

## **NEGOTIATION – LAW 5810 – FALL 2021 COURSE INFORMATION AND SYLLABUS**

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Office hours: Tuesdays & Thursdays 1:00 to 2:00 p.m. and by appointment.  
In person or via Zoom: <https://mizzou.zoom.us/j/5738847813>

**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:** Tuesdays & Thursdays 8:00 to 9:15 a.m., Hulston Hall Room 112

- The Instructor may record class meetings for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.
- In the event that all Law School courses pivot fully online, we will convert to a 100% online course with synchronous lectures on Zoom at our regular times.
- See the "Communication, Accommodation, and Pivot Plan" below for details.

### **REQUIRED TEXTS:**

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

Articles placed in the "Required Reading" folder on the course Canvas site.

**RECOMMENDED TEXTS:** These optional texts are available in the Law Library or may be purchased from many booksellers in stores or online.

Jennifer K. Robbennolt and Jean R. Sternlight, *Psychology for Lawyers: Understanding the Human Factors in Negotiation, Litigation, and Decision Making*, ABA (2012), especially chapter 11.

John Lande, *Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money* (2011).

Bob Mnookin, Scott Peppet and Drew Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes*, Harvard (2000).

Roger Fisher, Bill Ury & Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, Second Edition, Penguin (1991).

William Ury, *Getting Past No: Negotiating Your Way From Confrontation to Cooperation*, Penguin (1993).

### **COURSE PHILOSOPHY:**

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.

### **COURSE GOALS AND LEARNING OBJECTIVES:** By the end of the course, you will:

1. Understand and use conceptual and analytic models of negotiation, drawn from legal studies, behavioral sciences, and other disciplines.
2. Analyze negotiation problems to determine which models are most appropriate in which contexts.
3. Effectively plan for legal negotiations, considering the interests of all parties and others affected by the outcome, as well as their legal positions.
4. Create value and problem solve in negotiation.
5. Understand and plan for strategic behaviors and effectively implement appropriate responses.
6. Understand and address common cognitive, affective, and merit-based barriers to negotiated agreements.
7. Identify ethical and legal issues in negotiation and make choices that are ethical

and appropriate.

8. Appreciate the role and impact of culture, values, personality, race, class, gender and other differences in negotiation.
9. Understand the differences in dyadic and multi-party negotiation.
10. Develop your capacity and the habit of reflective practice critiquing and learning from your own negotiation experiences.
11. Articulate policy issues in the use of negotiation and related dispute resolution processes in a variety of practice contexts.

## **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 on course material and simulations	30%
Reflective analysis report on Capstone Negotiation	25%
Class participation and contribution including reputation	20%
Objective measure of 3 negotiation simulation results	15%
Quiz on ethics and law of negotiation	10%

## **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.<sup>1</sup> 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 NEGOTIATION (25%):**

In lieu of a final exam, you will submit a reflective analysis report of the capstone negotiation, in which you will integrate themes and readings covered throughout the semester. The capstone will be conducted as part of the Interschool Negotiation Practicum and you will negotiate with a student from another law school negotiation class participating in the practicum. The report should be 12-15 pages (double-spaced).

## **CLASS PARTICIPATION AND CONTRIBUTION AND REPUTATION SURVEY (20%):**

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

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<sup>1</sup> See, e.g., Michael Moffit, Lights, Camera, Begin Final Exam: Testing what we Teach in Negotiation Courses 54 J. Legal Educ. 91 at p. 97 (March 2004)

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).

### **Reputation Survey:**

At the end of the course, a Reputation survey will be distributed asking your colleagues to rate your negotiating reputation 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 survey will ask 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.

### **OBJECTIVE MEASURES OF NEGOTIATION SIMULATIONS (15%):**

Students will be graded on substantive results obtained in three simulations: *The Blockbuster*, *The White Album*, and *The Stadium* negotiations. The curve will be based on a comparison between your result and that of other students assigned the same role this year. Each 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.

### **POLICIES**

#### **NOTEBOOK COMPUTERS AND SMART PHONES:**

Computers and smart phones may be used in class only for purposes directly related to the class such as note taking, reading course materials, or capturing video of simulations. Social networking, reading or sending email messages, surfing the Internet, game playing, or doing any work not related to this class is not permitted. Likewise,

the use of cell phones and pagers for non-class activities is prohibited. If you have an extraordinary situation which might require you to answer your cell phone during class (e.g., child care issues or a family health situation), please let me know before class and exit the classroom quietly if a call comes.

### **AUDIO OR VIDEO RECORDINGS:**

Classes may not be recorded by students, except in cases of special need with the instructor's express permission. To foster a safe environment for learning, 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 instructor and of any students who are recorded. In accordance with Executive Order #38, the unauthorized distribution of such materials is a violation of academic standards and may violate copyright laws and/or privacy rights. Students found to have violated this policy are subject to discipline in accordance with the provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri.

### **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.

## **INCOMPLETES:**

My general policy is not to grant incompletes unless the following three conditions are met: 1) that the student has a verifiable emergency situation that makes it impossible to complete the coursework on time, 2) that the student sign an agreement with the instructor prior to the final examination period about the requirements to be met for completing the class, and 3) that all required work be completed within a short period of time, usually not to exceed 3 months. Otherwise, I will turn in a grade reflecting the work completed, including a zero for any incomplete assignments.

## **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 the Law School Associate Dean or Registrar. 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>.

## **STATEMENT FOR MENTAL HEALTH**

The University of Missouri is committed to supporting student well-being through an integrated network of care, with a wide range of services to help students succeed. The MU Counseling Center offers professional mental health care, and can help you find the best approach to treatment based on your needs. Call to make an appointment at 573-882-6601. Any student in crisis may call or go to the MU Counseling Center between 8:00 – 5:00 M-F. After hours phone support is available at 573-882-6601. Visit our website at <https://wellbeing.missouri.edu> to take an online mental health screening, find out about workshops and resources that can help you thrive, or learn how to support a friend. Download Sanvello, a phone app that teaches skills and strategies to help you maintain good mental health. Log in with your Mizzou e-mail to unlock all the tools available through Sanvello at no cost to you.

## **Decreasing the Risk of COVID-19 in Classrooms and Labs**

MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. This statement will be updated as information changes.

- **If you are experiencing any COVID-related symptoms**, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or

body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.

- We will all wear **face coverings while in the classroom**, unless you have a documented exemption due to a disability or medical condition.
- We will maintain a **6-foot distance from each other at all times** (including during simulated negotiations and other in class exercises.). We will use the seating chart and protocols required by the Law School and Campus administration.
- We will enter the classroom and **fill the room starting at the front, filing all the way across a row**. When class ends, we will exit the row nearest to the door first; the instructor or TA will give the signal for the next row to exit, in the same manner.
- Online office hours will be available for all students. I have set aside Tuesdays and Thursdays from 1:00 to 2:00 p.m. for formal office hours to meet with Negotiation students. At other times, I am happy to schedule an appointment to meet with you. Office hours will be via Zoom at <https://mizzou.zoom.us/j/5738847813>.
- This course may be recorded for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the [accountability process](#), as stated in the University's [Collected Rules and Regulations](#), Chapter 200 Student Code of Conduct.

### **Communication, Accommodation, and Pivot Plan**

This is an in-person course with class meetings on Tuesdays and Thursdays from 8:00 to 9:15 a.m. in Hulston Hall Room 112. We will follow all Covid protocols required by the Law School and University. Students will access course content via the Canvas course site. Class meetings will be recorded and posted on the Canvas course site for the benefit of those unable to attend F2F classes. Likewise, students may conduct in class exercises such as simulated negotiations via Zoom, if unable to attend F2F classes. Students may contact me via email at [ladehoffp@missouri.edu](mailto:ladehoffp@missouri.edu) for both regular communication and in case of emergency. In the event that all Law School courses pivot fully online, we will convert to a 100% online course with synchronous lectures on Zoom at our regular times.

## SYLLABUS: NEGOTIATION – LAW 5810 – FALL 2021

Instructor: Ladehoff

Text: Korobkin, *Negotiation Theory and Strategy*, 3<sup>rd</sup> ed., Aspen Publishers (2014)

Week/ Dates	Tuesday	Thursday
<b>1</b>	<b><i>Introduction to the course, the study of negotiation, and conceptual models</i></b>	
8/24 8/26	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 Bargaining Zone, BATNA, and Reservation Price</i></b>	
8/31 9/2	Read: Korobkin Ch. 2 pp. 25-47 Class: Ch. 2 Discussion	Prepare: <i>On the Stump</i> Class: <i>On the Stump</i> negotiation and debrief
<b>3</b>	<b><i>Persuasion and psychological factors impacting negotiation</i></b>	
9/7 9/9	Read: Korobkin Ch. 3 pp. 51-88. Class: Chapter 3 discussion;	Read: Korobkin pp. 88-99 Prepare: <i>Club West</i> . Class: <i>Club West</i> negotiation and debrief
<b>4</b>	<b><i>Integrative bargaining</i></b>	
9/14 9/16	Read: Korobkin Ch. 4 pp. 101-135 Class: Discuss Chapter 4.	Prepare: <i>Blockbuster</i> (graded) Class: <i>Blockbuster</i> negotiation and debrief
<b>5</b>	<b><i>Power, leverage, and distributive bargaining</i></b>	
9/21 9/23	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>6</b> 9/28 9/30	<b><i>Fair Division and Related Social Norms</i></b>	
	Read: Korobkin Ch. 6, pp. 169-200 Class: Discuss Ch. 6	Negotiate <i>Farley v. Compresi</i> and debrief
<b>7</b> 10/5 10/7	<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>8</b> 10/12 10/14	<b><i>Negotiator Style</i></b>	
	Read: Korobkin Ch. 9 pp. 251-271 Class: Thomas-Kilmann Conflict Mode Instrument, discussion of Chapters 8 & 9	Prepare: <i>Smith v. Electec</i> Class: Negotiate and debrief <i>Smith v. Electec</i>
<b>9</b> 10/19 10/21	<b><i>Group Membership</i></b>	
	Read: Korobkin Ch. 10 pp. 273-301 Class: Discuss Ch. 10	Prepare: <i>Alpha-Beta Robotics</i> Class: <i>Alpha-Beta Robotics</i> negotiation and debrief
<b>10</b> 10/26 10/28	<b><i>The Principal-Agent Relationship</i></b>	
	Read: Korobkin Ch. 11 pp. 303-333 Class: Discuss Chapters 10 and 11	Prepare: <i>The Startup</i> Class: <i>The Startup</i> negotiation and debrief
<b>11</b> 11/2 11/4	<b><i>Multilateral Negotiations</i></b>	
	Read: Korobkin Ch. 12 pp. 335-356 Class: Discuss Chapter 12	Prepare: <i>The Stadium</i> (graded) Class: <i>The Stadium</i> negotiation and debrief, <i>Ellsworth</i> Instructions

<b>12</b>	<b><i>The Use of a Mediator to Facilitate Negotiation</i></b>	
11/9 11/11	Read: Korobkin Ch. 13, pp. 357 – 368 Class: Discuss Ch. 13	Prepare: <i>Rick's Revenge</i> Class: Mediate and debrief <i>Rick's Revenge</i>
<b>13</b>	<b><i>The Law and Ethics of Negotiation</i></b>	
11/16 11/18	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 Complete negotiation ethics quiz on Canvas by 8:00 a.m. Tue., Nov. 30
<b>14</b>	<b>Thanksgiving Holiday</b>	
11/23 to 11/25	No Class	No Class
<b>15</b>	<b>Rules Encouraging and Limiting Settlement and Course Wrap Up</b>	
11/30 12/2	Read (Skim): Korobkin Chs. 15 & 16 Class: Discuss Chapters 15 & 16	Final Q & A, reputation index, course evaluations

**Friday, Dec. 17<sup>th</sup>, INP Reflective Analysis Report due by 5:00 p.m.**