

**Negotiation**  
University of Missouri School of Law  
Fall 2012

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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 more careful observers 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:

20% - Self-Assessment  
60% - Final Paper  
20% - Course Participation

**Self-Assessment**

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



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You are required to submit one self-assessment that will be graded. This must integrate material from the relevant readings and should be about 4-5 double-spaced pages. It must be submitted through the assignment drop box on TWEN.

### Final Paper

You must submit a paper analyzing 2-3 key negotiation issues in one of the extended simulations. The paper must integrate analysis from relevant readings including but not necessarily limited to the assigned readings in the course. In choosing issues to discuss in your paper, you would do well to start with challenging issues from the readings and then analyze your experience in terms of those issues. The paper should be about 12-15 double-spaced pages and must be submitted through the assignment drop box on TWEN. **The paper is due by December 6, at 5 pm.**

### Course Participation

You must participate actively in class and complete required activities outside of class. Asking insightful questions is a very good form of participation. Quality of participation is more important than quantity.

There will be brief (generally) ungraded quizzes in class. 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 it may be adjusted to reflect repeated unusually good answers or inability to answer appropriately.

Much of the course involves participation in simulations, which includes preparation for and debriefing of the simulations. You must perform your roles in simulations as realistically as possible because this affects your classmates, who learn from your joint experiences. In many classes, you will do simulations in front of the class and every student will be required to do some simulations in this manner. You will be required to give each other feedback, which should be helpful, candid, and tactful.

You will be required to submit some material that is not specifically graded, though it 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.

### Extra Credit

Students may receive up to 5 additional points in their grade for writing a suitable paper. Ideally, the paper would be based on interviews with at least two lawyers about specific issues in the lawyers' negotiation experience. Students may propose other ideas for a paper. In any case,



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the paper should be about 8-10 double spaced-pages and I need to approve the topic in advance.

### 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. 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.**

### 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

#### 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 with me, or if you need to make arrangements in case



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the building must be evacuated, please let me 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 (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 882-4696, and then notify me 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 get requests from students to connect with them on that network. I have adopted a practice of accepting all such invitations. Whether a student has a connection with me on LinkedIn or not will have no effect on students' grades or other actions I take as their instructor.

### **Laptops May Not Be Used in Class**

Students may not use laptop computers in class. After many years of allowing students to use laptops in class, I have decided to prohibit them because they distract students too much, especially since the primary focus in class will be discussion rather than transmission of information.

### **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).



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## Readings

The required text is JOHN LANDE, *LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW YOU CAN GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY* (2011) (“Lande”). [Under University rules, instructors must donate royalties from their books they assign in their courses. Royalties from sales of books for this course are being donated to the Greg Scott Equal Justice Fellowship.]

Additional required readings are posted in the “course readings” page in TWEN.

Recommended: ERIC R. GALTON & LELA P. LOVE (eds.), *STORIES MEDIATORS TELL* (2012). This is a collection of 31 short stories of actual cases with brief commentaries by the mediator-authors. Although this course doesn’t focus primarily on mediation, most of the cases involve lawyers and so you may find this book valuable to get the perspective of professionals who regularly work with lawyers and clients. The disputes range over a wide range of subjects. Some stories tell of extraordinary events and others describe more run-of-the-mill cases. By reading these stories, which feel like good novels, you will get a realistic take on pretrial litigation and perhaps a welcome respite from less-entertaining readings assigned in your courses.

## 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.

Date	Topic	Readings	Assignment Due
8/21 8/23	Introduction, Goals, Reputation	John Lande, Teaching Students to Negotiate Like a Lawyer, 39 Wash. U. J.L. & Pol’y 109 (2012). Lande, ch. 1, pp. vii-xxiii, 31-33.	
8/28	Ethics & Law of Negotiation	Lande, ch. 10. Russell Korobkin, Michael Moffitt & Nancy Welsh, The Law of Bargaining, 87 Marq. L. Rev. 839 (2004).	
8/30 9/4	Theories of Negotiation	Lande, ch. 5. Stephen B. Goldberg, A Review of Beyond Winning, 6 Harv.	



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		Negotiation L. Rev. 319 (2001). 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).	
9/6	Identity, Emotions, & Culture	Bruce M. Patton, Difficult Conversations With Less Anxiety and Better Results, 5 Disp. Resol. Mag. 25 (Summer, 1999). Daniel L. Shapiro, Emotions in Negotiation: Peril or Promise?, 87 Marq. L. Rev. 737 (2004). 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).	Self-assessment due 9/6, 5 pm
9/11	Trust & Persuasion	Roy J. Lewicki, Trust and Distrust, in The Negotiator's Fieldbook: The Desk Reference for the Experienced Negotiator 191 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006). Chris Guthrie, Principles of Influence in Negotiation, 87 Marq. L. Rev. 829 (2004). Janice Nadler, Rapport in Negotiation and Conflict Resolution, 87 Marq. L. Rev. 875 (2004).	
9/13	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. <u>Recommended:</u> Omer Shapira, Exploring the Concept of Power in Mediation: Mediators' Sources of Power and Influence Tactics, 24 Ohio St. J. on Disp. Resol. 535 (2009).	
9/18	Justice	Nancy A. Welsh, Perceptions of Fairness in Negotiation, 87 Marq. L. Rev. 753 (2004).	
9/20	Apology	Jennifer Gerarda Brown, The Role of Apology in Negotiation, 87 Marq. L. Rev. 665 (2004).	
9/25	Cognitive Errors	Russell Korobkin & Chris Guthrie, Heuristics and Biases at the Bargaining Table, 87 Marq. L. Rev. 795 (2004).	
9/27	Handling	Lande, ch. 7.	



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10/2	Problems		
First Extended Simulation			
10/4	Initial Client Interview	Lande, ch. 2, appendixes A and B.	Lawyers upload information requests by 10/4, 5 pm.
10/9	Developing Relationship with Counterpart	John Lande, Getting Good Results for Clients by Building Good Working Relationships with "Opposing Counsel," 33 U. La Verne L. Rev. 107 (2011).	
10/11	Legal Research & Argument		
10/16	Preparing Client		Lawyers email mediation memo and upload to dropbox by 10/16, 5 pm
10/18	Planning with Mediator	Lande, ch. 6, 8. Section of Dispute Resolution, ABA, Preparing for Mediation (2012).	
10/23	Mediation		
10/25	Debrief & Drafting Agreement		
Second Extended Simulation			
10/30	Initial Client Interview		Lawyers upload list of information requests by 10/30, 5 pm
11/1	Negotiate Retainer	Lande, ch. 3, Appendix J.	
11/6	Plan with		



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	Counterpart		
11/8	Prepare Client		
11/13	Plan for Dispute Resolution	Lande, Appendix T. CPR Model Clauses and Sample Language, <a href="http://www.cpradr.org/Resources/ALLCPRArticles/tabid/265/ID/635/CPR-Model-Clauses-and-Sample-Language.aspx">http://www.cpradr.org/Resources/ALLCPRArticles/tabid/265/ID/635/CPR-Model-Clauses-and-Sample-Language.aspx</a>	Lawyers upload DR options memo by 11/12, 5 pm
11/15	Negotiate Deal		
11/20 11/22	Thanksgiving - no classes		
11/27	Debrief Negotiation		
11/29	Look Back & Forward	Lande, ch. 9.	



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