

**Negotiation  
Fall 2017  
University of Missouri School of Law**

**Contact Information**

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**COURSE DESCRIPTION**

Negotiation is an essential skill for lawyers, regardless of practice area. Lawyers must negotiate with their counterparts, clients, partners, staff, court staff, and many others in the course of representing a client. This course provides an in-depth understanding of the different models of negotiation, practical skill development for meeting negotiation challenges in different contexts, and examines issues relating to professional responsibility and the law pertaining to negotiation and settlement. Students will explore negotiation theory and practice through readings, discussion, exercises, demonstrations, simulations, and a reflective journal. Topics include distributive and integrative bargaining, persuasion, the principal-agent relationship, social norms, and multilateral negotiations.

**CLASS MEETINGS**

Monday & Wednesdays 8:00 to 9:15 a.m., Hulston Hall 3

**REQUIRED TEXTS:**

Russell Korobkin, *Negotiation Theory and Strategy*, Third Edition, Aspen Publishers, New York, NY (2014). ISBN: 978-1-4548-3926-2.

**COURSE PHILOSOPHY AND GOALS**

Negotiation is not just a matter of practice or instinct, it is an art and a science. To learn how to improve our negotiation skills, we need to do several things: (1) understand negotiation theory from the vantage point of various disciplines (law, psychology, economics, etc.), (2) put negotiation theory into practice, and (3) learn our individual style, strengths, and weaknesses as negotiators.

This course is designed to help you approach future negotiations in a more knowledgeable and skillful manner so you can become better lawyer-negotiators. As a result, emphasis will be placed on developing awareness of how one can improve as a negotiator and on helping others improve as negotiators. This course will provide you with a strong foundation and a framework for continuing to improve your negotiation skills throughout your career.

There is no one right way to negotiate in every situation. Rather, there are different approaches and styles that are sometimes more effective and less effective. For example, we will examine both an interest-based bargaining/problem solving approach to negotiation, and a competitive or

“hard bargaining” approach and explore when each approach might be appropriate and effective.

### **CLASS EXERCISES AND SIMULATIONS**

This course combines theory, law, and skills. There will be numerous exercises and simulations designed to give you an opportunity to experience the process, to experiment with strategies and techniques, and to observe and critique your own and others performance. You and your classmates will derive the most benefit from the exercises and simulations if you prepare for them and play your role as realistically as you can. Since this class provides a relatively risk-free learning environment, feel free to experiment in your negotiations, remembering that learning new skills takes time, practice and patience.

An essential aspect of effective negotiation is preparation, but, surprisingly, many negotiators devote little or no time to this crucial tool. Make sure to do more than merely read the materials for a simulation. You should also plan your negotiation strategy and tactics well before class. The more you prepare for a simulation, the better your ultimate negotiation outcome and your learning experience will be.

Unless instructed otherwise, your negotiation preparations are to be completed individually. All confidential information is to be kept confidential. To preserve the quality and confidentiality of the role plays from year to year, it is equally important that you do not discuss any aspect of your negotiation role plays with students outside of this course. Your honesty, integrity, and ethical conduct in this regard will not only count in your grade but it will also affect your reputation with your peers and your instructor. If you have any questions about the confidentiality of any facts, please ask me.

**COURSE GRADING:** Your grade will be based on the following:

• Reflective journal	30%
• Reflective analysis report on capstone negotiation exercise	20%
• Class participation and contribution	15%
• Interview Exercise	10%
• Objective measure of 2 negotiation simulation results	10%
• Quiz on ethics and law of negotiation	10%
• Reputation index	5%

### **REFLECTIVE JOURNAL (30%)**

You are required to keep a reflective journal for this course. Journaling can provide many benefits such as increasing your awareness and understanding of negotiation behaviors, others’ as well as your own, and the effectiveness of strategies and techniques. Create a journal entry for each week of class and discuss one or more key points from the presentations, discussions, readings, exercises, or simulations. Journal entries should be concise, thoughtful and typically one page in length. For example, you might relate a reading to what was discussed in class, your own views on negotiation, or questions and concerns a reading raised for you. After a simulation, your reflection might focus on the communication and behavioral aspects of the experience. What worked and what didn’t? What was problematic for you? How could you improve the outcome when negotiating a similar dispute in the future?

### **REFLECTIVE ANALYSIS REPORT ON CAPSTONE EXERCISE (20%)**

In lieu of a final exam, you will submit a reflective analysis report of the capstone negotiation exercise, in which you will integrate themes and readings covered throughout the semester. The report should be 12-15 pages (double-spaced).

### **CLASS PARTICIPATION AND CONTRIBUTION (15%)**

You are expected to read the assigned material before class, to prepare for and participate in class discussion and in class exercises and simulations. Because this is a participatory and experiential class, your classmates and I must depend on your attendance and preparation for each class. If you must miss a class or arrive late, please communicate this to me prior to class.

You will be evaluated on the *quality* of your participation and contributions in class. A quality comment usually possesses one or more of the following attributes:

- It offers a relevant perspective;
- It contributes to moving the discussion and analysis forward;
- It builds on (rather than repeating or ignoring) other comments;
- It transcends mere opinion as it includes some evidence, demonstrates recognition of basic concepts, integrates concepts, reading, and/or current events with reflective thinking.

Similarly, for your feedback to colleagues, you will be evaluated on the *quality* of such feedback. Quality feedback generally:

- is honest and respectful;
- includes positive and constructive negative feedback;
- is specific (i.e., it identifies the specific language or behavior which triggered your observations);
- relates to the concepts we are studying;
- is constructive (i.e., it includes a suggestion of other language or other behavior that might have worked better for your character in this situation).

### **INTERVIEW (10%)**

You will interview someone who has been involved in a “significant negotiation” within the last year, involving a dispute or a transaction. You will then write a report about the interview. Instructions about the interview will be provided in a separate document.

### **OBJECTIVE MEASURES OF NEGOTIATION SIMULATIONS (10%)**

Students will be graded on substantive results obtained in two simulations: *The Blockbuster* and *The White Album*. The curve will be based on a comparison between your result and that of other students assigned the same role this year. Each such result will count for 5% of your overall grade in the course.

### **QUIZ ON ETHICS AND LAW OF NEGOTIATION (10%)**

There will be a quiz based on the reading assignments, class discussions and simulation relating to attorney ethics and the law of negotiation. The quiz format will be multiple choice or short answer, or a combination of the two. It will be an open book quiz, meaning that you may use your text book and self-prepared notes.

### **REPUTATION INDEX (5%)**

At the end of the course, a Reputation Index will be calculated, reflecting your negotiating reputation with your classmates, on the basis of their experience with you over the semester. The index recognizes that those individuals who have reputations as trustworthy and effective negotiators will have an advantage in future negotiations, and those who have reputations as untrustworthy and ineffective will have a disadvantage. It should incentivize integrity in all negotiations, including those that will be graded on substantive results.

The index will be determined by asking class members to identify peers in the class with positive and negative reputations for trustworthiness and effectiveness. These nominations will be converted into a point distribution and will be factored into your grade for the course, subject to the instructor's oversight. In addition, students will be surveyed to determine which students, in their opinion, have contributed to others' learning through helpful feedback, and insightful and effective participation in simulations. This portion of the survey may influence your class participation grade.

## **POLICIES**

### **STATEMENT OF INTELLECTUAL PLURALISM:**

The University and this instructor welcome intellectual diversity and respect student rights. I encourage free discussion, inquiry, and expression in this course. Student performance shall be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean of the Law School or the 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 HONESTY:**

Academic integrity is fundamental to the activities and principles of the School of Law. 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 the School of Law's Honor Code as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or whether something might be seen as a form of cheating, consult the course instructor. Please understand that the instructor will follow university procedures on cases of academic dishonesty, and in such cases it may be necessary to assign a failing grade for the assignment or even the entire course.

### **STATEMENT FOR ADA-STUDENTS WITH 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 the building must be evacuated, please let me know as soon as possible. If disability-related accommodations are necessary, please contact Associate Dean Mitchell or Registrar Denise Boessen. You may also register with the MU Disability Center, S5 Memorial Union, 882-4696. Please note that unlike the rest of campus, the Law School does not rely on the Disability Center for the administration of exams to students in need of accommodation; but rather handles

accommodation issues internally. For other resources for students with disabilities, visit <http://disabilitycenter.missouri.edu>.

#### **SUMMARY OF KEY DATES**

Friday, Sept. 1	Ethics quiz due by 5:00 p.m.
Wed., Sept. 20	<i>Blockbuster</i> graded simulation in class.
Wed., Sept. 27	<i>The White Album</i> graded simulation in class.
Mon., Oct. 30	Interview Paper due
Wed., Nov. 29	Reflective Journal and Reputation Index due
Friday, Dec. 15	Capstone Exercise reflective analysis report due by 5:00 p.m.

## READINGS AND EXERCISES SCHEDULE

Week/ Dates	Monday	Wednesday
<b>1</b>	<b><i>Introduction to the course, the study of negotiation, and conceptual models</i></b>	
8/21 8/23	Read: Course syllabus; Korobkin Ch. 1, pp. 1-24, paying particular attention to <i>A New Deck</i> , p. 23. Class: Course introduction; Begin chapter 1 discussion.	Prepare: <i>The Prado Scoot</i> . Class: Conclude Chapter 1 discussion; <i>Prado Scoot</i> negotiation and discussion.
<b>2</b>	<b><i>The Law and Ethics of Negotiation</i></b>	
8/28 8/30	Read: Korobkin Ch. 14, pp. 387-426, Missouri Rules of Professional Conduct 4-1.2(f), 4-1.6, 4-4.1 and 4-8.4(c) Class: Discuss Chapter 14 & MRPC	Prepare: <i>Mossyback Lane</i> Class: Conclude Ch. 14 discussion <i>Mossyback Lane</i> negotiation and debrief Distribute negotiation ethics quiz (quiz due by 5:00 p.m. Friday Sept. 1)
<b>3</b>	<b><i>The Bargaining Zone, BATNA, and Reservation Price</i></b>	
9/4 9/6	Labor Day	Prepare: Korobkin Ch. 2 pp. 25-47; <i>On the Stump</i> Class: <i>On the Stump</i> negotiation and debrief
<b>4</b>	<b><i>Persuasion</i></b>	
9/11 9/13	Read: Korobkin Ch. 3 pp. 51-99. Class: Chapter 3 discussion	Prepare: <i>The Baseball Player</i> Class: <i>The Baseball Player</i> negotiation and debrief
<b>5</b>	<b><i>Integrative bargaining</i></b>	
9/18 9/20	Read: Korobkin Ch. 4 pp. 101-135 Class: Discuss Chapter 4	Prepare: <i>Blockbuster</i> (graded) Class: <i>Blockbuster</i> negotiation and debrief

<b>6</b>  9/25 9/27	<b><i>Power, leverage, and distributive bargaining</i></b>	
	Read: Korobkin Ch. 5, pp. 137-168 Class: Discuss Ch. 5	Prepare: <i>The White Album</i> (graded) Class: <i>The White Album</i> negotiation and debrief
<b>7</b>  10/2 10/4	<b><i>Fair Division and Related Social Norms</i></b>	
	Read: Korobkin Ch. 6, pp. 169-200 Class: Discuss Ch. 6	Prepare: <i>Farley v. Compresi</i> Class: <i>Farley v. Compresi</i> negotiation and debrief
<b>8</b>  10/9 10/11	<b><i>Trust and Emotions</i></b>	
	Read: Korobkin Ch. 7, pp. 201-226 Prepare: <i>The Construction Venture</i> Class: Discuss Ch. 7 and play <i>The Construction Venture</i>	Read: Korobkin Ch. 8 pp. 227-249 Prepare: <i>Orca View</i> Class: Discuss Ch. 8, <i>Orca View</i> negotiation and debrief
<b>9</b>  10/16 10/18	<b><i>Negotiator Style and Group Membership</i></b>	
	Read: Korobkin Ch. 9 pp. 251-271 Class: Thomas-Kilmann Conflict Mode Instrument, discussion of Chapters 8 & 9	Read: Korobkin Ch. 10 pp. 273-301 Prepare: <i>Alpha-Beta Robotics</i> Class: Discuss Ch. 10, <i>Alpha-Beta Robotics</i> negotiation and debrief
<b>10</b>  10/23 10/25	<b><i>The Principal-Agent Relationship</i></b>	
	Read: Korobkin Ch. 11 pp. 303-333	Prepare: <i>The Startup</i> Class: Discuss Chapter 11 and conduct <i>The Startup</i> negotiation and debrief
<b>11</b>  10/30 11/1	<b><i>Debrief of Interview Exercise &amp; Multilateral Negotiations</i></b>	
	Class: Discussion of the interview exercise <b><i>Interview Paper due</i></b>	Read: Korobkin Ch. 12 pp. 335-356 Prepare and conduct: <i>The Stadium</i>
<b>12</b>  11/6 11/8	<b><i>Major Negotiation Exercise</i></b>	
	In-class negotiation	In-class negotiation

<b>13</b>	<b>Major Negotiation Exercise</b>	
11/13 11/15	In-class negotiation	In-class negotiation
<i>Thanksgiving Break</i> <i>Nov. 20-24</i>		
<b>14</b>	<b>Major Negotiation Debrief and Course Wrap Up</b>	
11/27 11/29	Read: To be assigned Class: Debrief Major Negotiation	<i>Final Q &amp; A</i> <i>Reflective Paper, Reputation index due</i>

**Friday, December 15<sup>th</sup>, Major Negotiation Reflective Analysis Report due by 5:00 p.m.**