the script aloud, in their roles as parties or mediators. This may be done in class or out of class, in person or online. This is the best preparation for future mediations in role-plays and real life and provides the richest and most immediate experience in language, critical thinking, leadership, teamwork, student-centered activities, and problem-solving.
- c. **Fishbowl:** One group reads the script aloud at the front of the class while other students observe and take notes. You may stick with one group for the entire script or change the groups at logical transition points. For the Narrator’s role, you can assign a strong

reader or read that part yourself. Consider using a fishbowl if you have a wide range of skill levels, too few or too many students for small groups, if you want to keep control over this activity, or if you are not trying to prepare students to conduct mediations in role-plays or real life. Students will still get a good sense of what mediation is and is not.

To keep the audience engaged, give them tasks such as completing a FENS form for each party (MUM 5), observing how the mediators are applying the Mediation Process Summary (9.02 in Companion Site, Part 1), or simply noting their comments about the strengths and weaknesses of the process they are observing. Observers should be prepared to provide their feedback after the mediation.

Also consider dividing the audience into two groups, one for each party. This will help observers feel more involved, and if parties need help, they can turn to their back-up group in the audience for advice.

Tip 4: You will probably need more than one class session to complete the script. You can split it up into two or more class sessions, or you can start the script in class and ask students to complete it out of class in person or online. Note that real-world mediations often require two or more sessions.

Tip 5: The script includes “Time Outs,” as opportunities to pause and reflect on key points. You can ask students to discuss these points when indicated, or you can skip them, complete the script, and come back to them later.

Tip 6: The script includes opportunities for students to improvise dialogue in their roles. If this is too challenging, students can skip these parts and just keep reading.

Tip 7: The script does not include dialogue for brainstorming, evaluating, or selecting solutions. In other words, students must conclude the mediation on their own. You have two options:

- For general ESL purposes: The mediators can simply ask the parties what they want to do or they can use the BEC Checklist (MUM 8) in an informal way to guide the parties' discussion and conclude the session.
- For law and business students: The mediators should use the BEC Checklist (MUM 8) to guide the parties through brainstorming and evaluating options, writing an agreement, and concluding the session. Consider adding the peer review activity (MUM 9) so that groups can exchange their written agreements, give and receive feedback, and revise their agreements before submitting them to you.

Either way, plan for about 30–60 minutes for Part 3 of the script to brainstorm, evaluate, and write settlement agreements and to conclude the session.

Tips 8–12 are optional pre-mediation activities for attorneys and law students.

Tip 8: Attorney-Client Interviews

This activity mirrors real-world meetings in which attorneys interview their clients about their case and discuss the pros and cons of trying mediation.

Instructions

1. Assign students to the “Pat” group or the “Lee” group. Within each group, half will be the party, Pat or Lee, and the other half will be the attorney for that party. Assign attorney-client partners or allow students to select their partners. Note that when it’s time to perform the mediation script, Pat and Pat’s lawyer can only play Pat; Lee and Lee’s lawyer can only play Lee. People in both groups can be mediators.
2. Instruct clients Pat and Lee to read their Confidential Fact Sheets: Pat, 10.1a; Lee, 10.1b.
3. Instruct their attorneys to *not* read the Confidential Fact Sheets. Instead, they should prepare for a client interview. They may use Active Listening Script 4 (MUM 4) and a FENS form (MUM 5). They should also review Chapter 1 (pp. 3–17) and Chapter 9, and be prepared to explain how this information applies to their client.
4. Students can conduct their interviews in class, out of class, or online. Consider asking students to record their session so that you and they can assess it later.
5. During the interview, the attorneys must learn about the facts, as well as their client’s concerns, needs, and goals. The attorneys should explain what mediation is, the pros and cons for this specific client, and what will happen if the parties do not reach an agreement at the mediation. Clients should ask questions about whether mediation is a good option for their particular case.

Students summarize their experience in class or in writing.

Tip 9: Legal research and writing

The scripted mediation involves two legal issues: civil harassment and property damage. These topics are discussed in Mediation Script: Legal Issues (10.2). If you wish to use the script for a research and writing assignment, consider these steps:

Instructions

1. Assign roles (attorney for Pat, attorney for Lee, mediator). If you are assigning this activity before doing the scripted reading, note that for the script, attorneys will have to play the same roles, or play their clients' role (attorneys for Pat can play Pat or Pat's lawyer; attorneys for Lee can play Lee or Lee's lawyer), and mediators should continue in their role as mediators.
2. Give each attorney the Confidential Fact Sheet for their client. (10.1a for Pat; 10.1b for Lee). Give the mediators both Confidential Fact Sheets. Give all students the Legal Issues handout (10.2).
3. In their roles, students research the law and write a memo about how the law applies to the facts in this case and the costs/benefits of resolving the case in mediation vs. going to trial.

Tip 10: Negotiation Role-Play

Before reading the script, students can role-play a negotiation of the dispute based on the information in the Confidential Fact Sheets (10.1a and 10.1b) and the information in the Legal Issues handout (10.2). This mirrors the real-world experience of attorneys and parties who try to resolve disputes on their own before seeking the assistance of a mediator.

Students can negotiate in pairs, as the attorneys for each party or as the parties themselves, or in groups of four (an attorney and client on each side). If they reach an agreement through negotiation, they can compare it to agreements they later reach through their scripted mediation. Students must keep these same roles when they read the script.

Instructions

1. Assign roles and provide the Confidential Fact Sheets. Half the class will be Lee; the other half will be Pat, or they can play attorneys for each party. When it's time to perform the mediation script, students should keep these same roles or play mediators. In other words, "Pat" and "Lee" should not read the other party's confidential fact sheet before the mediation.
2. Students role-play a negotiation of the dispute in class, out of class, or online. They should prepare for the negotiation using ideas from Chapters 4 and 5. Consider asking students to record their session so that you and they can assess it later.
3. Students summarize their experience in class or in writing.

Tip 11: Mediation Role-Play

You can ask students to take a stab at role-playing a mediation of this dispute before reading through the script. This gives them the opportunity to apply the concepts in Chapter 9 on their own. You can do this after a negotiation role-play or instead of a negotiation role-play. Students can then compare their own mediation to the scripted version.

Instructions

1. Assign roles: Pat and Lee (or their attorneys) and one or two mediators. **Parties (Pat and Lee) should play the same roles in the mediation role-play and the mediation script.** Mediators should play mediators during the script, as well, if possible.
2. Provide Confidential Fact Sheets to Pats and Lees. Provide Mediation Script: Preparation for Pat and Lee (10c) to both parties.
3. Direct mediators to the Mediation Process Summary (Companion Site, Part 1, 9.01), Active Listening Script 4 (MUM 4), and the BEC Checklist (MUM 8).
4. Students can conduct the mediation in class, out of class, or online. Consider asking them to record it so that you and they can assess it later.
5. Students conclude the session with or without an agreement and then debrief with the questions in MUM 10.

Tip 12: Take a look at Authentic Pre-Mediation Activities in Chapter 11 (11.4B). If appropriate for your students, select activities from this list to do before students perform the script or mediation role-play described in Tip 11.

PROCEDURES

Preparing for the Mediation Script Activity

Overview

1. Assign students to groups
2. Assign roles
3. Prepare materials
 - a. Materials to provide before the activity
 - b. Materials needed on the day of the activity

1. Assign Students to Groups

Each group needs at least four members: two mediators and two parties. Each group also needs a “Narrator.” You can assign a fifth member for that role, or the four students can take turns reading it. To help keep track of everyone, give each group a number or letter or ask them to create a group name.

If students will be reading the script together online, assign one student to be in charge of scheduling and inviting. If possible, ask one of the mediators to take on this task, as this would mirror an authentic mediator task for real-world mediations.

2. Assign Roles

All roles can be played by any gender. All participants should read “Pre-Mediation” in the textbook (10.1, pp. 259–261).

Mediators: M1 & M2

Mediators will use their own names. They should be strong readers. The script invites mediators to try active listening and to summarize the parties’ concerns, but if this is too challenging, they can decline these invitations and stick to the script. Note that they may have to adjust the script based on the participants you assign to each group.

Parties: Pat and Lee

Ideally, the parties will read and understand their Confidential Fact Sheets before the activity, but the script will work without this background information. During the first part of the script, the parties will be reading their parts, but later the script instructs them to improvise dialogue. If this is too challenging, they could get help from other participants or just stick to the script. Parties must not discuss their roles with each other or their mediators before the scripted reading. However, Pats may discuss their role with other Pats, and Lees may discuss their roles with other Lees.

Narrator (N)

Narrators should be strong readers. They do not have to improvise any dialogue. They will have a (guided) leadership experience. As explained above, you can assign this as a separate role or have the other participants take turns reading it. Or, if you think the groups will read at about the same speed, you can play the Narrator for all the groups.

Optional Roles

Attorneys for Pat and/or Lee

Attorneys will use their real names. They are mostly silent but can consult with their clients during breaks and Part 3 (creating the agreement). You may assign an attorney for each party or for only one party. Before the activity, attorneys should review the Legal Issues handout (10.2). During the activity they should take notes or complete a FENS form (MUM 5).

Observers

Observers will use their real names. You could give them tasks to complete during the mediation, such as creating a FENS form (MUM 5) for each party, noting how the mediators are applying the Mediation Process Summary 9.01 (Companion Site, Part 1), or simply noting their observations and comments about the strengths and weaknesses of the process.

3. Prepare Materials

A. Materials to Provide Before the Mediation Script Activity

Note that students can access all of these materials on their own. Remind Pats and Lees not to read their counterparts' confidential fact sheets; they will learn everything they need to know about their counterpart by the end of the activity.

For the parties:

10.1a: Mediation Script: Confidential Fact Sheet for PAT

10.1b: Mediation Script: Confidential Fact Sheet for LEE

10.1c: Mediation Script: Preparation for Pat and Lee

10.2: Mediation Script: Legal Issues (optional for general ESL purposes)

For mediators:

Instruct mediators to review—and have on hand—these materials: Mediation Process Summary 9.01 (Companion Site, Part 1) FENS Form (MUM 5), BEC Checklist (MUM 8).

Optional for law students and lawyers:

Pre-Session Activities (11.4).

B. Materials for the day of the Mediation Script Activity

- The Mediation Script (Chapter 10 in the book)

For mediators:

- Blank page with “Mediation Confidentiality Agreement” written at the top.
- Paper and pens or laptops for notetaking.
- Recommended: Flip chart or board to take notes for all to see.
- Optional: Water and snacks for each group. (Mediators often provide these, so this would add a touch of authenticity, but it is not necessary.)

Conducting the Mediation Script Activity in Class

Before Starting the Script

1. Take attendance. If you have full attendance, move on to Step 2. If not, ask the members of each group to raise their hands and state their roles. If there are absences for mediators, you could assign observers to play a mediator; ask one mediator to read the parts for both mediators or combine groups so that there are three or four mediators and two or three Pats or Lees who will take turns reading. If you are missing a Pat or Lee, again, you could combine groups so that two Pats or two Lees take turns reading their roles in the same group, or one Pat or Lee becomes the attorney for their role. You could also add attorneys or observers. Note that Pats, Lees, and attorneys who have read their Confidential Fact Sheets should not play the opposite party.

2. Instruct the mediators to arrange the chairs/desks for their group. For Part 1, the parties, Pat and Lee, will face the mediators, not each other.
3. Review the “Tips for All Participants” (textbook, p. 261). Give instructions about skipping or discussing the Time Out questions that appear in the script.

Reading the Script

1. Tell the Narrators to begin reading on p. 262.
2. Circulate and assess. If students get stuck when they are asked to improvise dialogue, either help them along or instruct them to skip it and keep reading.
3. Notice when students reach Part 3 (brainstorming, evaluating, concluding agreements). Tell them how much time they have. If possible, give them about 30 minutes for this part or ask them to conclude the mediation out of class or during the next class meeting.

After the Script

After students complete the script, they should debrief within their groups using the Mediation Debriefing Questions (MUM 10).

Notes

1. See Chapter 9, p. 251 in the textbook for a description of the facilitative mediation style.

2. Soft skills include “leadership” skills. Many thanks to Kevin Knight for his leadership on this topic; see Kevin R. Knight, *English for Specific Purposes Project Leader Profiles: The Leadership Communication of 55 ESP Project Leaders* (Hong Kong: Candlin & Mynard, 2022), 148, <http://candlinandmynard.com/espprofiles>. Soft skills are also emphasized in Brian North and Enrica Piccardo, Companion Volume for the Common European Framework of Reference for Languages (CEFR) (Strasbourg, France: Council of Europe, 2020), <https://www.researchgate.net/publication/344467246>.

10.1a. Mediation Script: Confidential Fact Sheet for PAT

Your parents immigrated to the United States from another country (you may choose the country) before you were born. You feel both “all-American” and strongly connected to your culture and to your parents’ homeland. You and your parents worked hard and now you are an emergency room (ER) doctor at City General Hospital. Your schedule varies, but last week, two ER doctors were ill, so you stayed at the hospital and worked 18-hour shifts.

When you finally got home Monday night, you just wanted to take a shower and sleep. You live in a beautiful apartment on the first floor of a charming old building in a quiet neighborhood. Your apartment is filled with plants and artwork you’ve collected from your travels around the world. Your prized possession, a precious vase you inherited from your grandparents, sits on top of your piano. Just for fun, you play in a jazz band with some friends on Sunday nights, and practicing piano is one way you relax from your stressful job. The walls are thin in your old building, but fortunately, your upstairs neighbors, a nice elderly couple, loved to hear your music, and you never heard any noise from their apartment. Unfortunately, they moved out last month. They were great neighbors: they watered your plants when you were away and left fresh-baked bread for you when you returned. You miss them very much.

When you left for work last week, the upstairs apartment was empty. But as you drove up to your building Monday night, the upstairs lights were on and loud electronic music was blaring from the open windows. When you got inside, the music was even louder and your walls were shaking. You were furious! But it was only 9:00 p.m., so you took a shower and hoped that your new neighbors would obey the noise ordinance (city law) that prohibits loud noise from 10:00 p.m. until 8:00 a.m. But at 10:05, the music was still on.

At 10:15, you heard cars screech to a halt and saw five or six young men, all dressed in black, running upstairs, carrying cases of beer with cigarettes hanging out of their mouths. Then you heard banging, feet clomping, dogs barking, and the music, still blasting.

Your *blood was boiling*, but you put on earphones, hoping that a Beethoven symphony would drown out the noise, and somehow you fell asleep until you were suddenly awakened at 5:00 a.m. by another kind of loud music that sounded more like crying than music. If all this was happening on Monday night, what would happen on weekends?! You thought about going upstairs to talk to them, but after seeing and hearing them, that didn't seem safe. They'd probably been drinking beer all night and they had dogs up there, now barking like crazy. What if these people had guns?

Your city police department has a special non-police unit to deal with noise complaints. They have a great reputation for solving problems, so you called them, reported the problem, and went back to bed. Within 30 minutes, everything became completely quiet upstairs, and you slept until noon, when, once again, you were suddenly awakened, this time by a loud crash. Your front window was shattered, there was broken glass everywhere, and there was a baseball sitting on the broken pieces of your grandparents' vase. This vase had been in the family for generations, and before they died, your grandparents had entrusted it to you to pass down to the next generation.

You were furious—and scared. Those kids were obviously taking revenge against you for calling the city noise department. They looked like the kids who were always being rushed into surgery at your hospital after knife fights and gun shots. You called the landlord, told her what happened, and asked her to evict them. She said she couldn't do that but would text you their names so that you could do whatever you thought would be best. The only name you could pronounce was "Lee."

You called the police department and reported what Lee's family had done. They said they might be able to send officers out to talk to them. Then you called a home- repair company to replace the window and clean up the glass, which cost \$5,500. You had no problem paying that amount, but you vowed to make your neighbor pay you back for that—and for the vase. But you had no idea how much it was worth.

You started researching how to file a lawsuit against Lee. You learned that you'd need to start two separate cases. For the damage to your home and the vase, you'd have to file the legal papers to start a property damage case. To prevent any more violent acts of revenge, you'd have to file a request for a "Civil Harassment Restraining Order." You weren't sure if you could include stopping the loud music and barking dogs in that request, but you decided to try.

When you went to the courthouse to start your case, the clerk gave you four pieces of information that you did not want to hear:

- All the documents and court hearings would be open to the public. This would be embarrassing and bad for your reputation as a healer and team player in a hospital with staff and patients from all over the world.
- Civil harassment restraining orders are hard to get, especially if the incident only happened once and didn't physically injure you.
- The property damage case would take a lot of time and cost you a lot of money unless you sued in small claims court and asked for less than \$10,000. But you were sure the vase was worth at least \$50,000.
- The judge expected people in civil harassment cases to try mediation to resolve the problems with the other person instead of going through a court hearing.

You asked the clerk to schedule a mediation for Thursday, which she did. You're sure this will be a waste of time because your neighbors are completely uncivilized and need to be ordered to obey the law by a judge, but you want to be able to tell the judge that you tried mediation. The clerk scheduled a court hearing with the judge for Friday in case the mediation did not solve the problem. You will try to get an attorney to represent you at the mediation and the hearing.

If you succeed in getting a restraining order, and if you believe that Lee violates it, you could call the police anytime to enforce it. If the judge agrees with you, Lee could be sent to jail and/or ordered to pay a fine. Also, Lee would not be allowed to have a gun while the restraining order is in effect. All of this sounds good to you.

10.1b. Mediation Script: Confidential Fact Sheet for LEE

Last year, you and your two sons escaped from your homeland, Blankland. You love your country and culture, but the government considers everyone in your ethnic group an “enemy of the state” and life became too dangerous to stay. Unfortunately, your spouse couldn’t leave with you and may never be able to get out. After a frightening journey to the United States, you are now living in a city that welcomes immigrants.

Last week, with the help of a refugee organization, you moved into a great apartment in a beautiful old building in a nice, safe, quiet neighborhood. You were so lucky to get this place: Some cousins live nearby; the high school has a great reputation; the apartment has a small room where your sons can play their new electric guitars and drums, which you just bought for them on your new credit card; and, best of all, it has a large area that’s perfect for your tailoring business. You specialize in making business suits for professional men and women, and you already have some good customers.

Right now, you only have enough cash for basic necessities, which the refugee organization helps you pay for, but you are sure that you will have a successful business and comfortable life in the near future. Fortunately, you and your sons learned English as children, so basic communication is not a problem. Both sons are planning to become professionals, possibly engineers or doctors.

The first few days in your apartment were good. You and your sons started to relax and feel that you had a new, safe home. You started a new tradition: Every evening, after dinner, you and your sons would have “Music Nights” to listen and dance to music from Blankland and your sons’ own compositions. Monday night, your cousins and some friends came over to give you a “housewarming”

party with music, dancing, drinks, and food. They helped you hang up some Blankland artwork and get your tailoring room ready for work. And they brought a special gift for your sons: a new puppy! You hope that your cousins and their friends will visit often.

But the next day, three very bad things happened. First, at around 5:30 a.m., as you were drinking tea, enjoying your favorite Blankland music and getting ready to cut fabric, there was a loud knock at the door. You looked through the window and saw two police officers. Your heart almost stopped. In Blankland, when the police appear, people disappear. The police banged on the door and yelled, “Police! Open up!” The puppy started barking like crazy, which woke up your sons, who walked toward the door in their pajamas. They said that you had to open the door or the police would break it down. You were too terrified to move, so your sons opened the door.

“Your music is too loud; we could hear it from the street. Don’t you know about the city’s noise law? You can’t make loud noise from 10:00 p.m. until 8:00 a.m. That’s quiet time. And you need to keep your dog quiet, too. Understand?”

You said, “Yes, I understand, sir. I’m sorry, sir; I don’t know the law; I didn’t know anyone could hear it, I’m sorry, we’ll never do it again, sir.” One of your sons ran to turn off the music.

“Ok,” said the police. “We’ll just give you a warning this time, but next time you’ll get a citation. Here’s a copy of the noise law. Read it. Have a good day.”

You could not understand how the police could come to your door because of music. You wondered if a neighbor complained. No one was living downstairs, so maybe it was the neighbor next to you. Why didn’t they just come and talk to you? Now you started worrying: would the police report you to the immigration authorities?

The next terrible thing happened at noon. When your sons came home from school for lunch, they decided to practice baseball in the front yard. Baseball was completely new to them, but they wanted to try out for the school team to make new friends. But right before lunch, you heard a loud crash, the puppy started barking, and then your sons came running up the stairs, almost crying.

“We accidentally hit the ball into the apartment downstairs! We broke their window! What should we do?!”

You knew that you should immediately go downstairs. No one was living there, but you thought you should leave a note to apologize and offer to pay for the damage. You also knew you should tell your landlord what happened, but after the police visit, you were too scared to do anything. You sent the boys back to school and called your cousins.

The third terrible thing happened after dinner, at about 8:00 p.m. There was another knock at your door. It was a young woman who asked if you were Lee, and when you said yes, she handed you some papers. They were court forms. The top one said, “Civil Harassment Restraining Order.”

Your hands were shaking too much to read the papers, so your sons read them to you. They were written by your downstairs neighbor, Pat. You didn’t even know that you had a downstairs neighbor! Pat described the party Monday night, the noise Tuesday morning, the baseball damage Tuesday afternoon, and the constant dog barking. Pat was afraid there would be more noise and “violence” and asked the judge to order you to stop all that or move out!

You called your cousins and read everything to them. They said that you had to attend a mediation, on Thursday at 9:00 a.m., at the county courthouse. They said they’d try to have a lawyer meet you there but couldn’t promise anything.

They also said that if you and Pat can't reach an agreement on Thursday, you'll have to attend a court hearing on Friday, and that if Pat wins, the judge will give Pat a Civil Harassment Restraining Order against you. That order would go into a statewide computer system; if Pat calls the police to say that you violated the order, any police officer in the state could enforce it. You could be sent to jail and/or ordered to pay a fine. You would not be able to have a gun while the restraining order is in effect. And the order could affect your immigration status even if you don't violate it! You are absolutely terrified!

The next day, you and your sons heard strange piano music coming from Pat's apartment. Your sons liked it, but you did not. You started to turn up the volume on your music to drown it out, but your dog started barking and you were afraid to violate the noise law again, so you just went back to work and suffered through it. You don't need any more problems with Pat!

10.1c. Mediation Script: Preparation for Pat and Lee

Note: You can use the Mediation Script without this information, but you will learn more about mediation if you use it along with the Confidential Fact Sheet for your character.

At the mediation, you will meet the other party for the first time. You will be too angry to even look at each other. You will try to stay calm, but sometimes you will show your anger and frustration. However, during the mediation session, you might learn new information that will change your thinking; allow the mediators to guide you through the process and be willing to change.

PREPARING FOR THE MEDIATION:

1. Fill out a FENS form for your role. (See MUM 5 or p. 142 in the book.)
2. Try to “get into character” by empathizing with the person described in your Confidential Fact Sheet. For example, list two or three things that you have in common with this person. Imagine how would you feel if you were in their situation. Imagine that this person is a close friend or relative.
3. Most of the time, you will be reading from a script, but practice responding to these questions without referring to your Confidential Fact Sheet:
 - a. What happened? Summarize the key facts.
 - b. What do you hope to accomplish in this mediation? What would the ideal agreement say?
 - c. Why would you prefer to resolve this problem in mediation instead of a court hearing?

OPTIONAL:

- For information and videos about Civil Harassment Restraining Orders, visit: <https://www.courts.ca.gov/1044.htm>

10.2. Mediation Script: Legal Issues

This handout provides information about the legal issues in this case. Note the following ways to use—and not use—this information for mediation. This handout is optional; you can participate in the mediation without reading it.

Attorneys may use this information to advise their clients, privately, during a caucus. Advice may include emphasizing or ignoring certain facts; making reasonable settlement offers; or accepting or rejecting settlement proposals. This advice may change as you learn new information about the dispute during the mediation.

Self-represented parties (parties who do not have attorneys) may use this information in the same ways as attorneys. They may also use it along with reality-checking questions during discussions with the other party.

Attorneys and parties do not use legal issues to try to prove their cases to a mediator because the mediator has no authority to decide who is right or wrong. However, attorneys and parties may try to persuade the mediator that they have a strong case so that the mediator will ask the other party tough, reality-checking questions and influence them to make concessions. Parties and attorneys also use legal issues the same way among themselves for the same purpose.

Mediators do not use legal issues to decide who wins or loses or to advise the parties about their legal rights and duties. Instead, they use these issues to ask reality-checking questions for the parties to consider. Sample questions are provided in the Companion Site, MUM 6. For an example, review Mediator Maria's reality-checking questions in the book, in Chapter 1 (pp. 27–28).

CIVIL HARASSMENT RESTRAINING ORDER

This is part of the law on civil harassment that applies in this case:

California CODE OF CIVIL PROCEDURE § 527.6.

- (a)(1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order...prohibiting harassment as provided in this section.
- (b)(3) “Harassment” is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner (the person who asks, or petitions, the court for this order).

Standard of proof: The petitioner must prove their case by “clear and convincing evidence.”

For more information, court forms, and videos about Civil Harassment Restraining Orders, visit: <https://www.courts.ca.gov/1044.htm>.

PROPERTY DAMAGE AND NUISANCE CLAIMS

This section may require some independent legal research.

Claims may include *negligence* and *emotional distress*.

Compensation may include costs for repairs or replacing items and payments for the “sentimental value” of damaged or destroyed property that cannot be replaced.

Evidence may include photos, receipts, appraisals, fair market value, reasonable costs to repair or replace.

SAMPLE NOISE ORDINANCE

[Sf311.org/information/noise-complaints#general](https://sf311.org/information/noise-complaints#general)

[Sf311.org/information/noise-coomplaints#Neighbor](https://sf311.org/information/noise-coomplaints#Neighbor)

You can also research “noise ordinances” online

CHAPTER 11

The ESL/ESP Instructor's Guide to Negotiation and Mediation Role-Plays

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (2.02)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 11 (where you are now)

Materials with a number and capital letter (3C)? Companion Site, Part 3; the number tells you the chapter number

This chapter describes seven steps for conducting ADR role-plays. It assumes that students have already done the following:

- At least one of these role-plays: Role-Play 1 (4A) or Role-Play 2 (5B)
- Active Listening Script activities (5.4, pp. 145–153)
- At least one Chapter 8 Lesson Plan activity with the BEC Checklist (MUM 8), such as Activities 4, 5 or 6. These activities are in the Companion Site, Part 3, on p. 157.
- Read Chapter 2, “Negotiation Ethics,” or at least 2.02 Summary of Ethical Rules (Companion Site, Part 1).
- Read The Civil-Assertive Communication Style (MUM 1).
- For mediation role-plays: Read or performed the Mediation Script (Chapter 10).

The seven steps are:

1. Select or create the role-play.
2. Assign roles.
3. Explain the logistics.
4. Assign pre-session activities.
5. Conduct the role-play.
6. Assign debriefing questions.
7. Assessment.

These seven steps are described in detail in the next pages.

You may want to add relevant language lessons and language assessments to role-play activities. Language lessons targeted to role-plays could include vocabulary, idioms, word forms, modals, verb tenses, question formation, pronunciation, and communication styles. See 11.7(b) Grading Rubric for Mediation Role-Plays (Detailed) for an example.

11.1. Select or Create the Role-Play

SELECT A PREPARED ROLE-PLAY

A. Role-Play for ESP Students

This chapter provides a role-play, “Spice Explosion,” that I prepared for EDR students. Whether done as a negotiation or mediation, this activity requires a collaborative problem-solving approach. The Confidential Fact Sheets for Spice Explosion are at 11.1A(1) and 11.1A(2). There is a brief guide for instructors at 11.1A.

B. Role-Plays for Law/Business Students and Professionals

Here are four excellent sources for ADR role-plays, but note that they are all designed for native speakers of English.

Harvard Program on Negotiation: Teaching Negotiation Resource Center (TNRC) (<https://www.pon.harvard.edu/store/>). This site has numerous role-plays, videos, and other useful materials. Introductory role-plays are described here: <https://www.pon.harvard.edu/course-outlines/introductory-negotiation-skills/>.

You can review the role-plays online along with their teaching guides at no cost. However, the role-plays present challenges for ESP students and instructors. First, they were written for native speakers of English. Unless your students are near fluent, you might have to set aside time to help them understand the vocabulary, idioms, and the scenarios overall. And you would have to provide separate sessions for students in each role. Second, the materials are not free, and the costs per student can add up.

ADR Teaching Center: <https://sites.suffolk.edu/adrvideo/>. This site has numerous ADR videos and role-plays and is user-friendly for instructors.

American Bar Association, Dispute Resolution Section:

Dispute Resolution: https://www.americanbar.org/groups/dispute_resolution/resources/. This site has numerous videos, role-plays, and other materials that are available at no cost to instructors at teaching institutions. For example, the Online Dispute Resolution (ODR) section has a ten-minute video that demonstrates online mediation through a mock case.¹ The content and language level of this video should be user friendly for readers of this book. One option is to show or assign this video and then have students use ODR to role-play a mediation.

Dispute Resolution Institute (DRI) Skills Lab: Laboratory for Advancing Dispute Resolution Skills Teaching, Mitchell Hamline School of Law (<https://mitchellhamline.edu/dri-skills-lab/>). Check the Resources section on this site for negotiation and mediation “simulations” with teaching notes. Again, note that these materials were created for native English speakers.

C. CREATE ROLE-PLAYS

Create Role-Plays Based on US Supreme Court Cases

Students can role-play negotiations or mediations between the attorneys or parties on each side of a case. The arguments in the decision, concurring opinions, and dissents will help students explore each party’s underlying interests and values. Even if students cannot reach an agreement that satisfies both sides (after all, the actual parties in the case could not do so), they are sure to learn valuable lessons from negotiating or mediating the issues rather than debating them. Consider using one of the cases listed in the Sidebar.

Note

1. “How to Conduct a Mediation Online: ABA Mock Mediation,” ABA Dispute Resolution Section Mediation Committee, YouTube video (9:51), posted August 18, 2021, https://youtu.be/i2hRCqfbb_g?si=gGnNrTBbe8bRca_Q.

US Supreme Court Cases for Negotiation and Mediation Role-Plays

The links to the first two cases include teaching guides on the facts, issues, laws, and decisions.

Tinker v. Des Moines School Dist., 393 U.S. 503 (1969)

Did students have a First Amendment right to protest the Vietnam war at school?

(<https://www.uscourts.gov/educational-resources/educational-activities/tinker-v-des-moines>)

Texas v. Johnson 491 U.S. 397 (1989)

Is flag burning protected speech under the First Amendment?

(<https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-texas-v-johnson>)

Grutter v. Bollinger 539 U.S. 306 (2003)

Can a law school deny admission to a qualified white student based on its admissions policy that promotes racial diversity?

(<https://www.loc.gov/item/usrep539306/>)

NetChoice v. Paxton and Moody v. NetChoice (argued Feb. 25, 2024)

What is the extent of a social media platform's free speech rights?

(For background information see, for example, <https://www.cnn.com/2024/02/25/tech/us-supreme-court-landmark-social-media-cases/index.html>)

D. Create Role-Plays Based on Scenarios in This Book

You can expand on the mini role-plays in 3C. 1 and the list of hypos in 7A (Companion Site, Chapter 7) to create negotiation or mediation role-plays. You could also use one of the “Scenarios for ADR Role-Plays” (11.D).

E. Create Role-Plays Based on Instructor/Student Suggestions

Create role-plays based on stories in popular culture, such as movies or television shows. Show the beginning of a dispute or discuss the basic facts. Then ask students to role-play the parties as they try to negotiate or mediate a resolution. After the role-play, you can show or discuss how the characters resolved—or failed to resolve—their dispute. Good candidates for this activity include *Friends*, *The Big Bang Theory*, *Shrek*, and *Batman v Superman*.

F. Create Scenarios

These could be based on course material from any course, international or cross-border disputes, business disputes, legal cases or reported decisions, current events, historical events, literature, social media, or disputes from students' own lives and experiences. Options:

- Assign students the job of writing Confidential Fact Sheets for their classmates to role-play.
- Choose a dispute. Divide the class into two or three parties who are involved in this dispute. Meet with each group to provide a verbal summary of their role.
- Choose a dispute. Provide the facts to all students and let them determine how to turn this into a role-play.

TIPS FOR CREATING SCENARIOS AND ROLE-PLAYS

Tip 1: Avoid role-plays about abstract issues. Be sure that there is a specific dispute and that each disputant has a story to tell. For example, if students want to mediate or negotiate “homelessness,” each student should play the role of a specific stakeholder with positions and interests that they can

research. One example is provided in Tent City 11.1D(3). If students choose to negotiate or mediate a relationship problem, they should identify a specific dispute with that person and be able to explain the role that they want to play and the role that they want their counterpart to play. For example, a student may want to play herself and prepare a classmate to role-play the part of her boss or mother, or vice versa. Examples of relationship disputes are provided in 11.1D(1) and 11.1D(2).

Tip 2: Ask an AI program for help creating a role-play.

11.2. Assign Roles

After selecting the role-play, assign roles or allow students to choose roles.

NEGOTIATION ROLE-PLAYS

You may assign two parties or two attorneys on behalf of the parties who aren't present, or parties and attorneys who are all present. Or one party could have an attorney while the other side is self-represented. You can always allow two students to be parties on the same side. You can also assign observers.

MEDIATION ROLE-PLAYS

In addition to the parties and attorneys as described above, assign one or two mediators and, if you wish, an observer.

FOR BOTH NEGOTIATION AND MEDIATION ROLE-PLAYS

Encourage law students and attorneys to play parties at least once so that they can experience the process from their clients' perspectives.

Observers: You can assign observers who will provide detailed feedback, orally and/or in writing. Observers should prepare by reading the Confidential Fact Sheets for both parties and by reviewing one of the rubrics provided in 11.7. You can ask observers to focus on any points you wish, such as conflict styles, reframing, or body language. Point out that feedback should start with positive comments about what the participants did well, followed by an invitation to the participants to request feedback on topics of their choice. Observers should reflect on what they have learned from this exercise.

11.3. Explain the Logistics

WHEN WILL THE ROLE-PLAY TAKE PLACE?

For in-class role-plays: Announce the date of the role-play. You can have all the pairs/groups negotiate/mediate at the same time, or you can schedule one or more pairs/groups to perform the role-play for the class.

For out-of-class role-plays: Announce the completion date and the process (in person, phone, text, video conference) or allow students to choose one method or a combination of methods. Consider asking students to record some or all of their sessions (or to submit their texts/emails) so that you can review and assess their progress, including language issues that you may wish to address. See 11.7 for assessment tools.

HOW WILL THE ROLE-PLAY BE SCHEDULED?

For negotiations: Assign one party the task of contacting the other party to schedule or confirm the logistics you have assigned. Refer students to the Step-by-Step Procedures (MUM 3).

For mediations: Instruct the mediators to contact both parties to schedule or confirm the session.

For both negotiations and mediations: Consider assessing these contacts by reviewing text messages or emails, or by asking the parties for feedback.

11.4. Assign Pre-Session Activities

You may assign specific pre-session activities, such as the ones in 11.4A or 11.4B, or you may remind students to carefully prepare in any ways that make sense to them. After the session, students should consider how their pre-session preparation helped or hindered their negotiation or mediation.

11.4A. Planning and Preparing for Role-Plays

For all role-play preparation: Ask students how they think actors prepare for their roles and “get into character.” Students should follow a similar process to prepare for their role-plays. This includes identifying their character’s emotions, conflict style, interests, needs, and values and identifying what they have in common with their character. In other words, they need to empathize with their character and determine how their character would balance empathy for the other party with assertiveness (determination to get their own needs met).

For negotiation role-plays: Parties and attorneys should

- Review the step-by-step negotiation procedures in the Companion Site, MUM 3.
- Use a FENS form (Companion Site, MUM 5), the Negotiation Planning Checklist (Companion Site, Part 1, 4.01), the BEC Checklist (MUM 8), or other planning tools that they design or find.
- Practice responding to the question, “How do you see the situation?” Students could present their response in writing or orally in person or by video.
- “Get into character.” Empathize with the character. Stand in their shoes. Identify several things they have in common with the character or can personally relate to.
- Review Chapter 2 or at least the summary of the Ethical Rules (Companion Site, Part 1, 2.02). Make an outline or write a short paragraph about ethical issues that may arise during the role-play and explain how they will handle them.

- Think about what type of apology might help their character or client reach their goals during the session. Ask students to choose an apology type from Chapter 7 and construct the apology they would like to give and/or receive. During the session, they can choose to revise the apology or to not give it at all. They should discuss their decisions and the results during debriefing.
- Review the BEC Checklist (MUM 8) and have it accessible during the role-play.
- Use peer review: Parties playing the same role can discuss their planning documents and present their responses to each other and request feedback about what information to include, highlight, or ignore.

You could assess the above activities, forms, checklists, and responses for content and/or language skills.

For mediation role-plays: Parties and attorneys should prepare by using the same steps as described above for negotiation role-plays.

Mediators should:

- Practice conducting introductions: they can refer to the Mediation Script (Chapter 10, pp. 262–263). This can be done in groups with other students who are serving as mediators in the role-play or with students who will be playing parties/attorneys.
- Present opening remarks to you or to peers who are also serving as mediators in the role-play. Each student should be able to deliver opening remarks based on an outline they create for themselves from the Mediation Script (Chapter 10, pp. 263–270) or from the Mediation Process Summary (MUM 9). This is an excellent activity for assessing students' ability to

understand and summarize the readings and to make an oral presentation from an outline. Students may film or record their opening remarks for assessment, self- assessment, or feedback from classmates. You can review and assess their presentations for content, language, and delivery in person or by videos that they send you.

- Practice with Active Listening Script 4 (MUM 4).
- Review the Sample Questions for Negotiators and Mediators (MUM 6).
- Review the four types of apologies (Chapter 7) to consider facilitating during the role-play.
- Review the BEC Checklist (MUM 8).
- For in-person sessions, decide how they will arrange the chairs, take notes, and/or use a blackboard or flipchart for brainstorming. For online sessions, mediators need to know how to use breakout rooms, gallery and speaker views, whiteboard features, document sharing, etc. This introduction to ODR may be helpful:
https://www.youtube.com/watch?v=i2hRCqfbb_g&ab_channel=ABASectionofDisputeResolution.
- Be able to access these materials during the mediation:
 - a. Mediation Process Summary (Companion Site 9.01)
 - b. Sample Questions for Mediators (MUM 6)
 - c. Active Listening Script 4 (MUM 4)
 - d. BEC Checklist (MUM 8)

11.4B. Authentic Pre-Mediation Activities for Mediators and Parties

1. MEDIATION BRIEFS

Some mediators ask the parties for a short, written description of the dispute before the mediation session. The brief may be confidential, for the mediator only, or shared with the other party. It's easy to find samples online. Topics include:

- a. Name of the case, participants names and roles (e.g., attorney, plaintiff, defendant), contact information.
- b. Key dates: Mediation session, trial, hearings. Students may skip this section or write *TBD* (to be determined) or *Pending*.
- c. Key facts (from the party's point of view).
- d. Party's goals for mediation.
- e. Previous settlement efforts, if any.
- f. Challenges/obstacles to resolving the case in mediation.

You can use mediation briefs as writing assignments and assessment tools to be submitted to you.

2. PHONE CALLS/VIDEO CONFERENCES/MEETINGS

Some mediators contact the attorneys or self-represented parties before the session to obtain the information described above and/or to take care of some Part 1 tasks (Chapter 10, pp. 262–270). Mediators may wish to “meet and greet,” discuss logistics (location, time, parking, ODR issues), or explain the mediation process, take care of the confidentiality agreement, and ask if there are any questions. You can save time during in-class role-plays by having the mediators

cover these points before the mediation begins, in person or online, they could record these communications for assessment. In this case, mediators could start the mediation by saying something like, “As you know, we have already discussed the mediation process, ground rules, and confidentiality, so we can get started with Part 2 unless anyone has a question or something they’d like to say.”

11.5. Conduct the Role-Play

In-class role-plays: To deal with absences or students who are unprepared or reluctant to participate, assign two people to work as partners on the same side, or as silent attorneys or observers who have tasks, such as completing a FENS form (MUM 5) or assessment tool (11.7a, b, or c). For mediations, you can add a third mediator.

Circulate and assess. Consider using or modifying one of the assessment tools (11.7 a, b, or c). It's challenging to assess several groups at once, but you can pick up a lot by spending a few minutes with each group several times during the session. Before walking around with a clipboard and pen, I explain that I'm taking notes of what everyone is doing well so that I can remember whom to praise for what.

Out-of-class or online role-plays: Ask students to record some or all of their sessions for review and assessment after they complete the role-play.

Both in and out of class role-plays: You can use the assessment tools on your own and/or you can provide them to students for self-assessment.

Settlement agreements: Assign parties or lawyers the task of writing their settlement agreements or writing a statement explaining why they did not reach an agreement. All participants should sign either document and submit it to you for assessment. You could also add a peer review activity before students submit their agreement to you (MUM 9).

POST-MEDIATION ACTIVITIES

When mediation sessions end without agreements, the parties and the mediator often agree to schedule follow-up sessions to keep trying. During classroom role-plays, the option to continue the mediation after a session ends can relieve pressure on student mediators and parties, especially when sessions are timed to meet the realities of the classroom instead of the dispute. When students aren't rushing to beat the clock, they can experience higher-quality processes and outcomes. On the other hand, time pressure can inspire parties to get off the fence and make a decision.

You can invite mediators to contact the parties for follow-up discussions in any format they wish—text, phone calls, video conferences, in-person meetings—and, at a later time, the group can submit their agreement or a memo explaining why they still could not reach an agreement.

11.6. Assign Debriefing Questions

- Debriefing with partners/groups (MUM 10).
- Debriefing after Role-Play 1 (a competitive negotiation):
MUM 3, Section F

Debriefing can be informal discussion or freewriting, or more formal written reflections or analysis for a grade or assessment.

11.7. Assessment

This section provides options for assessing EDR activities. Grading rubrics for mediation role-plays are in 11.7(a) and 11.7(b). Suggestions for assessing negotiation role-plays are in 11.7(c). You may wish to assess the following for language and/or content:

1. **Written planning activities**, such as 4.01 Negotiation Planning Checklist (Companion Site, Part 1), the FENS form (MUM 5), or another planning checklist that you or your students find or create.
2. **Oral presentations**. As with any oral presentations, you can assess the following activities for content, communication skills, presentation skills, and language issues. And you can invite written or oral peer review, as well:
 - a. **Instruct role-play parties to prepare a one–two minute oral response to a question**, such as the ones below, which they can expect from their negotiation counterpart or mediator:

How do you see the situation? What do you want me to know about your situation? Why are you here today?

Parties may present their response by video, in office hours, or, after the role-play, in class, but students playing the opposite role should not listen to these presentations before the role-play.

- b. **Instruct mediators to prepare a two–three minute oral presentation** of their opening remarks. They can present a quick summary of complete remarks or a detailed presentation of one portion. They may submit their presentation by video, in office hours, or in class—if in class, all students can provide feedback.

3. **For out-of-class sessions, ask students to record** some or all of their sessions and to submit these along with any texts and emails they sent each other concerning the dispute. You can use the grading rubrics in this guide (11.7a, b, and c).
4. **For in-class sessions,** consider having a few pairs/groups perform all or part of their negotiation/mediation one at a time. This makes the grading rubrics a lot easier to use.
5. **Assess responses to written debriefing questions.** You can also assign a grading rubric for self-evaluation.
6. **For a simple negotiation,** consider asking students to complete the entire session by text or email and to submit all or part of it to you to evaluate for content, skills, and language.
7. **Collect written settlement agreements and** assess them as you would for any writing assignment. Ask students to write a cover letter explaining how they applied the BEC framework and other EDR approaches to their agreement and assess.
8. **For videos of out-of-class role-plays:** You can review these with each pair/group, using a grading rubric (11.7 a, b, or c) to guide the discussion. Or you can review the videos on your own. Consider listening for language issues that apply to the whole class for possible mini-lessons.
9. **Assign debriefing activities** (discussions and/or written assignments) (MUM 7 and MUM 10).

MATERIALS FOR 11.1: SELECT OR CREATE ROLE-PLAYS

11.1A. Spice Explosion: Role-Play for ESP Students

This role-play can be done as either a negotiation or a mediation. Each role can be play by any gender, and negotiators can work in teams of two on each side.

Assign roles, either Alex 11.1A(1) or Jordan 11.1A(2), and instruct students to access only their role; they can learn all about their counterpart during and after their session.

11.1A(1). Spice Explosion: Confidential Fact Sheet for ALEX

You live in Blankville, a small city in the United States. You moved there from your home country (or from any country or culture you choose) last year to study English and get an MBA (Master of Business Administration) from the prestigious Blankville State University (BSU). This was your family's idea about what you should do with your life. You would prefer to study environmental science and work on climate change, or even better, study some kind of art, organic farming, or landscaping. You have many interests, but business is not one of them. You hope to find a way to please both your family and yourself.

Your parents own a small business in your home country. They are not wealthy, so they had to find a creative way to pay for your studies in the United States. They borrowed a million dollars from various relatives to buy a beautiful 25-unit apartment building near BSU for you to manage. This has given you a safe place to live for free along with experience running a business. It's your responsibility to select the tenants, collect their rent, keep the building in good shape, respond to any problems, and pay the bills and taxes. After you graduate, your parents will sell the building and use the profit to repay your relatives, help you start your own business, and expand their own business. It's very important to do a good job so that your parents can sell the building for the highest possible price.

Fortunately, you have done a very good job: You rented the other 24 apartments to excellent tenants who pay their \$2,000 monthly rent on time and take good care of the property. You pay all the bills (utilities, taxes, insurance, cleaning, repairs, etc.) from the rent and send the profit to your parents every month, and they send you an allowance to cover your daily needs. Your parents set up a special bank account with \$50,000 that you can use for improvements or emergencies, but you haven't used any of that money.

Your parents also gave you the authority to decide what to do with the land behind the building. This land was included in the price they paid for the building, so they own it. You've been thinking about two options: constructing a parking lot for 30 cars or creating a beautiful park with an organic vegetable garden, trees, flowers, art, and sculpture. The parking lot makes more sense because right now your tenants have to find street parking, and a parking lot would benefit them and increase the value of the property. But you'd actually enjoy creating the park and vegetable garden, and you know that your tenants would enjoy using it. However, each project would cost about \$30,000, and you want to keep at least \$25,000 in the special account for emergencies, so the land is still sitting there empty.

But you have a much bigger problem to solve. When your parents bought the building, your neighbor on the west was the Blankville Café. This small, neighborhood diner was owned by a sweet elderly couple. You and your tenants were regular customers and were always warmly welcomed there. The café was only open for breakfast and lunch and the customers were friendly, quiet, and respectful of your property. Like you, most customers walked or biked to the café, so they didn't take up parking spaces for your tenants. But six months ago, the owners closed the café, and new owners have opened a new restaurant in its place. And this new restaurant, the Spice Explosion, is a disaster!

Spice Explosion is open from 5:30 p.m. until 2:00 a.m. every night. It blasts loud foreign music that whole time. Customers start lining up outside at 5:00 p.m., and the line stretches to the front of your building. The restaurant isn't big enough for all of its customers, so there's always a long line of people outside your building, and waiters in strange costumes come out to keep them happy with drinks, snacks, music, and dancing. The customers make a lot of noise, leave trash on your property, and take up all the parking spaces on the streets near your building. And the restaurant has a huge sign on its roof that flashes its name, "Spice Explosion" letter by letter, in big, bright red explosions of light until 2:00 a.m. These explosions flash into the windows of half of your tenants.

Of course, your tenants have been complaining to you about the noise, the trash, the flashing lights, and the lack of parking. About half of them are planning to move out, and you doubt you could rent their apartments to anyone else. You and your family cannot afford to lose this income! Your tenants said that they'd consider staying if you reduce their rent and pay their parking fees in a nearby parking garage, since they can no longer find places to park on the street.

This is the kind of problem that your parents expect you to solve, so you told your tenants that you will pay their parking fees for at least one month and that you will solve the other problems as soon as possible. You begged them to stay, and no one has moved out yet. You are thinking about using the emergency \$50,000 in these ways:

- Installing black-out curtains for the 12 tenants whose windows face the restaurant's flashing lights. This would cost about \$5,000 total, and you could get that done in a few days.
- Build a fence in front of your building to keep the Spice Explosion customers off your property. This would cost about \$10,000, and you could get that done in about a week.
- Replace all the windows in the building with soundproof glass for about \$20,000 total. This would only take about a week, but you're not sure this would reduce the noise enough to solve the problem.
- Continue paying your tenants' parking fees. This costs \$2,000 a month, and you've already paid it for this month. But this is not a wise use of the emergency bank account. It would be "money down the drain."
- Build a 30-car parking lot for your tenants on the land behind the building. This would cost about \$30,000 and could be completed within a month. There would still be room for a small park and organic vegetable garden, but this would cost about \$25,000 to create.

- Give all 24 tenants a \$1,000 rent rebate for last month, for \$24,000. You'd have to use the special account because your parents would notice a reduction in their monthly profits if you took it out of the rent. But this is more "money down the drain" unless it prevents your tenants from moving out.
- Hire a lawyer to try to shut down the Spice Explosion or force it to solve all the problems it is causing you. That would probably cost at least \$10,000, and there's no way to know if this would work.

Additionally, you want to compensate your tenants for the harms they've suffered and show your appreciation to them for staying in the building. If the Blankville Café were still there, you'd buy them all gift certificates for a few free breakfasts there, but that's not possible now.

One thing that is not on your list of options is talking to the Spice Explosion owners. You've never met them, but you know that they are not nice people. They invaded your neighborhood, did not introduce themselves to you, and don't care about the harm they are causing. They may not even speak English, but even if they do, asking them to solve the problems could make them as angry as their flashing red lights. This is not an option you will pursue.

Before you could decide what to do, your problems got even worse: Last week, you received a letter from Blankville's Building Department stating that the Spice Explosion restaurant wants to expand so that it can serve even more customers!

The letter asked you to reply with your opinion, and you immediately delivered this letter to the Building Department:

I strongly object to this proposed expansion! The Spice Explosion is a nuisance! It has caused many problems in the neighborhood, lowered the market value of my building, and has made it impossible for me to run my business. I want the city to close down this restaurant, but if it stays open, I certainly object to any expansion!

A Building Department official told you that the city requires business owners to try to negotiate a resolution before it makes its decision. If the business owners would prefer to meet with a mediator, the city will provide one at no cost. However, if you can't work out an agreement, the city will make its decision after a public hearing. There's no way to predict the outcome, but if the restaurant expands and serves more customers, the city will benefit from increased property and sales taxes. And the city official showed you a magazine that listed the Spice Explosion as one of the top five restaurants in Blankville, along with a full-page color photo of its famous flashing sign on the roof. And he whispered these words in your ear: "Spice Explosion is the mayor's favorite restaurant."

Now you have no choice but to meet with the restaurant owners. You told the official that you'd agree to negotiate or mediate. Your goal is to convince the Spice Explosion's owner to move to another location or to solve and pay for each and every problem they have caused you and your tenants. If you can't reach an agreement, and if the city approves the expansion, you will hire a lawyer and take the Spice Explosion and the city to court, where you will ask the judge to make them pay for all your losses. However, that option would probably cost the entire \$50,000 of the emergency fund and it might not even work.

The Spice Explosion owner will contact you to schedule the negotiation or mediation with the Spice Explosion owner. Start preparing now!

11.1A(2). Spice Explosion: Confidential Fact Sheet for JORDAN

Last year, you and your family moved to Blankville, a small city in the United States, from your home country (you can choose to be from any country or culture you wish). You moved there so that your son, Mike, could go to college at the prestigious Blankville State University (BSU). Mike is studying computer science and business.

You and your spouse (husband or wife) owned a restaurant in your home country—a famous, award-winning restaurant, known for its exciting atmosphere and authentic dishes from old family recipes. That’s the only business you know, and fortunately your market research showed that it would be popular in Blankville with people from your home country who live in nearby towns as well as with college students, so you decided to start the same type of restaurant. You were lucky to find a small café that was for sale at a good price, so you borrowed the money from a bank and from relatives, bought the building, and began transforming it. You decided to translate the original restaurant’s name into English: “Spice Explosion.”

Mike offered to make the same flashing signs that were installed on the roof of your restaurant back home. He’s a talented artist and was able to recreate the firecrackers and explosions that spell out “Spice Explosion” letter by letter in bright red flashing lights in English and your native language. He installed these on the roof, slightly facing an apartment building to the east, but you told him to change the direction to the west so that they’d be more visible from the main street and attract more customers. This would only take an hour and Mike promised to do this “soon.”

It was very expensive to buy and transform the restaurant. To save money, you, your spouse, and Mike did most of the physical labor yourselves. Plus, you had to pay for many city permits and wait for many weeks to have the permits approved before you could complete

some of the work, which caused delays, headaches, and unexpected extra costs. But you and your family were strongly motivated to create a prosperous life in the United States, so you persevered. You put your blood, sweat, and tears into this building, and it was all worth it: Although you've only been open for six months, a magazine just named Spice Explosion one of the top five restaurants in Blankville and included a full-page color photo showing the flashing signs! Customers increased by 20% after that article was published.

You are especially proud that customers from your home country have told you that being in your restaurant is like taking a mini vacation back home, thanks to the authentic atmosphere, food, drinks, decorations, music, and costumes, which your mother designed and sewed. Customers—including the mayor of Blankville—have also started family traditions of celebrating birthdays, anniversaries, and holidays at Spice Explosion—there's nowhere else like it!

But there are a few problems. First, your restaurant has become so successful that you don't have space for all of your customers. You're only open for dinner starting at 5:30 p.m. every night. Mike hasn't had time to set up a reservation system, so customers start lining up at 5:00 p.m. The long line makes you proud, but it's not comfortable for your customers, so you send waiters outside to serve free drinks and snacks and to sing and dance. You're too busy to go out there and see if this is working out, but your customers seem happy and you haven't heard about any problems. And, to make up for waiting in line, you allow customers to stay inside until 1 or 2 a.m. This is unusual for Blankville, but it's common back home and adds to the authenticity of your restaurant. But you need more space. And you need Mike to create a system for taking reservations.

Second, a related problem is that you don't have a parking lot, so your customers have to drive all over the neighborhood to find a place to park or pay for parking in a lot a few blocks away. A city official told you that you are required to provide a parking lot for

your customers but gave you a six-month extension on the deadline to do so. But even if you could afford to build one, where would you build it?

Third, you may have to stop serving your most popular “signature” dish. This dish uses Purple Rose eggplants and a secret spice that you’ve been importing from your hometown, but climate conditions back home from floods, draughts, and excessive cold and heat have ruined the eggplant and spice crops. Nobody grows these eggplants or spices in the United States, so you don’t know what to do except figure out how to grow them here. But where?

There’s an empty piece of land behind the apartment building next to your building. You found out that it is owned by the people who own that building. You’ve thought about asking them if you could rent or buy it to help solve your parking, eggplant, and spice problems. But you’ve never met them, their name is impossible to pronounce, and you have no idea how to talk to Americans about a business deal like this.

You have done some research about the options for using that land, assuming the owner would agree to sell or rent it to you. You could build a two-story parking lot there for about \$60,000; it would hold about 60 cars, and there would still be land left over for a garden to plant your eggplants and spices. It would cost about \$25,000 to create that garden. You only have \$50,000 saved up, and you’re willing to spend \$40,000 to solve these problems. If you need more, you’d have to borrow more money at a high interest rate, which you do not want to do.

But two weeks ago, you found out about the biggest problem of all: the Blankville Fire Department has ordered you to limit the number of customers inside the building to 25 at a time—effective immediately—or they will close your restaurant! You’ve been squeezing in 40, and that’s the minimum number you need to make a profit!

To prevent the city from shutting down your restaurant, you immediately sent in the city's Building Expansion Request Form, saying that you plan to add a second floor so that you can serve 50 people at the same time, which would satisfy the fire code. The city is required to notify your neighbors about this request and to notify you of any objections.

You were shocked to find out that someone named "Alex" objected!

You think that Alex must be prejudiced against your culture and just wants you to leave the neighborhood. But a Building Department official told you that the city won't approve your expansion unless Alex withdraws the objection. She said that the city requires business owners to try to negotiate a resolution before it makes its decision. If the business owners would prefer to meet with a mediator, the city will provide one at no cost. However, if you can't work out an agreement, the city will make its decision after a public hearing. There's no way to predict the outcome, but the official told you that the city council has never approved an expansion request that is opposed by a neighboring business.

She also told you about a special small business loan fund for successful businesses that experience sudden problems. You could receive a low-interest loan for up to \$150,000—if Alex withdraws the objection. That amount is not enough to solve all your problems, but it would cover some of the costs for the building expansion, and to buy or rent the land next door for a parking lot or garden, assuming that the owner is agreeable.

But your first step is to get Alex to withdraw the objection. Contact Alex to schedule your negotiation or mediation, and then start preparing for it.

11.1D. Scenarios for ADR Role-Plays

11.1D(1). Business or Music? (Dispute between a parent and an adult child)

11.1D(2). What Should We Do about Mom? (Dispute between siblings)

11.1D(3). Tent City (Dispute among homeless people, community volunteers, county residents and the county)

11.1D(1). Business or Music? (dispute between a parent and an adult child)

FACTS: A parent (father or mother) has spent their whole life working at hard, unfulfilling jobs to save up the money to send their child (son or daughter) to a US university to study business administration so that the child, now an international student at a US university, could return home to a secure job with a big company. However, the student's lifelong passion has been music; he/she has no interest in business and has registered as a music major.

The student wants a secure future, but also a happy one, and believes that a music major will provide both security and fulfillment. The parent believes that fulfillment comes from carrying out one's financial and filial duties to the family and has threatened to stop paying the university fees and force the student to return home in the middle of their sophomore year. The parent is making a special—and very expensive—trip to the US university this weekend to discuss the matter and reach a final decision.

11.1D(2). What Should We Do About Mom? (dispute between siblings)

FACTS: Two adult siblings (brothers, sisters, or a brother and a sister) disagree about the best care for their 90-year-old mother. She lives alone in her own home but is starting to have memory problems and doesn't always seem to understand what's going on around her. She needs a wheelchair to get around the house, and she has a heart condition. The siblings live in other states with their own families but visit their mother at least once a month and speak with her daily.

Sibling A insists that it's time for their mother to move into a nursing home near that sibling's home. Sibling B insists that it would be better to keep their mother in her own home, in the community where she's lived her whole life, with round-the-clock caregivers. The costs are about the same to keep her at home with excellent caregivers or in an excellent nursing home. Neither sibling believes they have the space or ability to care for their mother in their own homes.

The mother wants to stay where she is in her own home—with occasional caregivers, certainly not 24/7. She doesn't want strangers in her house all the time and thinks she only needs someone to drive her to the doctor, the grocery store, and her hairdresser, and to stop by once a week to clean the house and prepare some food for the week. She says that she'd rather die than spend her final years in a nursing home or at home with strangers.

Sibling A says that if their mother refuses to move to a nursing home, it's time to hire lawyers and get a conservatorship to force her to do so, for her own good. Sibling B strongly disagrees and would hire a lawyer to oppose a conservatorship. The siblings are meeting this weekend to discuss the matter and reach a decision. They may or may not include their mother in the discussions. And they may agree on outcomes other than the ones described above. All options are on the table.

11.1D(3). Tent City (dispute among unhoused/homeless people, community volunteers, county residents and a county)

This dispute is an opportunity for a multi-party mediation with four or more parties, but it can also be done as a negotiation with two or more of the parties described below. Students are welcome to create names for the community group and any other group or person in this scenario. They are also welcome to research the issues about unhoused people in their local communities or elsewhere and to base their roles on people and issues they learn about during their research. Note that “homeless” is the traditional term for people who are experiencing a lack of housing, but many people prefer the term “unhoused.”

FACTS: Two years ago, many unhoused people in Blankville County began setting up tents and living in Blankville County Park. This “Tent City” has been expanding, and as a result, county residents, including families and senior citizens, have stopped using the park’s playgrounds, soccer and baseball fields, bike paths, and senior citizen center. A community group brings food and water to Tent City every morning, afternoon, and evening. County residents want the community group to stop feeding the homeless people. And they want the county to move the homeless people out of the park and preferably out of the county. At a recent County Board of Supervisors (the county government) meeting, county residents asked park officials to lock the bathrooms to try to force the homeless people to move out, but that did not work; in fact, it made matters much worse.

State law requires the county to provide housing and social services to unhoused people, but the county does not do so. It does not have a homeless shelter or affordable housing. The County Board of Supervisors will discuss these matters and make a decision about what to do about Tent City at its next public meeting. It has asked the parties, or some of the parties, to negotiate or mediate an agreement before that meeting and to present it then. If they can’t reach an agreement, the County Board of Supervisors will make a decision that none of the parties will like.

PARTIES:

Community group: This is an interfaith group that includes people of many different religions and people who do not practice any religion. However, they are united in their belief that they have a religious duty to care for their less fortunate neighbors and that feeding the homeless is a protected constitutional right under the First Amendment (freedom to practice their religion, freedom of speech, freedom to assemble). They all live and work in Blankville County.

County residents: This group includes people who live near the park, own businesses near the park, or want to use and enjoy the park. They may be parents of young children and teens, soccer coaches, senior citizens, or adults who use the park for recreation as individuals or groups. They believe that the homeless people are violating state “nuisance” laws (violations of health and safety laws that make it impossible for taxpayers like them to use the park that they are paying for). Nuisance violations include public urination; filth and garbage; loud, disorderly conduct; and illegal drug sales. They want the community group to stop bringing food because it encourages more homeless people to set up tents, live there permanently, and cause more nuisances, all of which harms their businesses and lowers the value of their homes. They want the County Board of Supervisors to order the Sheriff’s Department to arrest the unhoused people who have set up tents or move them out in some other way.

Unhoused/Homeless people: The homeless people who live in the park may include a veteran with a physical disability due to his service in a war; a teen-aged mother of two young children who has no family, friends, or work; a middle-aged man or woman who has a job but doesn’t earn enough to keep an apartment; teens who have run away from home; and anyone else who can’t afford to rent a place to live or who has no friends or relatives to stay with.

They have created a community—almost like a family—in Tent City, where they take care of each other—and their dogs, which many homeless people keep for companionship and security. They have organized committees to try to keep the park as clean and safe as possible and to resolve conflicts among themselves and with neighbors and nearby businesses.

They will not agree to stay in a homeless shelter because of bad experiences they've had with shelters in the past (crime, strict, arbitrary rules, and nowhere to stay during the day no matter the weather). Also, shelters do not allow male and female couples to stay together and do not allow dogs. Tent City residents would gladly move to apartments, but they don't have the money or skills to do so. They don't want to cause any problems for the people who want to use the park, but the county has locked the bathrooms and does not provide any garbage collection, showers, or security.

The County: The county representative is the president of the County Board of Supervisors. The county could pay for services at the park (bathrooms, garbage collection, security), but this would anger the county residents because it could cause Tent City to become a permanent establishment in the park. However, these services could make it possible for residents to use the park again even if Tent City remains.

The county is glad that the community group provides food because it believes this may relieve it of some of its duties to take care of its homeless residents, but this could encourage county residents to sue the county for not enforcing the nuisance laws. But if the county orders the community group to stop serving food, that group will sue the county for violating its First Amendment rights.

The county does not want to order the Sheriff's Department to arrest the homeless people and put them in jail because it's not effective (they'll be back in the park the next day) and because public interest groups will sue it for violating the unhoused people's civil rights and for not meeting its legal obligations to provide housing and social services.

11.7(a). Grading Rubric for Mediation Role-Plays— General

Student mediator:

Role-Play subject:

Points:

0 = Did not complete a key task

1 = Satisfactory

2= Good

3= Excellent

Examples of skillful conduct:

Skills to work on:

Language points:

11.7(b). Grading Rubric for Mediation Role-Plays— Detailed

Student: _____ Role: _____ Date: _____ Group #: _____

Points:

1 = poor

2 = below adequate

3 = adequate

4 = good

5 = outstanding

PART 1: MEDIATOR'S OPENING REMARKS

A. Mediator's Welcome

___ Introductions: professional and appropriate (culture, age, gender)

___ Incorporates new language points

___ terms ___ idioms ___ verb tenses

___ modals ___ question formation

___ paraphrasing ___ clarifications ___ other:

B. Mediator's Opening Statement

___ Explains mediation process ___ Explains mediator's role

___ Appropriate demeanor (optimistic w/o over-promising, culture, rapport)

___ Manages time and transition to Phase 1

___ Incorporates new language points

___ terms ___ idioms ___ verb tenses

___ modals ___ question formation

___ paraphrasing ___ clarifications ___ other:

PART 2: ACTIVE LISTENING DURING PARTIES' PRESENTATIONS

- ___ Active Listening for ___ facts ___ emotions ___ needs
- ___ Closed questions serve a valuable purpose
- ___ Uses “paraphrase and check” to clarify, confirm, let parties correct errors
- ___ Maintains neutrality while providing reality checks
- ___ Balances and manages time
- ___ Appropriate use of caucus (can explain choices to use/not use)
- ___ Summaries: reframes parties' statements into neutral language
- ___ Transition to Phase 2
- ___ Incorporates new language points
- ___ terms ___ idioms ___ verb tenses ___ modals ___ question formation
- ___ paraphrasing ___ clarifications

PART 3: GUIDING THE PARTIES THROUGH THE BEC PROCESS

- ___ Helps parties create an agenda
- ___ Encourages parties to propose creative ideas without evaluating
- ___ Encourages parties to create win-win solutions
- ___ Uses reality-checking questions to help parties evaluate and select best options
- ___ Applies the BEC Checklist to help parties review their agreements
- ___ Concludes the session Throughout Part 3
- ___ Maintains neutrality and appropriate demeanor
- ___ Balances and manages time for both parties
- ___ Uses active listening
- ___ Adjusts communication style for each part of the BEC process
- ___ Incorporates new language points
 - ___ terms ___ idioms ___ verb tenses
 - ___ modals ___ question formation
 - ___ paraphrasing ___ clarifications

Examples of skillful conduct/communication:

Examples of skills/communication to work on:

Table 11.1. Grading Rubric

Tasks	Opening	Part 1	Part 2	Part 3	Closing
a. Manages the mediation process					
b. Stays within the mediator's role					
c. Uses appropriate tone, demeanor					
d. Uses active listening skills					
e. Communicates clearly					
f. Communicates accurately (vocabulary, idioms, grammar)					

11.7(c). Assessing Negotiation Role-Plays

This section lists skills that you may wish to assess for ADR and/or language purposes.

NEGOTIATION PLANNING

Negotiation Planning Checklist (Companion Site 4.04)

FENS form (MUM 5)

COMMUNICATION SKILLS

Civil-Assertive Communication Style (MUM 1)

Saying and Hearing “No” (MUM 2)

Active listening (Chapter 5)

BEC (Brainstorming, Evaluation, Concluding) (Chapter 8)

NEGOTIATION PROCEDURES (COMPANION SITE, MUM 3)

A. Schedule the negotiation

B. Prepare for the negotiation

C. Start the negotiation

1. Introductions
2. Pleasantries: Create a Positive Environment
3. Small Talk: Create Rapport
4. Transitioning to the Subject of the Negotiation
5. Information Sharing Q&A (Questions and Answers)

D. Conduct the Negotiation.

Procedures for competitive negotiations (MUM 3):

1. Opening Offer or Request for Opening Offer
2. Counteroffer
3. Back-and-Forth Communications and Concessions
4. Parties Consider Their BATNAs
5. Brainstorm Solutions

Tools for collaborative negotiations (Chapter 5)

1. Go above and below the line.
2. Balance empathy and assertiveness
3. Use active listening for facts and positions
4. Use emotional literacy
5. Explore needs and values
6. Use active listening to explore interests, needs, and values
7. Use reframing
8. Use a FENS form
9. Use objective criteria
10. Brainstorm solutions

- E. Conclude the Negotiation:** Students may end the negotiation with or without an agreement or with a partial agreement, but in all cases, they should be able to explain why their outcome was the best option and should leave “on good terms.” (Use the BEC Checklist, MUM 8.) Consider using and assessing the Peer Review activity for settlement agreements (MUM 9).

- F. Debriefing/Reflections:** For sample questions, see MUM 7.

CHAPTER 12

Additional EDR Activities

Where are the Companion Site materials described in this chapter?

Detailed Table of Contents for Part 3? p. iv

Items with decimal points (12.01)? Companion Site, Part 1

MUMs? Companion Site, Part 2

Materials “in this section”? Companion Site, Part 3, Ch. 12
(where you are now)

Materials with a number and capital letter (5A)? Companion Site, Part 3; the number tells you the chapter number.

12.1. “Go-To” Activities

This section provides five “go-to” ideas for courses, units, or occasional activities. Except for the first one, they can all be assigned many times for a variety of purposes.

1. The Orange Exercise (5A) works well as a Day 1 or Week 1 icebreaker and introduction to EDR for both ESL and ESP students. It is also an excellent introduction to brainstorming, evaluating, and selecting options in small groups for any purpose.
2. Conflict Styles Chart activity: Apply the Chart.
3. FENS Form Activities: 5.3
4. Active Listening Exercises: 5.4, pp. 143–153 in the textbook and MUM 4.

5. Looking at a conflict from several perspectives.
 - a. Students choose a conflict from their own experience, current events, history, movies, or social media, etc. Avoid abstract conflicts on issues (immigration, climate change, education); focus instead on specific conflicts between two people with stories to tell.
 - b. Students describe the conflict from the perspective of each party and as a mediator, who describes both perspectives neutrally. Each student can describe all three perspectives or, in groups of three, each student can present one perspective, using “I” instead of “he” or “she.”
 - c. Optional: Provide a mini-lesson on the different rhetorical styles students may draw on to persuade, inform, or motivate. Examples:
logos, pathos, ethos; narration, description, exposition, compare/contrast.
 - d. Students present these perspectives in writing or in oral presentations.
 - e. Students reflect on what they have learned from this assignment with a partner, in groups or in writing.

12.2. Idiom Practice

This activity focuses on “table” idioms that are commonly used in negotiation and mediation. You could create similar activities with “line” and “pie.”

TABLE IDIOMS

Read the mediator’s Opening Remarks below. This mediator has used too many idioms. Paraphrase each idiom so that the mediator can present the information without using any idioms at all.

1. Welcome to mediation. I’m glad you’ve all *come to the table* today.
2. Everyone here has something unique to *bring to the table*.
3. In mediation, you can *bring* any issue *to the table* even if it wouldn’t be relevant in court.
4. If you’re not sure about raising something, you can *put it on the table* and we can either discuss it or *table it*.
5. Thanks to confidentiality, you can *put all your cards on the table* because nothing you say is admissible in court.
6. If you feel that someone is *turning the tables* on you or that something’s happening *under the table*, ask for a time out; we’ll discuss it and then hope to get everyone back *to the table*.

12.3. Working with Quotations

You can use the following quotations in these or other ways:

- Partner or group discussions
- Formal or informal writing or oral presentations
- Interviews (students ask each other or other people what they think about these quotes)
- Paraphrasing and quoting practice

Students can also

- Practice supporting a quote with specific examples
 - Research the people who are quoted
 - Research similar or different quotes about dispute resolution from students' countries and cultures
1. *I destroy my enemy when I make the enemy my friend.* — Abraham Lincoln
 2. Peace is not the absence of conflict; it is the ability to handle conflict by peaceful means.—Ronald Reagan
 3. *Can we all get along?* —Rodney King
 4. *Let him who desires peace prepare for war.* —Flavius V. Renatus (375 AD)
 5. *The weak can never forgive. Forgiveness is the attribute of the strong.* —Gandhi
 6. *Always forgive your enemies; nothing annoys them so much.* —Oscar Wilde
 7. *If you want to make peace with your enemy, you have to work with your enemy. Then he becomes your partner.* — Nelson Mandela

8. *There's been a quantum leap technologically in our age, but unless there's another quantum leap in human relations, unless we learn to live in a new way towards one another, there will be a catastrophe. —Albert Einstein*
9. *When you have a conflict, that means that there are truths that have to be addressed on each side of the conflict. And when you have a conflict, then it's an educational process to try to resolve the conflict. And to resolve that, you have to get people on both sides of the conflict involved so that they can dialogue. —Dolores Huerta*
10. *In the long course of history, having people who understand your thought is much greater security than another submarine. —J. William Fullbright*

Quotes from Mary Parker Follett:

11. *That is always our problem, not how to get control of people, but how all together we can get control of a situation.*
12. *Conflict is resolved not through compromise, but through invention.*
13. *All polishing is done by friction.*
14. *It is possible to conceive conflict as not necessarily a wasteful outbreak of incompatibilities, but a normal process by which socially valuable differences register themselves for the enrichment of all concerned.*
15. *We have thought of peace as passive and war as the active way of living. The opposite is true. War is not the most strenuous life. It is a kind of rest cure compared to the task of reconciling our differences....From War to Peace is not from the strenuous to the easy existence; it is from the futile to the effective, from the stagnant to the active, from the destructive to the creative way of life....The world will be regenerated by the people who rise above these passive ways and heroically seek, by whatever hardship, by whatever toil, the methods by which people can agree.*

12.4. Conducting Surveys

Students can create and carry out surveys on many of the ideas in the book and then present their findings orally or in writing. Consider the following sample question types and questions.

FIXED ALTERNATIVE

Have you studied negotiation? _____ Yes _____ No

What is your negotiation style?

*compete, collaborate, compromise, accommodate, avoid,
problem-solve, other.*

SCALE

How often do you negotiate?

Rarely _____ *Every day*

Do you agree or disagree with this statement: “It’s impossible for both parties in a negotiation to feel like they’ve won.”

Strongly agree | Agree | Don’t know | Disagree | Strongly disagree

OPEN-ENDED

What do you like about negotiating?

What do you dislike about negotiating?

How do you know if someone is a good negotiator?

12.5. Court Observations

Students can attend civil trials at the local courthouse. Every court hearing and trial should be interesting to legal English students, but small claims court may be the most accessible.

Students can research online when and where small claims cases are heard. If they arrive at a courtroom when court is “in session” (the judge is hearing a case), they should simply and quietly sit down in the audience or go to another courtroom.

If they arrive before court proceedings begin, and if the court clerk is not busy with court business, students could introduce themselves to the clerk and explain that they are international law students or lawyers who are studying US law and ADR. Depending on the clerk and how busy they are, they may be able to mention their presence to the judge, who may have a few minutes to talk with them. Or, the clerk may be able to direct students to court staff who can tell them about ADR options at the court.

You may wish to assign students the following questions for observations and reflections.

1. Choose one case that you observed. What was it about? What were the facts?
2. What were the parties' positions, emotions, interests, needs, values?
3. What conflict styles did you observe?
4. Why do you think the parties could not resolve their dispute through negotiation or mediation?
5. Did you observe these parties negotiating outside the courthouse or in the hallways outside the courtroom? What did you observe?
6. If you were the mediator for these parties, what would you ask them?
7. Do you think the parties made the right decision to go to trial instead of settling their case? Explain.
8. How did the hearing end? Did the judge make a ruling?
9. If you were the judge, how would you rule on this case? Why?
10. Does the court have a mediation program for the cases you observed?
11. If you could talk to the judge "in chambers" (the judge's office), what questions would you ask him/her?
12. What surprised you about this visit, or what was most interesting?
13. If you could suggest a few improvements to anything you observed at the courthouse, what would you suggest?
14. How was this experience similar to court experiences in your own country or other countries you know? How was it different?
15. How would you describe your court visit to people from your country or culture?

12.6. Advanced Reading Activities

After students have completed a chapter in the textbook, provide a reading on the same or similar topic from a book or journal written for US law or business students or professionals. Ask students to report on their understanding of words, sentences, paragraphs, and overall concepts and to discuss questions with each other or with you.

This activity works well as a jigsaw with three–four students in a group assigned to read portions of a book or chapter, summarize it for their partners, and collaborate to put it all together. Candidates for this activity include:

- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd. ed. (New York: Penguin, 2011)
- Charles B. Craver, *Effective Legal Negotiation and Settlement*, 7th. ed. (New Providence, NJ: LexisNexis, 2012)
- Articles from mediate.com and pon@law.harvard.edu

12.7. Prompts for Presentations and Writing

- The Companion Site materials for Chapter 1 (1.02 and 1.03) provide numerous ideas for research, presentations, writing, and projects on ADR.
- The warm-up questions in Chapter 2 (ethics) and Chapter 7 (apologies) in the textbook may lead to interesting ideas for research, interviews, essays, panel discussions, and presentations.
- The Companion Site materials for Chapter 6 (6.01) provide suggestions for researching applications of game theory to ADR.

Consider these additional ideas:

- Students choose a case or other dispute, or you assign one. Students must apply the conflict styles framework (Companion Site, Part 1, 3.02, and/or a dispute resolution process to the dispute (competitive negotiation, collaborative negotiation, mediation, trial), analyze the pros and cons of this approach, and then recommend the best approach for resolving the case or dispute. You could also require students to set up a role-play negotiation or mediation of this dispute with classmates or others and use evidence from the role-play to support their ideas.
- A variation on the above activity asks students to delve more deeply into one particular approach: Apply one of the chapters in the book, or one of the frameworks in a chapter (e.g., conflict styles, FENS, apology types) to the dispute or case of your choice. Describe the dispute. Describe the framework. Demonstrate how the framework helps us analyze and resolve the conflict. Include a counterargument to discuss how the framework may not be effective or how a different approach could be more effective.

- Assign the above activities as a graded group or panel presentation. Create some stress or pressure, such as giving students a limited amount of time—less than you ordinarily would—and/or adding a requirement that the presentation must include survey data based on a survey that group members create and use with at least ten survey respondents.

Ask students to keep a journal to reflect on their emotions, needs, and conflict and communication styles as they work with their group. Ask them to note what conflicts arise and how they and others resolve—or don't resolve—them. After the presentation, ask students to apply the framework or processes they described in their presentation to conflicts within their group—and to their own conduct within the group. Include this analysis as part of the grade.

CHAPTER 13

Sample Syllabi

This chapter presents sample syllabi and course descriptions for three types of courses:

- 13.1 30-hour negotiation and mediation course for general ESL purposes
- 13.2 30-hour ADR course (negotiation, mediation, and arbitration) for legal English and business English students, and
- 13.3 semester-long English for Dispute Resolution (EDR) course (negotiation, mediation, and ADR) for international LL.M. students.

THE 30-HOUR COURSES

Courses 1 and 2 are based on three-week Intensive English Programs IEPs that I created for UC Berkeley's Summer English Language Studies program. Course 1 has become a staple in that program, and my colleagues have created their own original versions and materials for it over many years.

CLASS LENGTH

Each class session was 2.5 hours, which is ideal for role-plays (preparation, language points, conducting the role-play, debriefing). For shorter class sessions, you can start role-plays in class and have students complete them out of class in person or in video conferences, or even by text or email. This mirrors the real world in which ADR processes often require more than one session. And it provides opportunities to record the sessions for feedback and assessment. After one in-class role-play, students could conduct future ones out of class from start to finish.

REQUIRED READING

Getting to Yes was required reading for both courses except when arbitration was included in the Legal English/Business course (Course 2) and we didn't have time for it. Although it is not possible to cover the whole book in a 30- hour course—unless it is the sole topic, which is an excellent idea for a course—it is certainly worthwhile to introduce students to the book, to guide them through the first few chapters, and to encourage them to continue reading it on their own. For more on using *Getting to Yes* in ESP courses.¹

WEEKLY SCHEDULES

There are two weekly schedules for Course 1. Schedule A is based solely on this book and guide. Schedule B includes *Getting to Yes*. If you are new to ADR, you may want to stick with Schedule A for your first course or two.

MATERIALS

The syllabi refer to the textbook book and this teaching guide, and Schedule B refers to *The Getting to Yes Guide for ESL Students and Professionals*. However, these courses predated these books and were therefore limited to course readers.

THE SEMESTER-LONG EDR COURSE

I created this course for this teaching guide. It is based on semester-long courses I have taught for LL.M. negotiation students and for students in various courses at UC Berkeley. This is a course I hope to teach and that I hope others will teach.

¹ Barrie J. Roberts, "Using *Getting to Yes* to Teach English, Negotiation, and Other 21st Century Skills," *Journal of Research Institute* 58 (2018): 77–93, <http://id.nii.ac.jp/1085/00002259/>

FINAL PROJECTS FOR ALL COURSES

All three courses end with “final projects.” Samples are provided below.

1. **Negotiation or mediation role-play:**

- a. Students create, prepare for, conduct, and debrief a negotiation or mediation role-play. Or
- b. Students prepare for, conduct, and debrief a role-play that you assign.

For both options, students must submit planning documents, a written agreement or statement explaining why there was no agreement, and written self-assessments/reflections. They may present their role-play in class or they may record an online or in-person session. For guidance on creating and selecting role-plays, see Chapter 11.

2. **Group presentations:**

In groups of four–five, students demonstrate how to apply course material to the dispute of their choice. In addition to submitting written outlines, references, and analyses, students must analyze how they and their group did or did not prevent or resolve conflicts while working together on this project. For guidance on this assignment, see Chapter 11.

3. **For LL.M. students:**

Students may propose a final project that promotes their individual interests in and goals for ADR. For topics, see the Companion Site, Part 1 1.02 and 1.03.

13.1. Sample Syllabus for ESL Students

Communication Skills for Conflict Resolution

Class Meetings: M, T, W, Th, 9:00–11:30 a.m.

Course Description

This two-unit 30-hour course is an intensive introduction to negotiation and mediation for international students with high-intermediate to advanced ESL skills. These “soft skills” are highly valued by employers and colleagues in any work setting that requires communication, teamwork, and leadership.

We will cover the same material presented in US law and business courses while focusing on the English and cultural skills required to negotiate with native speakers of English. This means that you will apply your developing negotiation and mediation skills to role-plays involving business, culture, law, international relations, the environment, and your personal experiences.

Instead of studying vocabulary, idioms, grammar, pronunciation, and listening comprehension in traditional ways, you will acquire the language and skills you need to accomplish your negotiation and mediation goals while you prepare for and participate in role-plays. As one former student described it, you will study English without studying English. As another student described it, this course is “two for the price of one”: you will become more naturally fluent in professional-level English while learning practical conflict resolution skills for any personal, academic, or professional purpose.

Grading Criteria

This course may be taken Pass/No Pass or for a letter grade.

- **25%:** Reading and writing assignments and quizzes
- **50%:** Participation in role-plays and class exercises
- **25%:** Final project (mediation or group presentation)

Attendance

Every class session includes collaborative work with classmates and experiential learning through activities and role-plays, so daily, punctual attendance is required.

Weekly Schedule “A”

Required Texts

- Barrie J. Roberts, *English for Dispute Resolution: Mastering Negotiation, Mediation, and Alternative Dispute Resolution (ADR) in English*. All reference to readings are to EDR.

The following schedule is tentative and subject to change:

Week 1

Monday, July 25

Introduction to the course and to conflict resolution. Activities (Arm Wrestle/Locked Horns). What is conflict? What is resolution? Conflict Styles. Prepare for the reading assignment.

Homework

- Read Chapter 3: Background reading. Follow-up questions.

Tuesday, July 26

Orange exercise. Conflict styles chart, idioms, and word forms. Introduction to competitive negotiation. Introduction to role-plays. Review the Negotiation Planning Checklist for Role-Play 1. Assign roles for Role-Play 1. Review the homework assignment.

Homework

- Read Chapter 4: Background reading
- Prepare for Role-Play 1: Read your role. Complete your Negotiation Planning Checklist for Role-Play 1.
- Read the Summary of Ethical Rules for Negotiation and Mediation Role-Plays

Wednesday, July 27

Competitive Negotiation: Conduct and debrief Role-Play 1. Discuss the Ethical Rules. Introduction to collaborative negotiation. Active Listening Script 1.

Homework

- Reflections on Role-Play 1.
- Read Chapter 5: Background Reading. Respond to selected post-reading questions.

Thursday, July 28

Discuss Chapter 5, collaborative negotiation. Active Listening Scripts 2 and 3. Intro to FENS forms. Modals. Polite interruptions. Preparation for Role-Play 2 and assign roles. Discuss final project/paper.

Homework

- Active listening practice; prepare one-minute oral report on this activity.
- Brainstorm and submit two–three ideas for your final project/paper.
- Prepare for Role-Play 2 (collaborative negotiation). Read your Confidential Fact Sheet. Complete a FENS form for both parties.
- Read Chapter 8 (Reaching Agreements).

Week 2

Monday, Aug. 1

Active Listening reports. Active Listening Script 4. Role-Play 2. Review Chapter 8 and the BEC Checklist. Quick introduction to mediation. Assign roles for tomorrow's Mediation Script.

Homework

- Finalize your FENS form and agreement for Role-Play 2.
- Reflections on Role-Play 2.
- Prepare for the Mediation Script. Pat and Lee: Read your Confidential Fact Sheets and prepare a FENS for both parties. Mediators: Review the Mediation Process Summary and the BEC Checklist.
- Sign up for office hours to discuss your final project.

Tuesday, Aug. 2

Mediation Script. Assign roles for tomorrow's mediation role-play.

Homework

- Reflections on today's mediation script.
- Prepare for Role-Play 3: Mediation.
- Read Chapter 9: Background Reading (Mediation).

Wednesday, Aug. 3

Active listening practice. Review Chapter 8 and Chapter 9. Role-play 3: Mediation. Debrief. Discuss ethical issues, reality-checks, cultural issues, language points. Assign roles for tomorrow's mediation role-play.

Homework

- FENS and reflections on today's role-play.
- Prepare for tomorrow's role-play.
- Work on final projects.

Thursday, Aug. 4

Guest speakers/role-play coaches. Mediator ethics. Role-play 4: Mediation. Debrief. Active listening practice and Q&A with guest mediators. Discuss Monday's quiz on mediation.

Homework

- FENS and reflections on today's role-play.
- Work on final projects.
- Thank you notes to guest speakers.

Week 3

Monday, Aug. 8

Active listening practice. Mediation quiz. Mediator ethics. Guest speakers/coaches: Mediators/ombuds/attorneys: careers in ADR; using ADR at work. Q&A. Active listening practice and reframing with guest coaches.

Homework

- Prepare for final projects.

Tuesday, Aug. 9

Final projects. Peer review and discussion.

Wednesday, Aug. 10

Final projects. Peer review and discussion.

Thursday, Aug. 11

Debrief final projects. Global ADR. Integrating ADR into your personal/professional worlds.

Weekly Schedule “B”

Required Texts

- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd ed. (2011). Hereafter *GTY*.
- Barrie J Roberts, *The Getting to Yes Guide for ESL Students and Professionals: Principled Negotiation for Non-Native Speakers of English* (2024) (available for rent online). Hereafter *GTY Guide*.
- Barrie J. Roberts, *English for Dispute Resolution: Mastering Negotiation, Mediation, and Alternative Dispute Resolution (ADR) in English*. Hereafter *EDR*.

The following schedule is tentative and subject to change:

Week 1

Monday, July 25

Introduction to the course, *GTY*, and to conflict resolution. Orange exercise. What is conflict? What is resolution? *GTY Guide* to the Introduction.

Homework

- *GTY* and *GTY Guide*: Introduction and After Reading activities.

Tuesday, July 26

Review *GTY* Introduction. Arm Wrestle activity. Conflict and communication styles: conflict styles chart, idioms, and word forms. Introduction to competitive bargaining and to role-plays. Assign roles for Role-Play 1. Prepare to read *GTY*, Chapter 1.

Homework

- Read *GTY*, Chapter 1. Respond to selected After Reading questions.
- Role-play 1: Read your role and prepare for tomorrow's competitive negotiation role-play. Complete your Negotiation Planning Checklist for Role-Play 1. Read the Summary of Ethical Rules for Negotiation and Mediation Role-Plays.

Wednesday, July 27

Competitive Negotiation: Conduct and debrief Role-Play 1. Discuss the ethical rules. Introduction to collaborative negotiation. Prepare for the reading assignments.

Homework

- Reflection on today's role-play.
- Read *GTY*, Chapter 3.
- Read *EDR*, Chapter 5: Background Reading. Respond to selected follow-up questions.

Thursday, July 28

Discuss readings. Intro to active listening and FENS forms. Modals. Polite interruptions. Preparation for *GTY* Chapter 4. Discuss final project/paper.

Homework

- *GTY*: Chapter 4: Respond to selected After Reading questions.
- Active listening practice; prepare one-minute oral report on this activity.

- Brainstorm and submit two–three ideas for your final project/paper.
- Prepare for Role-Play 2 (collaborative negotiation). Read your Confidential Fact Sheet. Complete a FENS form for both parties.

Week 2

Monday, Aug. 1

Quick active listening practice. Discuss *GTY* Chapter 4. Conduct Role-Play 2. Introduction to BEC for brainstorming, evaluating, and concluding. Debrief. Quick introduction to Mediation. Assign roles for tomorrow’s Mediation Script. Announce *GTY* quiz for Wednesday.

Homework

- *EDR* Chapter 9: Warm-up questions, Background Reading.
- Finalize your FENS and agreement for Role-Play 2.
- If you are playing party “Pat” or “Lee,” read your Confidential Fact Sheet. If you are playing a mediator, review the Mediation Process Summary and the BEC Checklist.
- Sign up for office hours to discuss your final project.

Tuesday, Aug. 2

Mediation Script and debrief. Assign roles for tomorrow’s mediation role-play.

Homework

- FENS and reflections on today's mediation script.
- Prepare for Role-Play 3: Mediation.

Wednesday, Aug. 3

Active listening practice. *GTY* Quiz. Role-play 3: Mediation. Debrief. Discuss ethical issues, reality-checks, cultural issues, language points. Assign roles for tomorrow's mediation role-play.

Homework

- FENS and reflections on today's role-play.
- Prepare for tomorrow's role-play.

Thursday, Aug. 4

Guest speakers/role-play coaches. Mediator ethics. Role-play 4: Mediation. Debrief. Active listening practice and Q&A with guest mediators.

Homework

- FENS and reflections on today's role-play.
- *GTY*: Review "Ten Questions People Ask about *GTY*." Select three questions. Summarize and respond.
- Work on final projects.
- Thank you notes to guest speakers.

Week 3

Monday, Aug. 8

GTY Quiz. Discuss GTY “Ten Questions” Guest speakers: Ombuds/Attorneys/Mediators/careers in ADR; using ADR at work. Active listening and reframing with guest speaker/coaches. Q&A.

Homework

- Prepare for final projects.

Tuesday, Aug. 9

Final projects. Peer review and discussion.

Wednesday, Aug. 10

Final projects. Peer review and discussion.

Thursday, Aug. 11

Debrief final projects. Global ADR. Integrating ADR into your personal/professional worlds.

13.2. Sample Syllabus for Legal English and Business English Students

Alternative Dispute Resolution (ADR) for Business, Law, and Other Professional Purposes: Intensive Practice in Negotiation, Mediation, and Arbitration

Class Meetings: M, T, W, Th, 2:00–4:30 p.m.

Course Description

This two-unit 30-hour course is an intensive introduction to the English communication skills needed to participate in Alternative Dispute Resolution (ADR) (negotiation, mediation, and arbitration) for professional purposes. Although the course includes an introduction to ADR theory and ethics, the focus is on interactive simulations (role-plays) in which students must work together to analyze, prevent, and resolve a variety of conflicts using new skills and strategies.

These simulations require students to develop a complex set of English skills (grammatical accuracy, speaking and listening, pronunciation, and new vocabulary and idioms) and cross-cultural and sociolinguistic skills (body language, formality, and tone). The course also includes an introduction to Online Dispute Resolution (ODR) and requires students to participate in simulations through videoconferences and other online methods.

NOTE: This course is designed for high-intermediate through advanced-level ESL students with a professional or academic interest in ADR. Students who are interested in conflict resolution for general communication purposes are encouraged to take the course called “Communication Skills for Conflict Resolution.”

Goals

By the end of the course, students will be able to

- explain the principles and strategies of the three main ADR processes
- participate in these processes with confidence using professional-level English and ADR terms of art.
- demonstrate specific skills to prevent and resolve conflicts in their personal and professional lives with people from a variety of cultures.
- participate in ADR courses with native speakers of English.

Required Texts

- Barrie J. Roberts, *English for Dispute Resolution: Mastering Negotiation, Mediation, and Alternative Dispute Resolution (ADR) in English (EDR)*

Recommended

- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd ed. (2011). Hereafter *GTY*.
- Barrie J Roberts, *The Getting to Yes Guide for ESL Students and Professionals: Principled Negotiation for Non-Native Speakers of English* (2024) (available for rent online). Hereafter *GTY Guide*.
- Natasha Costello and Louise Kulbicki, *Practical English Language Skills for Lawyers: Improving Your Legal English*.

Grading Criteria

- **20%:** Reading and writing assignments
- **40%:** Quantity and quality of participation in daily role-plays and class exercises
- **20%:** Final project (mediation or group presentation)
- **20%** Final exam

Weekly Schedule

Tentative & subject to change. All references are to *EDR*. Role-play preparation must be submitted on the dates assigned; other assignments may be submitted within two class days after the due date.

Week 1

Monday, July 29

Introduction to the course and to Alternative Dispute Resolution (ADR). Orange Exercise. Negotiating and mediating in the context of ADR. Warm-up questions for the reading assignments.

Homework

- Reflections on the Orange Exercise.
- Read Background Reading for Chapters 3 and 4. Review the Summary of Ethical Rules for Negotiation and Mediation Role-Plays.
- Prepare for Role-Play 1: Read your Confidential Fact Sheet and complete your Negotiation Planning Checklist.

Tuesday, July 30

Arm Wrestle/Locked Horns activity. Role-Play 1 and debrief. Ethical rules. Conflict styles chart, idioms, word forms, follow-up questions, and mini role-plays. Prepare for the reading assignment.

Homework

- Reflections on Role-Play 1.
- Reflections on conflict styles activities.
- Read Chapters 3 and 5.

Wednesday, July 31

Active listening scripts and FENS forms. Assign roles for Role-Play 2. Discuss final projects.

Homework

- Reflections on active listening activities.
- Prepare for Role-Play 2. Submit FENS.
- Read Ch. 8 (Reaching Agreements).
- Schedule office hour meeting to discuss your final project.

Thursday, Aug. 1

Role-Play 2. Apply the BEC process (Chapter 8) to Role-Play 2. Introduction to mediation. Assign roles for the Mediation Script. Assign partners and roles for Role-Play 3 (online negotiation).

Homework

- Reflections on Role-Play 2.
- Finalize FENS form and agreement for Role-Play 2.
- Read Chapter 9 (Mediation).
- Prepare for the Mediation Script: Pat and Lee, read your Confidential Fact Sheets. Mediators, review the Mediation Process Summary and the BEC Checklist.
- Schedule Role-Play 3, a collaborative negotiation with two attorneys. The assignment for this weekend is simply to schedule the negotiation. Review Companion Site 4.01 before doing so. You will conduct the negotiation by video conference, which you will video record. Submit the video by Thursday, Aug. 8, at 8:00 p.m. We will review and assess it together in person or online. Submit a planning checklist and/or FENS form along with your video.

Week 2

Monday, Aug. 5

Active listening practice. Mediation Script. Exchange settlement agreements for peer review and then submit agreements to the court. Discuss final projects.

Homework

- Prepare for Role-Play 4: Mediation. Parties submit FENS or planning checklists.
- Email final project proposals by 1:00 p.m. on Tuesday, Aug. 6.
- Arbitration reading (for Wednesday) (handout):

Tuesday, Aug. 6

Role-Play 4: Mediation, with guest speakers/mediation coaches. Debrief and Q&A with guests. Assign roles for Role-Play 5: Arbitration.

Homework

- Thank you notes/emails to guest coaches.
- Complete arbitration reading. Prepare at least one question for our guest instructor.
- Prepare for Role-Play 5: Arbitration (we'll do the role-play on Thursday).

Wednesday, Aug. 7

Welcome our guest lecturer on arbitration. Interactive lecture. Q&A.

Homework

- Arbitration reading.
- Prepare for Role-Play 5: Pre-arbitration negotiation, arbitration. Submit a negotiation planning checklist and outline of your argument.
- Email requests for feedback on final project proposals by 1:00 p.m. on Thurs., Aug. 8.

Thursday, Aug. 8

Arbitration lecture by guest lecturer. Role-Play 5: Negotiation and arbitration. Debrief. Discuss selected issues in arbitration. Assign roles for Role-Play 6: ODR (Mediation).

Homework

- Thank you note/email to guest lecturer.
- Visit Small Claims Court tomorrow. Reflections.
- Work on final projects.
- Schedule video conference for Role-Play 6. Submit video recording by Monday, Aug. 12, at 8:00 p.m.

Monday, Aug. 12

Active listening practice. Reports on Small Claims Court visits. Guest lecture: Campus Ombuds or other ADR professionals/attorneys: Selected topics in ADR/ODR for international attorneys.

Homework

- Reflections on Role-Play 6.
- Work on final projects.
- Prepare for final exam.

Tuesday, Aug. 13

Final exam. Preparation for final presentations.

Wednesday, Aug. 14 and Thursday, Aug. 15

Final presentations. Peer review. Applications of our course to students' goals. Next steps in ADR/ODR.

13.3. Semester-Long EDR Course for LL.M. Students

English for Dispute Resolution: Negotiation, Mediation, and ADR for International LL.M. Students

Materials

Required:

- Barrie J. Roberts, *English for Dispute Resolution: Mastering Negotiation, Mediation, and Alternative Dispute Resolution*. Hereafter *EDR*.

Recommended:

- Natasha Costello and Louise Kulbicki, *Practical English Language Skills for Lawyers: Improving Your Legal English* (New York: Routledge, 2023)
- Charles B. Craver, *Effective Legal Negotiation and Settlement*, 7th ed. (New Providence, NJ: LexisNexis, 2012)
- Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 3rd ed. (2011)
- Barrie J. Roberts, *The Getting to Yes[©] Guide for ESL Students and Professionals: Principled Negotiation for Non-Native Speakers of English* (Ann Arbor: University of Michigan Press, 2024)

Introducing Students to Authentic Materials

Two items in the recommended reading, *Getting to Yes* and *Effective Legal Negotiation and Settlement*, are often used in ADR courses for native English speakers. Consider assigning relevant portions of these authentic materials after students have worked through similar material in EDR.

Weekly Schedule

Week 1

Introduction to the course. Arm Wrestle/Locked Horns activities.

Note to Readers. Introduction to ADR.

Week 2

Negotiation Ethics. Intro to active listening (Script #1).

Week 3

Active listening practice. Negotiation Styles. Mini role-plays.

Week 4

Active listening practice. Competitive negotiation. Role-Play 1. Ethics activity with Role-Play 1.

Week 5

Collaborative negotiation. Active listening (Scripts 2–4). FENS forms. Introduction to the BEC Checklist for reaching agreements. Role-Play 2 (collaborative negotiation).

Week 6

Active listening practice with Script #4. Using the collaborative style with confidence (tit for tat). Discuss ODR and AI.

Week 7

Apologies, Ch. 7. Looking at a conflict from several perspectives. Creating a Dramatic Monologue to Inspire Empathy.

Week 8

Active listening practice: Reframing. Reaching agreements. Assign roles for Spice Explosion negotiation role-play (Teaching Guide, Chapter 11).

Week 9

Spice Explosion negotiation role-play. Use active listening for attorney-client interviews. Out of class, use the interviews to negotiate an agreement via video conference. Record your session and schedule office hour to review and assess it. Peer review of written agreements.

Week 10

Introduction to mediation. Attorney-client interview and other pre-mediation activities for the Mediation Script, Chapter 10. Mediation Script.

Week 11

Two mediation role-plays so that each student plays a party and a mediator. Guest mediation coaches/speakers. Discuss attorney roles and opportunities in ADR/ODR.

Week 12

Mediate cases decided by the US Supreme Court. (Teaching Guide, Chapter 11). Visit Small Claims Court or observe a civil trial in Superior Court. Assign roles for next week's role-plays. Language preparation for these role-plays.

Week 13

Negotiation or mediation role-plays with native speakers of English (law students or guest coaches).

Weeks 14 and 15

Final projects. Reflections. Global ADR. Creating your ADR training and career plan.