

Preface to Fourth Edition

We are very pleased to be publishing the Fourth Edition of *Negotiating Business Transactions*. Since the basic premise of the experiential, collaborative, extended-simulation negotiations class was originated over 25 years ago, the course for which this textbook was written has evolved to its present dynamic experiential learning model, which is now taught at more than 50 law schools worldwide. The course has been offered on six continents and has grown to include numerous U.S./U.S. and U.S./international collaborative partnerships among law schools, as well as a growing number of international/international collaborations that offer the class.

The class for which this textbook is designed is fully compliant with all requirements of ABA Standard 304 for an experiential class. In addition, the class serves as an excellent introduction to the skills and practice of business transactional law and to the role of a transactional lawyer in guiding a client through the transactional process and addressing the legal and business issues arising in such practice.

Multiple models of the class have been developed since its initial introduction as a full-semester three-credit class, including condensed versions ranging from 12 to 18 hours, which has facilitated the introduction of the class at multiple law schools without conflicting with regular classes. These condensed versions of the class can easily be offered during a series of weekends or evenings, over a winter term, during a summer session, or during a pre-semester week. The newest version of the class is a “travel” version, in which a class of U.S. law school students travels to an international location (e.g., during spring break) to negotiate with a class at a counterpart law school. This version of the class, which has been offered at three “Top-14” U.S. law schools, creates the most intense “real experience” of business transactional practice, cross-cultural immersion, and time-intensity while still within the “safe haven” of the classroom where the transactional negotiation process can be studied and explained.

The class has also been taught with both law and business (MBA) students. The opportunity to teach business and law students in the same class is exhilarating. While the two groups of students approach the simulation from the perspective of their own discipline, they are able to work collaboratively and learn how the other discipline approaches the exercise and how they each can add value to the negotiations. The reality, of course, is that eventually the MBAs will be hiring the lawyers, and the lawyers will have the business students as clients. What better place than a classroom to learn how each other thinks?

In this new edition we have expanded the material that highlights the importance of understanding the role of psychology in negotiations, the use of “back channel” negotiations to achieve successful negotiated outcomes, the relevance of understanding accounting and financial analysis in representing business clients

and negotiating business transactions, and the fundamental aspect of building trust and rapport for successful negotiations. We have incorporated new discussions of these aspects in the text, including multiple examples from practice that emphasize their relevance, many of which are described in footnotes that highlight and illustrate the topical discussion but do not disrupt the flow of the text. In some contexts, we have incorporated prior student observations based on their experiences working with the simulation, which illustrate key points about negotiating business transactions.

We have expanded the chapter related to understanding and drafting transactional agreements and our concept of “holistic” drafting. Our focus in this regard has been to explain the process by which agreements reached via negotiations are transformed into contractual terms, and how to conceptualize and draft contractual provisions that work to achieve the parties’ intentions by considering the context in which such provisions will be implemented or enforced. This process of memorializing the agreements reached in the negotiation in written documents is instrumental to the successful conclusion of a negotiation and the effective implementation of the agreed objectives of the parties. It involves an active thought process that tailors the written agreement to the realities of the market in which the parties will operate.

We have also expanded the materials that acknowledge and address the growing use of negotiations via platforms such as Teams or Zoom—and, potentially, AI. Online platforms significantly facilitated negotiations during the pandemic and have continued to evolve and impact the conduct of negotiations even as COVID has faded to a memory. The class has always incorporated computer-based communication methodologies to enable connection between classes with collaborative partners who are not close enough for in-person meetings. Even where face-to-face negotiations are utilized, the class often incorporates online communications to introduce students to this evolving format for negotiating and practicing law. The use of AI in negotiations is an evolving area. While we acknowledge its potential, we believe it is too early to incorporate it usefully into this edition.

Finally, we have made a few additions, corrections, or updates in the simulation module and the related materials in Chapter 5, many of which have been brought to our attention by both faculty and students working with the material. We greatly appreciate their input.

Student reception has continued to be overwhelmingly positive to the experiential, immersive, practical, transactional, and cross-cultural components of the class, often acknowledging that it has been one of their best experiences in law school. The class continues to evolve and we are grateful for the input we have received from students and faculty teaching the class. It is our hope that this Fourth Edition and the class for which it is designed will continue to foster the experiential and transactional legal education of students.

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