

University of Missouri School of Law  
Lawyering: Problem-Solving and Dispute Resolution  
Fall 2014

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### **Course Goals and Objectives**

This course will examine lawyers' roles and help students understand how you want to act when practicing as lawyers. It will help students: (1) understand lawyers' roles and relationships with clients generally; (2) understand the distinction between problem-solving and traditional legal adversarial approaches to lawyering; (3) develop basic skills in interviewing and counseling clients and negotiation; (4) understand basic alternative dispute resolution (ADR) procedures and their strengths and weaknesses; (5) understand how to analyze cases to assess appropriateness of different dispute resolution approaches and procedures; and (6) improve analytical skills. Good analysis involves identifying problematic issues and alternative perspectives about the issues. It also involves making sound generalizations based on theory and one's own experience to develop appropriate strategies.

This course focuses primarily on the roles of advocates with some discussion of the roles of neutrals (such as mediators and arbitrators). Students will analyze how lawyers can help clients select and participate in efficient, just, and appropriate methods of managing and resolving conflicts.

### **Requirements and Grading**

Grades will be based on the following criteria:

85% - Final Exam. The exam will be an in-class, closed-book exam.

15% - Three short papers. Each is worth five points and there is a presumption that each will get four points, though this may be increased or decreased.

Grades may be increased or decreased by up to three points based on the quality of class participation about issues in the readings, class discussion, case simulations, or other relevant matters. Asking insightful questions is a very good form of participation. Quality of participation is more important than quantity.

American Bar Association rules require students' "regular and punctual class attendance." Attendance is very important because much of the learning happens in class. No distinction will be made between excused or unexcused absences. You may miss three classes without penalty. **Upon the fourth absence, you will be penalized**

**three points. Upon the fifth absence, you will be dropped from the class. Grades may be reduced for repeated tardiness.**

## **Policies**

### **Intellectual Pluralism**

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities ([osrr.missouri.edu](http://osrr.missouri.edu)). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

### **Academic Integrity**

Academic integrity is fundamental to the activities and principles of the Law School. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult with me.

### **Disabilities**

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please let Associate Dean Christina Wells or Registrar Denise Boessen know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services ([disabilitycenter.missouri.edu](http://disabilitycenter.missouri.edu)), S5 Memorial Union, 882-4696, and then notify Dean Wells or Registrar Boessen of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

### **Requirement of Consent for Redistribution of Recordings of Classes**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline

in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student's grade.

### **LinkedIn**

I am on the LinkedIn network and occasionally receive requests from students to connect with them on that network. I have adopted a practice of declining all such invitations from students who are currently enrolled in the Law School. After a student graduates or otherwise leaves the Law School, I am happy to consider LinkedIn requests.

### **Laptops and Other Electronic Devices May Not Be Used in Class**

You may not use laptop computers in class. After many years of allowing students to use laptops in class, I decided to prohibit them because they distract students too much. Outlines of class presentations will be posted on TWEN so students do not need to copy this material in class. You may not use smartphones or other electronic devices in class unless you may have to deal with an urgent matter (such as a medical situation of a relative). If you anticipate needing to deal with an urgent matter, please let me know at the beginning of class.

### **Course Web Site**

This course will make use of a course web page through TWEN (The West Education Network). The syllabus and other required course materials will be posted on this website. I occasionally send email messages to the email account that you designate when you register with TWEN. It is your responsibility to check this account regularly (at least every other day or so) and to make sure that the account remains functional and is not too full to accept emails.

### **Readings**

The required text is Stefan H. Krieger & Richard K. Neumann, Jr., *Essential Lawyering Skills* (4<sup>th</sup> ed. 2011). Assignments from this book are listed below with the prefix "K&N." **Additional required readings are posted in the "course readings" page in TWEN.**

### **Class Schedule and Assignments** - subject to change.

Consider what generalizations you can develop that you can use to advance your clients' interests. As you do the readings, consider what makes sense to you and what does not. Do not assume that everything in the readings is the only or necessarily correct perspective. For most issues in this course, there are multiple valid perspectives. This does not mean, however, that all perspectives are equally valid. Some statements are problematic or incorrect.

Discussion in class will inevitably cover some but not all of the material in the readings. If you have questions about the readings, please ask them, preferably in class (or with me privately).

**8/26 Introduction to the Course**

Stephen D. Easton, *My Last Lecture: Unsolicited Advice for Future and Current Lawyers*, 56 S.C. L. REV. 229 (2004).

John Lande & Jean R. Sternlight, *The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering*, 25 OHIO ST. J. ON DISP. RESOL. 247 (2010), pp 259-69.

Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. 499 (2011), pp. 499-503.

David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011.

**8/28 Roles of Lawyers**

LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 4<sup>th</sup> ed. 2009), pp. 57-60.

K&N chap. 2.

Predictors of Lawyering Effectiveness.

MacCrate Report Fundamental Lawyering Skills and Values.

Phillip M. Armstrong, *Why We Still Litigate*, 8 PEPP. DISP. RESOL. L.J. 379 (2008).

Jonathan D. Glater, *Study Finds Settling Is Better Than Going to Trial*, N.Y. Times, Aug. 7, 2008.

**9/2 Attorney-Client Relationships**

K&N chaps. 3-4.

JOHN LANDE, LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW TO GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY (forthcoming 2d ed. 2015), ch. 2, pp. 2-7 .

Frank H. Wu, *A Law School Dean Reflects on Law Firm Practice*, Feb. 13, 2013, [http://www.huffingtonpost.com/frank-h-wu/a-law-school-dean-reflect\\_b\\_2672201.html](http://www.huffingtonpost.com/frank-h-wu/a-law-school-dean-reflect_b_2672201.html).

Clark D. Cunningham, *What Do Clients Want From Their Lawyers?*, 2013 J. DISP. RESOL. 143.

**9/4 Role of Lawyers & Attorney-Client Relationships - continued**

**9/9 Questioning and Listening Skills**

K&N chaps. 5-6.

**9/9 Interviewing Clients**

**1pm** K&N chap. 8.

**9/11 Questioning and Listening Skills & Interviewing Clients - continued**

**\*\*\* Short Paper Due**

- 9/16 **Interviewing Clients: Discuss Simulation** \*\*\* Class Photo (optional)
- 9/18 **Counseling Clients**  
K&N chaps. 20-21.
- 9/23 **Counseling Clients: Discuss Simulation**
- 9/25 **Negotiation: Theory**  
JOHN LANDE, *LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW TO GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY* (forthcoming 2d ed. 2015), ch. 5.
- 9/30 **Negotiation: Videotape**
- 10/2 **Negotiation: Legal and Ethical Obligations in Negotiation**  
K&N §§ 23.5, 28.1.2.
- 10/7 **Negotiation: Developing a Negotiation Strategy**  
K&N chap. 25.
- 10/9 **Negotiation: Conducting Negotiation Effectively**  
K&N chaps. 27-28.
- 10/10 **Special Class: Symposium on Judicial Education and the Art of Judging**  
noon
- 10/14 **Negotiation** - continued
- 10/16 **Negotiation** - continued
- 10/21 **Negotiation: Discuss Simulation** \*\*\* Short Paper Due
- 10/23 **Mediation: Introduction**  
ABA Section of Dispute Resolution, *Preparing for Mediation*,  
[http://www.americanbar.org/content/dam/aba/images/dispute\\_resolution/Mediation\\_Guide\\_general.pdf](http://www.americanbar.org/content/dam/aba/images/dispute_resolution/Mediation_Guide_general.pdf).  
Skim: Model Standards of Conduct for Mediators.  
Recommended: CPR, ADR Suitability Guide.
- 10/28 **Mediation: Videotape**
- 10/30 **Mediation: Alternative Approaches, Designing the Process; Mediators' Statements About the Law**  
John Lande, *Doing The Best Mediation You Can*, *DISP. RESOL. MAG.* Spring/Summer 2008, at 43.

- 11/4 **Mediation: Effective Advocacy in Mediation**  
G. NICHOLAS HERMAN & JEAN M. CARY, LEGAL COUNSELING, NEGOTIATING, AND  
MEDIATING: A PRACTICAL APPROACH (2d. ed. 2009), pp. 314-33.
- 11/6 **Mediation** - continued
- 11/6 **Mediation** - continued  
1 pm
- 11/11 **No Class** (offsetting extra class on Sept. 9)
- 11/13 **No Class** (offsetting extra class on Oct. 10)
- 11/18 **No Class** (offsetting extra class on Nov. 6)
- 11/20 **Mediation: Discuss Simulation** **\*\*\* Short Paper Due**
- 11/24-28 **No Class - Thanksgiving Break**
- 12/2 **Arbitration: Nature of Arbitration**  
Thomas J. Stipanowich, *Arbitration: The "New Litigation,"* 2010 U. ILL. L. REV. 1,  
pp. 1-24.
- 12/4 **Advising Clients About Dispute Resolution Processes**  
LEONARD L. RISKIN ET AL., DISPUTE RESOLUTION AND LAWYERS (Abridged 4<sup>th</sup> ed.  
2009) , pp. 11-19, 606-612.  
Skim: CPR, Protocol for Early Case Assessment.