DECISION ANALYSIS
SMU DISPUTE RESOLUTION GRADUATE STUDIES
SUMMER 2014

COURSE DESCRIPTION

Dispute resolution professionals create value by helping people frame and make tough decisions. We don't tell them what to do. We help *them* create a framework for effective decision making – serving as "decision architects" if you will. Since effective decision making is not strongly correlated with higher education or high I.Q., it must be learned and practiced. This course incorporates psychology and neuroscience, behavioral economics and game theory, and light statistical analysis through computer programs that aid decision makers. Students will learn about well-known barriers to disinterested analysis, factors correlated with poor quality decisions and adverse outcomes, the incidence and magnitude of settlement decisions errors, and methods they can employ to improve decision making and problem solving skills.

This is a highly-interactive lecture-based course with ample time for practical exercises applying the material. The Brest and Krieger text book provides background on effective decision making and common cognitive errors that predictably confound those decisions. A CIVIL ACTION is a New York Times best-seller gone movie by the same title that provides a comprehensive case study through which we will apply these concepts in class and in the final assignment. While the subject is a legal case, no legal training is required to understand and enjoy it. It is a light read that should be completed in advance of class.

INSTRUCTOR

Donald R. Philbin, Jr., J.D., M.B.A., LL.M.
don.philbin@adrtoolbox.com
(210) 212-7100 – office
(210) 241-4216 – mobile

Your questions and comments are invited and I will be available before class and by appointment.

REQUIRED TEXTS

- Paul Brest & Linda Hamilton Krieger, PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR LAWYERS AND POLICYMAKERS (Oxford 2010).

- Jonathan Harr, A CIVIL ACTION (Vintage 1996).

SUPPLEMENTARY RESOURCES

- Donald R. Philbin, Jr., *Decisional Errors: Why We Make Them and How to Address Them*, 64-JAN DISP. RESOL. J. 64 (Nov., 2009-Jan., 2010).

- Donald R. Philbin, Jr., *The One Minute Manager Prepares for Mediation: A Multidisciplinary Approach to Negotiation Preparation*, 13 HARV. NEGOT. L. REV. 249 (2008).

- Randall L. Kiser et al., *Let's Not Make a Deal: An Empirical Study of Decision Making in Unsuccessful Settlement Negotiations*, 5 J. EMPIRICAL LEGAL STUD. 551 (2008).

- Richard Birke, *Neuroscience and Settlement: An Examination of Scientific Innovations and Practical Applications*, 25 OHIO ST. J. ON DISP. RESOL. 477, 493-97 (2010)

- Jeffrey J. Rachlinski, *Gains, Losses, and the Psychology of Litigation*, 70 S. CAL. L. REV. 113 (1996).

- Jerome Facher, *The View From The Bottomless Pit: Truth, Myth, and Irony in A Civil Action*, 23 SEATTLE U. L. REV. 243 (1999-2000).

- Michael B. Keating, *The Woburn Case: Is There a Better Way*?, 23 SEATTLE U. L. REV. 251 (1999-2000).

- Lewis A. Grossman & Robert G. Vaughn, A DOCUMENTARY COMPANION TO A CIVIL ACTION (rev. ed. 2002).

ADVANCED READING

You should read A CIVIL ACTION before the course begins. It's a novel that will make good summer reading. Because this is an intensive course, students should read the materials assigned for Classes 1-3 and attempt to read the assigned materials for Classes 4-6 before the course begins.

GRADES AND WRITTEN ASSIGNMENT

Grading will reflect class performance (25%) and the written assignment (75%). Students are required to submit a 20-25 page paper describing a decisional error(s) in the *book* A CIVIL ACTION and suggesting ways in which that error could have been reduced. There will be an ongoing discussion of the decisional errors made in the case the book depicts during class. Your grade on the written assignment will turn

on the depth of your analysis of the error and the creativity of your solution to mitigate the impact of that error.

CLASS SCHEDULE AND READINGS

Date	Subject	Readings
Class 1 5 Hours	**Introduction**	
	Introduction to Problem Solving and Decision Making	B&K Chapter 1 (only specified sections below)
	Defining Problem Solving and Decision Making	B&K Chapter 1.3
	Deliberative and Intuitive Problem Solving	B&K Chapter 1.4
	Intuitive Processes in Problem Solving and Decision Making	B&K Chapter 1.5
	The Interaction of Intuition and Deliberation	B&K Chapter 1.6
	Professional Problem Solving and the Nature of Expertise	B&K Chapter 1.7
	Quick Negotiation	A CIVIL ACTION
	Framing Problems, Identifying Objectives, and Identifying Problem Causes	B&K Chapter 2 (only specified sections below)
	Problem Framing	B&K Chapter 2.2
	Problem-Framing Pitfalls	B&K Chapter 2.3
	Identifying Interests and Objectives	B&K Chapter 2.4
	Deep Pocket Defendants	A CIVIL ACTION
Class 2 9 Hours	**Cognitive Errors Predictably Lead Us Astray**	
	Biases in Perception and Memory	B&K Chapter 9 (only specified sections below)
	Biases in Acquisition, Retention, and Retrieval	B&K Chapter 9.2
	Biases in the Acquisition of Information	B&K Chapter 9.3
	The Biasing Effect of Schemas, Expectations, Theories, and Interests	B&K Chapter 9.4
	Distortions in Retention and Retrieval	B&K Chapter 9.5
	The Availability Heuristic – and a Detour into Metacognition	B&K Chapter 9.6
	Egocentrism: A Particular Memory Bias	B&K Chapter 9.7

	in Acquisition and/or Retrieval	
	Biases in Processing and Judging Information	B&K Chapter 10 (only specified sections below)
	Anchoring, Adjustment, and Activation	B&K Chapter 10.1
	Hindsight Bias	B&K Chapter 10.2
	Confirmation Bias and Other Resistance to Modifying Prior Expectations and Theories	B&K Chapter 10.3
	Overconfidence	B&K Chapter 10.4
	Intuition, Analysis, and the Role of Experts Redux	B&K Chapter 10.5
	Lawsuits Are War	A CIVIL ACTION
Class 3 9 Hours	**Decision Making**	
	The Power of Frames	B&K Chapter 14 (only specified sections below)
	Prospect Theory, The Endowment Effect, and Status Quo Bias	B&K Chapter 14.1
	Regret Aversion	B&K Chapter 14.2
	Sunk Cost	B&K Chapter 14.3
	Mental Accounting	B&K Chapter 14.4
	The Downsides of Choices or Options	B&K Chapter 14.5
	Decision Making under Risk	B&K Chapter 15 (only specified sections below)
	Expected Utility in Decision Making Under Risk	B&K Chapter 15.1
	Dependency Diagrams and Decision Trees	B&K Chapter 15.2
	Risk Tolerance and Utility Functions	B&K Chapter 15.3
	The Framing of Risky Decisions: Prospect Theory Redux	B&K Chapter 15.4
	The Role of Affect in Risky Decisions	B&K Chapter 16 (only specified sections below)
	Risks as Feelings	B&K Chapter 16.1
	The Availability Heuristic and the Role of Vividness	B&K Chapter 16.2
	Other Determinants of Responses to Risk	B&K Chapter 16.3
	Risk vs. Uncertainty (or Ambiguity)	B&K Chapter 16.4
	Complexities of Evaluating Risks	B&K Chapter 16.5
	What's This About	A CIVIL ACTION
Class 4 5 Hours	**Choice Architecture**	
	Generating Alternatives	B&K Chapter 3 (only specified sections below)

	"Pickers" and "Choosers": Problem-Solving Frames of Mind	B&K Chapter 3.1
	Frameworks for Generating Solutions to Present Problems	B&K Chapter 3.2
	Creativity in Professional Problem Solving	B&K Chapter 3.3
	Problems in the Future Tense: Scenario Planning	B&K Chapter 3.4
	Choosing Among Alternatives	B&K Chapter 4 (only specified sections below)
	Specifying the Consequences of Alternatives	B&K Chapter 4.1
	The Spectrum of Decision-Making Processes	B&K Chapter 4.2
	Risk Assessment and Settlement Conference	A CIVIL ACTION
Class 5 9 Hours	**Probabilistic Assessments**	
	Predicting One-Time Events	B&K Chapter 8 (only specified sections below)
	Calculating Conditional Probabilities	B&K Chapter 8.1
	The Probability of Conjunctive Events	B&K Chapter 8.2
	The Conjunction Fallacy and the Representativeness Heuristic	B&K Chapter 8.3
	The Probability of Disjunctive Events	B&K Chapter 8.4
	Bayesian Statistics	B&K Chapter 8.5
	Confusion of the Inverse	B&K Chapter 8.6
	Probabilities and Clusters	A CIVIL ACTION
Class 6 9 Hours	**Frame for Better Decision Making**	
	Social Influence	B&K Chapter 17 (only specified sections below)
	Consistency and the Escalation of Commitment	B&K Chapter 17.3
	Liking	B&K Chapter 17.4
	Reciprocity	B&K Chapter 17.5
	Influencing Behavior Through Cognition	B&K Chapter 18 (only specified sections below)
	Persuasion Through Argument	B&K Chapter 18.1
	Framing Arguments in Terms of Gains and Losses	B&K Chapter 18.2
	Linguistic Form	B&K Chapter 18.3
	Priming	B&K Chapter 18.5
	Group Decision Making	B&K Chapter 19 (pages 618-30)

	Groupthink	B&K Chapter 19.3
	Strategic Participation in Group Decision Making	B&K Chapter 19.6
	Improving Group Decision Making	B&K Chapter 19.8
	Optimizing Group Decision Making	B&K Chapter 19.10
	The Effects of Accountability on Individual and Group Decision-Making Performance	B&K Chapter 19.11
	This Is Personal	A CIVIL ACTION