

Negotiation
University of Missouri School of Law
Spring 2016

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Course Goals and Objectives

Negotiation is central to what it means to think, act, and be like a lawyer. Virtually all practicing lawyers spend much of their time negotiating, often in contexts that people may not think of as negotiation. There is no single right way to negotiate for all lawyers, parties, or legal matters. So good lawyers consider what negotiation approach would best achieve their clients' goals and their own goals in particular situations. This course will help you learn to make these judgments.

This course will help you improve your negotiation knowledge and skills. In particular, it will help you: (1) increase your understanding of different negotiation approaches and perspectives, (2) become a more careful observer of negotiation process, goals, tactics, and effects, (3) enhance your negotiation skills, and (4) learn to learn about negotiation. Learning to learn is an especially important goal because you cannot possibly learn everything they need to know from a law school course; lawyers continue to learn throughout their experience in practice.

Requirements and Grading

Grades will be based on the following criteria:

25% - Course Participation
75% - Papers Assessing Simulations

Course Participation

You must participate actively in class and complete required activities outside of class to get the full benefit from this course. Asking insightful questions is a very good form of participation. Quality of participation is more important than quantity.

Much of the work involves participation in simulations; you are required to perform your roles as realistically as possible. In some classes, students will do simulations in front of the class and every student will be required to do some simulations in this manner. Students will be required to give each other feedback, which should be helpful, tactful, and candid.

There will be brief unannounced quizzes in some classes. The quizzes are intended to help identify what you learned from the readings, prepare you to discuss issues in class, and motivate you to do the readings. In general, your performance on the quizzes will not affect your grade, though grades may be adjusted to reflect repeated unusually good answers or inability to answer appropriately.

You will be required to submit some material that is not specifically graded, though grades may be adjusted to reflect unusually good or poor submissions. You will sometimes receive feedback about students' performance as a group. I will be happy to provide individual feedback on your work on request.

Assessing Simulations

You will be required to submit three papers assessing simulations that you participate in. You should use these assessments as opportunities to develop specific insights from the particular interactions and, more importantly, develop the skill of professional self-reflection. Instructions for the papers are in the "syllabus" section on TWEN.

To help you practice learning from your experience, you will be given assessment forms to complete after most simulations. These assessments are for your own use and you will not submit them to me. The more effort you invest in your assessments, the more you will benefit.

Attendance and Punctuality

Attendance in this course is very important because much of the learning occurs in class. In addition, American Bar Association rules require "regular and punctual class attendance" of students. No distinction will be made between excused or unexcused absences. Students may miss three classes without penalty. **Upon the fourth absence, students will be penalized three points. Upon the fifth absence, students will be dropped from the class. Repeated tardiness or departures during class may result in grade reduction.**

Greg Scott's Philosophy of Law School

I share Greg Scott's philosophy: If you aren't having fun, you're not doing it right. (Of course, just because you have fun doesn't necessarily mean that you are doing it right.)

Policies

Course Website and Email

This course will use the TWEN website, which is the repository for the syllabus and other required course materials. You will receive simulation instructions and other notices through the email accounts registered through your TWEN account. You are required to check these email accounts regularly for such emails (generally at least once every business day or so, i.e., excluding weekends, holidays).

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.](#) You may not use smartphones or other electronic devices in class except if 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.

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 (<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 the course instructor.

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 David Mitchell 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), S5 Memorial Union, 882-4696, and then notify Dean Mitchell 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 decline 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.

Readings

The required text is John Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (2d ed. 2015) ("Lande"). Under University rules, instructors must donate royalties from their books they assign in their courses. Royalties from sales of books for this course were donated to the Greg Scott Equal Justice Fellowship. Additional required readings are posted in the "course readings" page in TWEN.

Class Schedule and Assignments - subject to change.

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.) Consider what generalizations you can develop that you can use to be most effective in practice. Also consider what factors may prompt you to use particular approaches instead of others.

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). Feel free to email me to ask questions.

All assignments must be Word documents uploaded to the assignment dropbox on TWEN website.

Date	Topic	Readings	Assignment
1/15 1/20	Introduction & Goals	<p>Read for 1/15</p> <p>Lande, ch. 1, pp. vii-xvi.</p> <p>Recommended: John Lande, My Last Lecture: More Unsolicited Advice for Future and Current Lawyers, 2015 J. Disp. Resol. (forthcoming).</p>	
1/25	Litigation	<p>Lande, pp. 35-38.</p> <p>See website assignment</p>	See assignment
1/27	Ethics & Law of Negotiation	<p>Lande, ch. 10.</p> <p>Russell Korobkin, Michael Moffitt & Nancy Welsh, The Law of Bargaining, 87 Marq. L. Rev. 839 (2004).</p>	
2/1 2/3	Theories of Negotiation	<p>Read all of the following for 2/1</p> <p>Lande, ch. 5.</p> <p>John Lande, BATNA, MLATNA—No Big Difference, Right? (read all the comments).</p> <p>John Lande, A Framework for Advancing Negotiation Theory: Implications from a Study of How Lawyers Reach Agreement in Pretrial Litigation, 16 Cardozo J. Conflict Resol. 1 (2014). <u>Read: Part IV.</u></p> <p>Clark Freshman & Chris Guthrie, Managing the Goal-Setting Paradox: How to Get Better Results from High Goals and Be Happy, 25 Neg. J. 217 (2009).</p> <p>Recommended: John Lande, Toward a Comprehensive Framework for Negotiation Theory, in The Negotiator's Desk Reference (Andrea Kupfer Schneider & Christopher Honeyman eds., forthcoming).</p>	
2/8	Identity, Emotions, & Culture	<p>Bruce M. Patton, Difficult Conversations With Less Anxiety and Better Results, 5 Disp. Resol. Mag. 25 (Summer, 1999).</p> <p>Daniel L. Shapiro, Emotions in Negotiation: Peril or Promise?, 87 Marq. L. Rev. 737 (2004).</p> <p>Julia Ann Gold, Cultural Baggage When You "Win as Much as You Can," in Rethinking Negotiation Teaching: Innovations for Context and Culture 281 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2009). <u>Read pp. 281-87.</u></p>	Assessment due 2/8
2/10	Trust & Persuasion	<p>Roy J. Lewicki, Trust and Distrust, in The Negotiator's Fieldbook 191 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).</p> <p>Chris Guthrie, Principles of Influence in Negotiation, 87 Marq. L. Rev. 829 (2004).</p> <p>Janice Nadler, Rapport in Negotiation and Conflict Resolution, 87 Marq. L. Rev. 875 (2004).</p>	

Date	Topic	Readings	Assignment
2/15	Power	Russell Korobkin, Bargaining Power as Threat of Impasse, 87 Marq. L. Rev. 867 (2004). Russell Korobkin, Negotiation Theory and Strategy 152-54 (2d ed. 2009). Robert S. Adler & Elliot M. Silverstein, When David Meets Goliath: Dealing with Power Differentials in Negotiations, 5 Harv. Negotiation L. Rev. 1 (2000). Read pp. 4-28, 77-112. The rest is recommended.	
2/17	Fairness	Nancy A. Welsh, Perceptions of Fairness in Negotiation, 87 Marq. L. Rev. 753 (2004).	
2/22	Apology	Jennifer Gerarda Brown, The Role of Apology in Negotiation, 87 Marq. L. Rev. 665 (2004).	
2/24	Handling Problems	Lande, ch. 7, app. A.	
2/29	Speakers: Bill Rotts and Merilee Crockett	John Lande, Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better , 16 Cardozo J. Conflict Resol. 63 (2014).	
First Extended Simulation			
3/2	Initial Client Interview	Lande, ch. 2, apps. B and K.	Lawyers upload information requests by 3/4
3/7	Develop Relationship with Counterpart	Lande, ch. 4.	
3/9	Legal Research & Argument		
3/14	Prepare Client	Lande, app. N.	
3/16	Plan with Counterpart	Lande, apps. O, Q. ABA Section of Dispute Resolution, General Mediation Guide (2012).	
3/21	Negotiate		
3/23	Debrief & Drafting Agreement		Assessment due 4/3
3/28 3/30	Spring Break		

Date	Topic	Readings	Assignment
Second Extended Simulation			
4/4	Initial Client Interview		Lawyers: upload information requests by 4/5, 5 pm
4/6	Negotiate Retainer	Lande, ch. 3, apps. H and J.	
4/11	Plan with Counterpart		
4/13	Prepare Client		
4/18	Plan for Dispute Resolution	Lande, app. T. CPR Model Clauses and Sample Language . ABA Section of Dispute Resolution Planned Early Dispute Resolution User Guide	
4/20	Negotiate Deal		
4/25	Debrief Negotiation		
4/27	Look Back & Forward	Lande, ch. 9. Andrea Kupfer Schneider et al., Cooking Up a Deal: Negotiation Recipes for Success	Your recipe for success due 4/27 Assessment due 5/1