

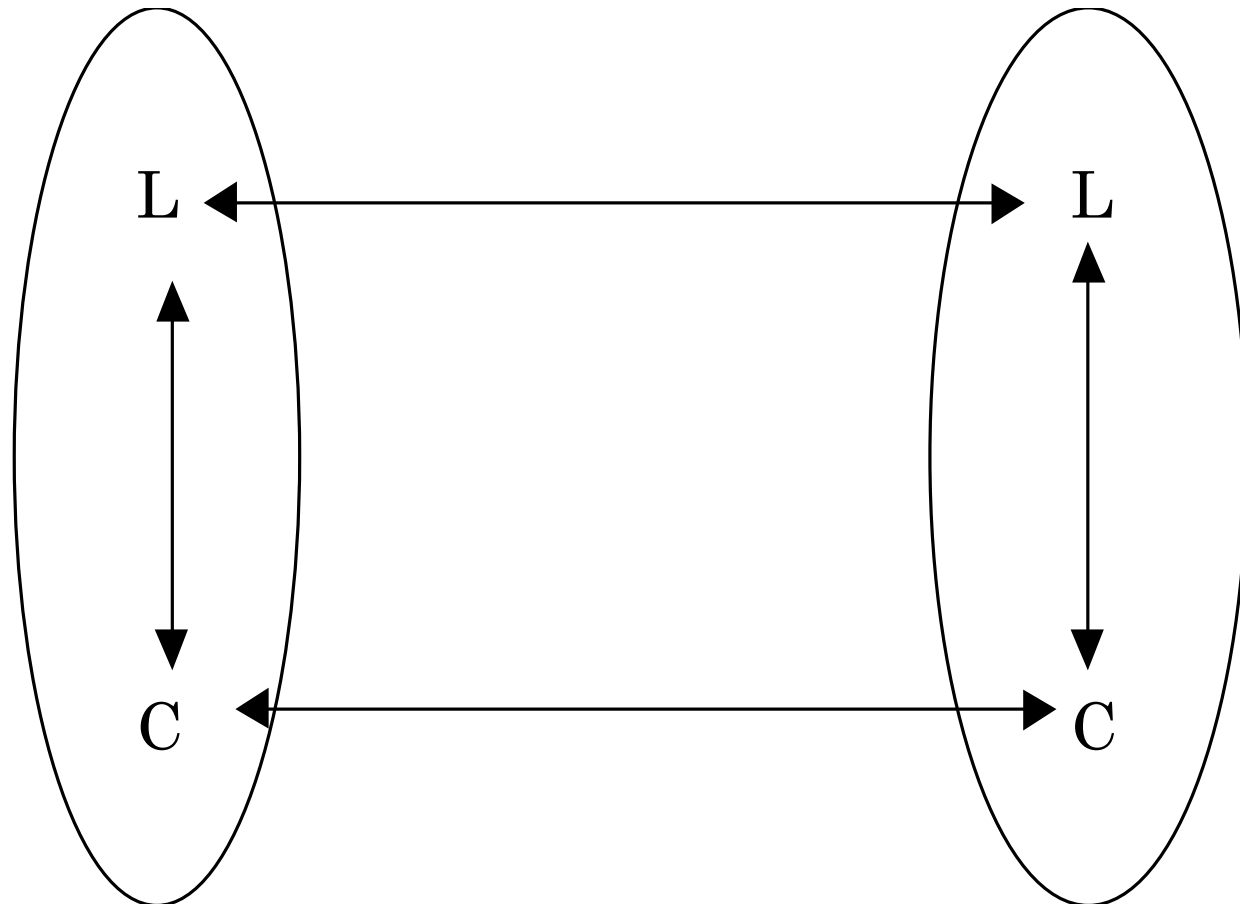
Law School Survey
Hewlett Conference 2000

Bob Bordone
Robert Mnookin

Legal Negotiation: The Context

- Two Great Domains: Deals & Disputes
- Lawyers Negotiate within a System
- The Challenge of Legal Cultural

The System Of Legal Negotiation



Implications

- The Quality of Three Relationships Can Affect Negotiations
- Special Communication Problems
- Questions Concerning Role Allocation:

Why Lawyers?

- Comparative Advantage
- Good News: Special Opportunities to Create Value
- Bad News: Experts at Hard Bargaining

Deal Making Negotiation

- No Pre-existing Legal Claim if no deal
- Definition: Process of Creating Legal Obligations concerning the exchange or allocation of assets and services between two or more parties

Role of Lawyers in Deal-Making: Why Lawyers?

- Identification and allocation of risks
- Management of the commitment process

Dispute Resolution:

- Definition: Involves possible legal claim for relief or remedy
- Bargaining in the Law's Shadow
- Lawyers Evaluate Litigation Opportunities and Risk
- Lawyers Play the Game

Culture

- Scripts and Role Expectations
- Learned AND Forgotten
- Context Matters

Assumptions about clients, lawyers, the legal system and law

- Negotiations Are Purely Distributive: The Zero-sum mindset
- Lawyers as Gladiators: The Adversarial Mindset
- Lawyers as Faithful Servants: The Hired Gun Mindset

Our Survey

- **Willamette Law School**
 - Richard Birke
- **U. of Florida Law School**
 - Jonathan Cohen
- **U. of New Mexico**
 - Scott Hughes
- **Columbia Law School**
 - Carol Liebman
- **Georgetown Law School**
 - Carrie Menkel-Meadow
- **Stanford Law School**
 - Maude Prevere
- **U. of Mo. Law School**
 - Len Riskin
- **Marquette Law School**
 - Andrea Kupfer
- **Ohio State Law School**
 - Joseph Stulberg
- **Harvard Law School**
 - Mnookin & Bordone

Three Dimensions

- Focus on Skills
- Focus on Theory
- Focus on self-reflection: Learning how to learn from experience

Prescriptive Orientation

- Agnostic? Teach all the world's religions
- Special emphasis on problem-solving, interest-based mutual gains bargaining?

Resource Differences

- Instructional Time
- Student/instructor ratio
- Workshop format (intensive, long sessions) or standard course meeting times
- Available Technology (Video's)