

Contents

<i>Preface to Fourth Edition</i>	xv
<i>Acknowledgments</i>	xvii
PART I	
GENERAL OVERVIEW	1
1. Introduction	3
<i>The Lawyer in Negotiation (Article by Lee C. Buchheit)</i>	4
2. Introduction to Transactional Practice	11
<i>Thinking Like a Deal Lawyer (Article by Tina L. Stark)</i>	13
3. Role of the Lawyer in a Business Transaction	21
A. Identification	23
B. Preparation	23
C. Appraisal/Assessment	25
D. Negotiation and Documentation	26
E. Implementation	29
4. Use of Financial Analysis in Transactional Practice and Negotiations	31
A. Introduction	31
B. Accessing and Understanding Financial Information	32
C. Using Financial Information to Understand the Parties	33
D. Using Financial Information to Understand the Transaction	34
E. Examples from Actual Transactions	34
F. Use of Accounting Information in Transactional Agreements: Contract Drafting	37
G. Resources	40
PART II	
SIMULATION EXERCISE	41
5. The Simulation Materials	43
A. International Simulation Module	43
B. Domestic Simulation Module	59
C. Initial Questions Related to the Simulation	68
D. Some Information on the Business Aspects of the KJH-MCC Transaction	68
E. The Basics of Cassava	69
F. Basics of Cotton	70
G. Basic Facts about the Drug Manufacturing Industry	72
H. Basic Facts about Arthritis	75

PART III	
NEGOTIATIONS	77
6. The Process of Negotiation	79
A. Types of Agreements	80
B. BATNA	82
C. People	82
D. Tactics	82
E. Process	86
The Negotiation Cycle (UNITAR Workshop on Negotiation Theory and Practice)	86
1. Analyze the Issues	87
2. Set Your Aims	90
3. Prepare Your Information	93
4. Plan the Negotiation	100
5. Negotiate	105
6. Review	113
F. Conclusion	114
7. Lawyer as Negotiator: Understanding the Deal; Applying the Process	117
A. Know the Business	118
B. Diagram the Transaction	120
C. Analysis	122
D. Aims	124
E. Prepare and Plan	125
<i>How Should the Lamb Negotiate with the Lion?</i> (Article by Jeswald W. Salacuse)	126
F. Negotiate	137
G. Review	140
8. International Negotiation	141
A. Language	141
B. Perception	142
C. Cross-Cultural Sensitivity	143
D. Trust and Rapport	144
E. Dynamics of Negotiations with a Counterparty from a Different Country	146
F. Dispute Resolution	153
G. Assessing International Aspects of the Simulation Exercise	154
9. Psychology of Negotiations	161
A. Some Basic Principles	162
B. Parties and Negotiators	166
<i>Negotiating Styles (Article by Lee C. Buchheit)</i>	167
C. Choosing Participants in Negotiation	169
D. Dealing with Difficult Personalities	170
E. Tone	170

Contents

F. Time and Urgency	171
G. Frustration	171
H. Structured Negotiation	172
I. Mistake	173
J. Food, Etc.	173
K. Creativity in Negotiations	174
L. Back Channel Negotiations	175
M. Government as Negotiator	178
N. Perspectives of a Former Student	180
10. Special Issues in Negotiations (and Some of the Issues You May Encounter in the Simulation)	183
Part I. ISSUES REGARDING PROCESS	183
A. Barriers to Successful Negotiations	183
B. Impasse	185
C. Irrationality	189
D. Bad Faith	190
E. Surprise	191
F. Knowing When to Stop	191
G. Sequencing as a Strategy	191
Part II. ISSUES REGARDING SUBSTANCE	193
A. Good Faith or Trust Me	193
B. Role of the Media	195
C. Interrelated Documents	197
D. Exit Strategies	199
E. Contractual Language Matters	201
F. Minority Protective Provisions	202
G. Social and Environmental Considerations	203
H. Ancillary Agreements	204
I. Dispute Resolution	205
J. Considering the Alternatives (BATNA)	205
11. Communication	207
A. Written Communications	208
B. In-Person and Video Communications	209
C. Negotiations via Computer Conferencing	209
D. Telephonic Communications	210
E. Team Dynamics	211
F. Initial Communication	211
G. Visual Presentations	212
H. Team Communications	213
I. Notes	213
J. Informal Negotiations	214
K. The Future	214

12. Ethics of Negotiations	217
A. The Guiding Principles	218
B. Application of Guiding Principles to Negotiations	219
C. Nuances in the Application of Ethical Principles	221
D. Application of Ethical Principles in Specific Situations	222
E. Challenging Questions Remain	228
F. International Negotiations	228
 PART IV	
THE TRANSACTION	231
13. An Introduction to Understanding and Drafting	
Transactional Contracts	233
A. Framing the Approach to Drafting	233
B. Preliminary Issues	238
C. Anatomy of an Agreement	239
D. The Process of Drafting and Analyzing Transactional	
Agreements	252
E. Conclusion	271
14. The Letter of Intent	273
Sample Joint Venture and License Agreement Letter of Intent	276
15. The Joint Venture Agreement	283
Sample Joint Venture and Limited Liability Company Agreement	287
16. The License Agreement	319
Sample License Agreement	322
17. The Supply Agreement	329
Sample Commercial Supply Agreement	331
18. Conclusion – Looking Back	341
 <i>Index</i>	 347