

DEAL OR NO DEAL: TEACHING ON-LINE NEGOTIATION TO LAW STUDENTS

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This article discusses and evaluates a teaching initiative conducted by the authors and their students in 2006. At the time, the authors were teaching in law schools in different States of Australia and were the coordinators of an elective subject, Dispute Resolution, in each school's undergraduate law curriculum. The two subjects had similar content but the class demographics and sizes, as well as the teaching structures and methodologies varied. The on-line negotiation exercise was a small part of the overall units, taking up about two weeks of the semester-long units, and comprising part of the students' summative assessment.

I INTRODUCTION

In 1997 the Australian Law Reform Commission recommended that there be more theoretical and skills-based education in law schools about conflict and dispute management.² Since that time many Australian law schools have incorporated undergraduate and postgraduate courses on dispute resolution into their curriculum. Gutman et al provide a comprehensive overview of alternative dispute resolution legal education in Australia in their recent article 'Why Teach Alternative Dispute Resolution to Law Students'.³ A fundamental part of this aspect of legal education is training in negotiation, and Conley Tyler and Cukier note that negotiation theory and skills training has been adopted by many law schools around the world.⁴ There has also been a great

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² Australian Law Reform Commission, *Review of the Adversarial System of Litigation: Rethinking Legal Education and Training*, Issues Paper No 21 (1997) 52-3.

³ J Gutman, T Fisher and E Martens, 'Why Teach ADR to Law Students?' (2006) 16 *Legal Education Review* 125.

⁴ M Conley Tyler and N Cukier, 'Nine Lessons for Teaching Negotiation Skills' (2005) 15 *Legal Education Review* 61, 62.

deal of research about appropriate methodologies for teaching negotiation, and a selection of these is discussed in the next section of the paper.

In their recent article ‘Nine Lessons for Teaching Negotiation’, Conley Tyler and Cukier note that ‘with lawyers around the world now using on-line communication such as email to conduct negotiations, an understanding of the differences in communication and negotiation techniques involved is vital’.⁵ They call for further studies in relation to these nine lessons, and specifically those utilising the ever-changing phenomenon of on-line technology and note that this research is important in order to further refine teaching methods and produce optimal learning outcomes.⁶ This paper answers that call and makes some important suggestions for the use of on-line negotiation simulations in negotiation training and in practice.

II TEACHING NEGOTIATION IN A BACHELOR OF LAWS PROGRAM

There are many reasons to teach negotiation in an undergraduate law program. Bruce Patton, Deputy Director of the Harvard Negotiation Project, argues that negotiation training in law schools changes students’ behaviour and attitudes by increasing students’ confidence, competence, and satisfaction in dealing with a broad range of negotiation contexts and roles, and also by helping students learn how to keep learning from future experience.⁷ Williams and Geis also suggest that negotiation training offers an opportunity for both students and teachers to ‘gain greater self-understanding as well as a greater appreciation for others’.⁸ However, how well these aims are achieved depends greatly on the design of the negotiation training.

There are a number of perceived and actual challenges in effectively teaching negotiation. Bruce Patton refers to some perceived obstacles, including that negotiation cannot be taught, that skills courses are inappropriate for a scholarly institution, and that negotiation theory is imperfect.⁹ Other more recognised barriers include the fact that students are required to change habits long developed and deeply ingrained,¹⁰ and what Michael Wheeler calls ‘the ethics challenge’ and ‘the power challenge’.¹¹ The ethics challenge refers to the difficult goal of teaching students *how* to negotiate and how to relate to one another more effectively. The power challenge is the problem of how people deal with issues of social identity and equity, and how these affect interactions that are shaped by roles and status. Despite these difficulties, there is a ‘healthy variety’ in the ways negotiation is taught in law schools¹² and this teaching appears to be largely successful.

⁵ Ibid 85.

⁶ Ibid 84.

⁷ Bruce M Patton, ‘On Teaching Negotiation’ in Michael Wheeler (ed), *Teaching Negotiation: Ideas and Innovations* (2000) 7.

⁸ Gerald R Williams and Joseph M Geis, ‘Negotiation Skills Training in the Law School Curriculum’ in Michael Wheeler (ed), *Teaching Negotiation: Ideas and Innovations* (2000) 203, 211.

⁹ Patton, above n 7, 7-16.

¹⁰ Ibid 7.

¹¹ M Wheeler, ‘Is Teaching Negotiation Too Easy, Too Hard, or Both?’ (2006) *Negotiation Journal* 187, 189.

¹² Williams and Geis, above n 8, 206.

Most negotiation training shares a set of similar objectives. Conley Tyler and Cukier reviewed a large number of negotiation programs and identified the following common goals: to impart some type of theoretical framework for understanding negotiation; to provide opportunities to practice negotiation; to reflect on students' experiences of negotiation; and to encourage students to continue their learning process.¹³ There is insufficient room in this paper to review the wide range of approaches to achieving these goals. However, one tool that is commonly used and that forms the basis of the teaching initiative on which this paper is focused, is simulated role play. Conley Tyler and Cukier point out that students will not learn just from theory, and negotiation simulations provide an opportunity to put theory into practice and try out new skills.

Simulations and role-plays provide an opportunity for experiential learning, or 'learning-by-doing' and are particularly useful in challenging existing habits and allowing students to try out and integrate new ideas, concepts, and principles in a low-risk environment.¹⁴ However, Wheeler warns that merely providing students with opportunities to experiment via role-play simulations is, by itself, unlikely to be truly transformative.¹⁵ In order for role-plays to be effective, it is important that they are credible, relevant, and contextual, and that they are followed by a rich reflective review and analysis of students' negotiation experience.¹⁶ This kind of review may take the form of individual or group debriefing sessions, peer feedback and discussion, or written reflective journals.

In recent years, information and communication technologies have been increasingly used in negotiation training. Köszegi and Kersten argue that the use of e-learning technology is appropriate for both the training of conventional negotiation skills as well as new technology-related skills.¹⁷ Given the frequent use of technology in conducting negotiations, understanding this medium is important to prepare students for practice. In addition, the use of technology in negotiation training can enhance the learning process.¹⁸ Previous studies have shown that the use of technology in negotiation training:

- assists students with reflective analysis, as their interactions can be recorded, retrieved and sorted with ease; and
- allows for a delay in between communication (in contrast with the immediacy of face-to-face negotiation), which provides students with the time to think and formulate their responses before communicating them to the other party.¹⁹

¹³ Conley Tyler and Cukier, above n 4, 64.

¹⁴ L E Susskind and J Corburn, 'Using Simulations to Teach Negotiation: Pedagogical Theory and Practice' in Michael Wheeler (ed), *Teaching Negotiation: Ideas and Innovations* (2000) 285; Sabine Köszegi and Gregory E Kersten, *On-line/Off-line: Joint Negotiation Teaching in Montreal and Vienna* (2003) InterNeg 2 <<http://interneg.org/>> at 22 April 2008.

¹⁵ Wheeler, above n 11, 189.

¹⁶ Conley Tyler and Cukier, above n 4, 71; Patton, above n 7, 19-22; Susskind and Corburn, above n 14, 302-6; Köszegi and Kersten, above n 14, 2.

¹⁷ Köszegi and Kersten, above n 14, 2.

¹⁸ Conley Tyler and Cukier, above n 4, 64.

¹⁹ Ibid 83; A P Lempereur, 'Innovation in Teaching Negotiation: Towards a Relevant Use of Multimedia Tools' (2004) 9 *International Negotiation* 141, 143; Köszegi and Kersten, above n 14, 9-10; Derry Dance, 'Lessons Learned in On-line Education: On-line Business Negotiation' (Paper presented at the Teaching On-line in Higher Education Conference, held entirely on-line, 10-12

There are a range of approaches to teaching negotiation with multimedia tools. For example: negotiation roleplays may be carried out using email, live chat, or video conferencing; negotiation exercises may be based on direct communication between students, or using a computer simulation package; students may negotiate as individuals or in groups, with students in their own class with whom they are familiar, or with students from other universities in the same or other countries; and technology may form the basis for all learning and teaching in the course, or just one of the tools used in a face-to-face course.²⁰ Saunders and Lewicki point out that a primary question for the teacher of negotiation considering the use of technology is: What is the purpose of using it?²¹ Purposes might include acquiring new knowledge, reinforcing and practising the acquisition of knowledge previously acquired, and evaluating and testing the acquisition of that knowledge.²²

Alain Lempereur reports on simulated cross-cultural e-mail negotiations between French, American, Japanese and Canadian students.²³ The structure of the exercise was quite similar to the one the subject of this paper, although ours did not have the added complexity of cultural and language barriers. Students in both exercises negotiated by email, participated in a debriefing session, and answered questionnaires after the experience. Lempereur reports the following key lessons, which are reflected in our own findings:

- Technical difficulties can sometimes make negotiation exchanges a nightmare, obliging students to wait until they can obtain the correct e-mail address or an efficient Internet connection.
- Students often waited longer than they expected before receiving an answer from their counterpart.
- Students grew accustomed to the fact that some students were not as skilled in the use of e-mail and needed to accept that time differences could pose an obstacle for exchanges, though it also allowed more time for reflection between messages.
- Students were able to read and reread messages and take the time to decide how to answer in the most appropriate way.
- Many students also found that the use of e-mail as a medium altered their negotiation style, though during the discussions it was not clear how. It may be the case that students who tended to be more relational may not have interacted as much as they would have otherwise.
- A majority of students thought that e-mail tended to keep the relationship at a superficial level.
- This type of negotiation did not appear easier or more difficult than face-to-face interactions and did not clearly make students tenser or more uncomfortable.²⁴

November 2004), paper available at: http://www.ipfw.edu/tohe/Papers/Nov%2012/0216__odr_paper_final.pdf at 9 January 2008; D M Saunders and R J Lewicki, 'Teaching Negotiation with Computer Simulations: Pedagogical and Practical Considerations' (1995) 11 *Negotiation Journal* 157, 166.

²⁰ See, for example, Lempereur, above n 19; Köszegi and Kersten, above n 14; Dance, above n 19; Saunders and Lewicki, above n 19, 157.

²¹ Saunders and Lewicki, above n 19, 157.

²² Ibid.

²³ Lempereur, above n 19.

²⁴ Ibid 143.

Lempereur also noted that students involved in the exercise had to be more self-dependent and more patient, and that some became stressed when the other party did not answer, or was not 'professional' enough. Students in the different locations also demonstrated partisan perceptions, and often referred to 'our group' and 'their group'.²⁵ This was also evidenced in our exercise, even though the two groups were less culturally differentiated.

Other similar studies have found that e-negotiation:

- Allows more time for preparation, the assessment of offers and counter-offers, and the possibility of integrating time pressures in tactics;²⁶
- Lessens social pressures, by giving students the ability to remain anonymous, and thus the opportunity to experiment with different approaches, or to conceal their gender or ethnicity;²⁷ and
- Made it difficult for students to establish rapport, a good relationship and build trust, as it can be difficult to interpret others' behaviour.²⁸

These findings were also reflected in the comments made by the students who participated in our exercise.

III THE MACQUARIE UNIVERSITY AND UNIVERSITY OF TASMANIA ON-LINE NEGOTIATION

The Macquarie University is located in Sydney, New South Wales and the University of Tasmania is located in Hobart, Tasmania. The two universities' dispute resolution subjects had similar content but the class demographics and sizes, as well as the teaching structures and methodologies varied. Macquarie University's Division of Law teaches 'LAW415 Dispute Management & Resolution' every year in second semester as an elective unit in their Bachelor of Laws program. In 2006 the unit attracted 182 students of whom 131 were full time students and 51 were part-time students. Two teachers delivered the unit – one as unit convener/lecturer/tutor and the other as a tutor. The Faculty of Law at the University of Tasmania teaches 'LAW622 Dispute Resolution Law & Practice' every second year as an elective unit in their Bachelor of Laws program. Unit enrolments are capped each year to maximise the amount of feedback students receive on the practical components of the unit. In 2006 the unit was capped at 32 students. The unit was delivered in total by the unit convener only, without any other teaching staff. Ethics approval was obtained from both universities. The questionnaire returns showed an overall return rate of 53.5% with Macquarie students accounting for a 51% return rate, and the University of Tasmania students accounting for a 56% return rate. The on-line negotiation exercise was a small part of the overall courses, taking up about two weeks of the semester-long courses, and comprising 20%-30% of the students' summative assessment (this varied across the different universities). The learning and teaching aims of the exercise were:

²⁵ Ibid 146.

²⁶ Köszegi and Kersten, above n 14, 7.

²⁷ Ibid 8.

²⁸ Ibid; Dance, above n 19, 4-6.

- (a) For students to engage in a simulated on-line negotiation;
- (b) For students to apply the theory and philosophy of negotiation to the simulation in a practical sense, in particular, the principled model of negotiation;
- (c) For students to develop interpersonal and communication skills through the simulation; and
- (d) For students to reflect on the positives and negatives of the on-line setting in conducting a negotiation.

The anticipated learning and teaching outcomes were:

- (a) Participation in a simulated on-line negotiation;
- (b) Understanding of the difficulties and advantages of the on-line setting in conducting a negotiation;
- (c) Application of the theoretical models of negotiation, in particular, principled negotiation in a simulated negotiation exercise; and
- (d) Reflection on the conduct of a simulated on-line negotiation, with particular emphasis on the on-line setting and the theoretical and philosophical principles of negotiation.

Each student from the University of Tasmania was paired with a student from Macquarie University. Students were given their opposing student email address (determined by the unit convenors), the Rules of Engagement, the fact scenario and a Negotiation Debrief Questionnaire. Students from each university all acted for the same side of the dispute, which set up an element of rivalry. Students were instructed that they did not have to settle the dispute, and were encouraged to employ a principled model of negotiation (although they were permitted to use other models if they thought it appropriate). Students were encouraged to consider options outside of monetary compensation to resolve the dispute. In other words, students were encouraged to use creative option generation as a way to resolve the dispute.

The fact scenario was a simple commercial dispute involving a company supplying coal to another company to drive smelting machinery for the production of steel. The coal was found to be contaminated and caused the buyers of the coal to suffer damages as a result of having to clean out its furnaces and to replace the dirty coal. There were specific figures in relation to damages supplied in the fact scenario, as well as a previous and on-going relationship (and love of golf) between the two company chief executive officers.

The negotiation opened at a prescribed date and time, and closed at a prescribed date and time. Students were instructed that all correspondence in the negotiation was to be conducted directly between the students via the email addresses. Communications were to be recorded in the form of a negotiation log. At the conclusion of the negotiation students filled out the questionnaire and submitted it electronically to their respective unit convenor. Students also wrote up a reflective journal of no more than 2000 words with the negotiation log annexed to the journal.

The reflective journal consisted of between 20%-30% of the final total mark for the units (this varied across the different universities). Assessment was based on the submission of a reflective journal containing two components. The first component of the reflective journal was the reflective commentary of the negotiation. Students were

advised that this was not to be a transcript of what happened between the students. It was to be a thoughtful reflection on what happened during the negotiation that will seek to address:

- (a) How the theories and philosophies of negotiation translated into the practice of negotiation
- (b) Why certain negotiation strategies were adopted or discarded
- (c) What difficulties the on-line setting presented to the conduct of the negotiation
- (d) What advantages the on-line setting presented to the conduct of the negotiation
- (e) What could have been done better to make the negotiation more effective
- (f) If the student could change anything, what would the student change to make the negotiation more effective?

The second component consisted of the negotiation log which was a cut-and-paste record of the on-line negotiation that was a reference point for the reflections made by students.

IV THE RESULTS

A *Quantitative Results*

Appendix 1 sets out the statistical data of the returned questionnaires. Table 1 shows the combined results of both universities by question and the number of responses to each proposition. Question 1 asked students to respond by way of five preferences, ranging from strongly disagreeing to strongly agreeing, to the proposition that the on-line negotiation exercise was a useful activity for learning about negotiation. As table 1 shows, 98% of responding students strongly agreed or agreed that the exercise was worthwhile in learning about negotiation. Question 2 saw combined responses in the order of 96% of students strongly agreeing or agreeing that the exercise was a useful activity for learning about on-line negotiation. These results support Susskind and Corburn's hypothesis that negotiation training via the use of role play allows students to test the theory they have learned in a low risk environment and that experience in itself leads to effective learning in the theory and skills of negotiation.²⁹

²⁹ Susskind and Corburn, above n 14, 285-310.

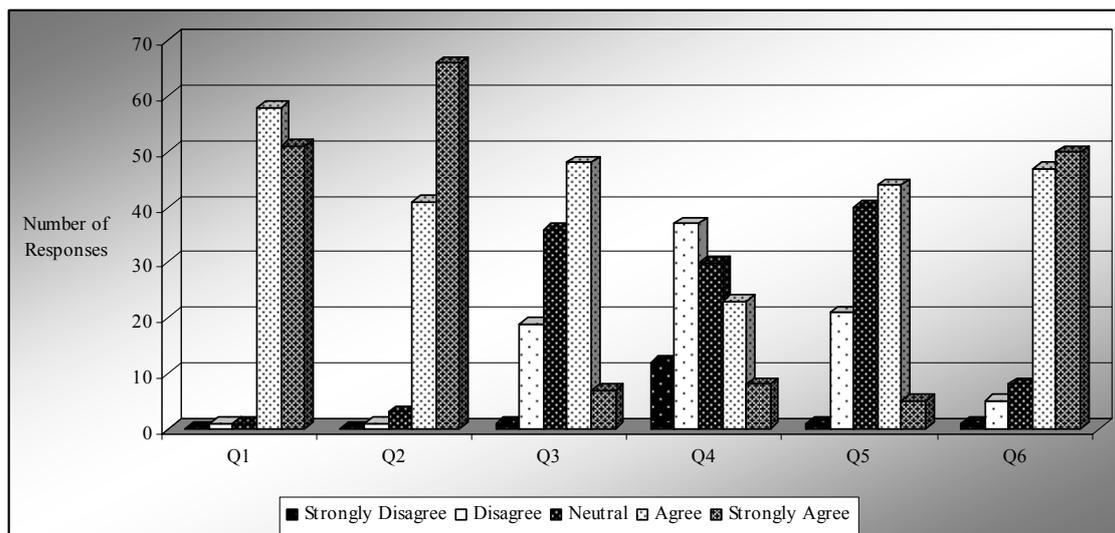


Table 1: Overall Quantitative Responses

While an overwhelming majority of students saw the exercise, as a learning experience of the skills of negotiation, as being effective, that same group of students saw far less value in on-line negotiation as a way to effectively resolve disputes and build relationships. Question 3 asked students to respond to the proposition that on-line negotiation is an effective method of resolving disputes and saw combined responses only in the order of 49.5% strongly agreeing or agreeing with the proposition. Neutral responses accounted for 32.5% of responses, with a further 17% disagreeing with the proposition. Question 4 asked students to respond to the proposition that on-line negotiation is an effective method of building relationships and similarly saw reduced agreement with the proposition down to 28.5% for those that strongly agreed or agreed with the proposition. Neutral responses accounted for 27% of responses, with a further 33.5% disagreeing with the proposition, and 11% strongly disagreeing with the proposition.

This lack of confidence that on-line negotiation can address relationships issues and lead to a resolution of the dispute is in stark contrast to the confidence students displayed about the learning benefits of the exercise. Perhaps the positive learning gained from this exercise was the notion that on-line negotiation does pose problems in relation to the chances of successful resolution and the possibility of building healthy relationships as a result of the dispute. If this hypothesis is correct, then the learning experience derived by the students has been a valuable one from the perspective of highlighting the problems that on-line negotiation presents to its participants. This result is consistent with the findings of academic commentators in the field who warn that the lack of human contact through on-line dispute resolution processes jeopardises the chance of resolution, predominantly through the missed opportunity to build relationships that occurs through a reduction of emotional content present in on-line mediums.³⁰ These issues will be further discussed below when we deal with the qualitative results.

³⁰ See, for example, T Schultz, G Kaufman-Kohler, D Langer and V Bonnett, *On-line Dispute Resolution: The State of the Art and the Issues* (2001) On-line Dispute Resolution [7] <<http://www.on-line-adr.org>> at 23 April 2008; S Hardy, 'On-line Mediation: Internet Dispute Resolution' (1998) 9 *Australian Dispute Resolution Journal* 216, 218-19.

Question 5 asked for responses to the proposition that on-line negotiation promotes effective negotiation. Table 1 shows that only 44% of students strongly agreed or agreed with that proposition, while 36% were neutral to the proposition, with a further 20% disagreeing or strongly disagreeing with the proposition. The qualitative results to be discussed below may explain these responses, however, for the moment it would seem that the contrived nature of the exercise, in terms of its timeframe and lack of ability to control the parameters of the negotiation, played a significant role in the poorly-held view that on-line negotiation can promote effective negotiation.

The final qualitative question sought responses to the proposition that students would recommend the on-line negotiation assessed task for inclusion in the unit next time the unit is run at the respective law schools. Of the students responding, 87% strongly agreed or agreed that the activity should be run again, with only 8% neutral to the idea and 5% disagreeing or strongly disagreeing. From a teaching perspective these are quite good results that indicate that the assessed activity was received very well by students and that it enhanced their learning experiences within the unit.

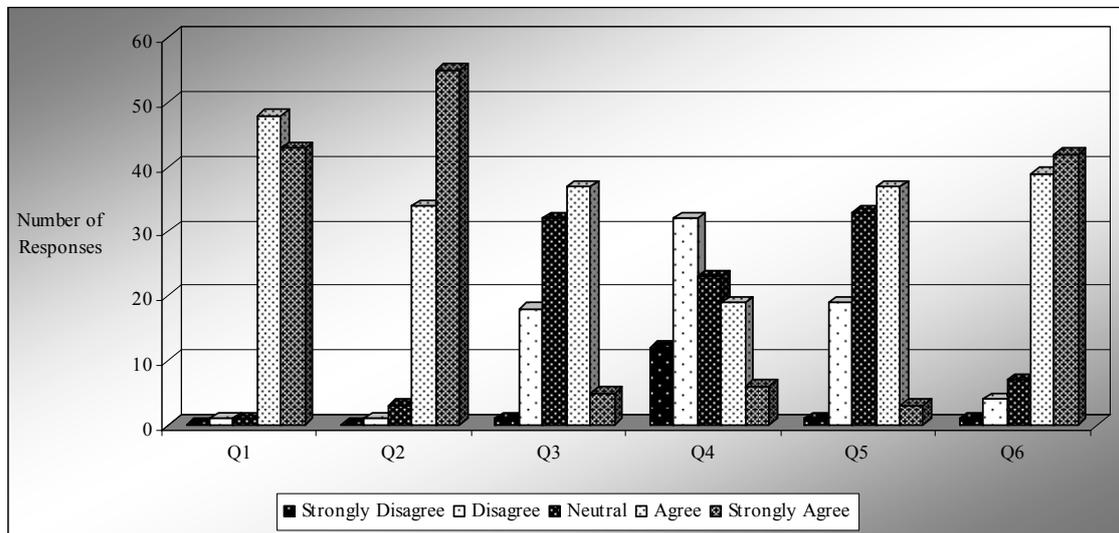


Table 2: Macquarie Quantitative Responses

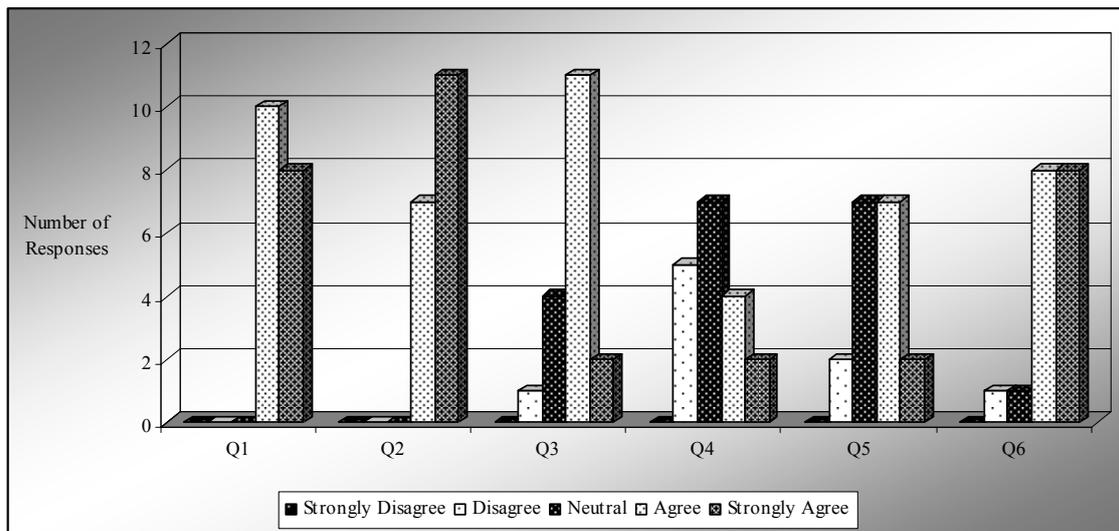


Table 3: University of Tasmania Quantitative Responses

Tables 2 and 3 graph the individual institutional results and do not indicate any trend-worthy departure from the combined results. Tasmanian results were a little flatter at the positive end of the spectrum for the value of the exercise in learning about negotiation and in particular on-line negotiation but not enough to warrant any further analysis at this stage.

B *Qualitative Results*

There were six questions asked of students that allowed for a qualitative response. In order to analyse the answers provided by students the responses have been broken up into the questions and the themes that flowed from the answers.

1 *Question 1(a) – ‘Why was principled negotiation used’ - Theme 1 – ‘An effective model’*

The first question asked, ‘Did you employ the principled negotiation model of negotiation? If so, why? If not, why?’ Out of the 111 respondents to the questionnaire, 105 stated that they employed or tried to employ the principled negotiation model at some stage during the on-line dispute resolution exercise. The answers as to why students attempted to employ the principled negotiation model fell into a number of common themes.

There was a commonly held view that principled negotiation is ‘the most effective model of negotiation’. It was judged to be the model most likely to produce an outcome that would last and serve the participants. Further, some students felt the principled model would be better for maintaining relationships despite the fact that the mode of participation was via an on-line medium. Some criticism of the model included its inability, when applied through an on-line medium, to deliver relationship outcomes. This was an interesting balancing of opinion by students engaged in an actual simulation of an on-line negotiation.

Some students reflected that principled negotiation allowed them to engage in creative option generation that would allow a more creative solution to the dispute before them. Other students reflected that that principled model was ‘the fairest’ in that it would enable both parties to emerge from the dispute with some semblance of a ‘win’ scenario. A number of students suggested in their reflections that, given the multi-issue nature of the dispute, a principled model would best deal with this kind of a situation - unfortunately no justification was given for this proposition.

These responses are consistent with the materials used in the teaching of the units and the approach to teaching adopted by the unit conveners and tutors. In other words, many students felt compelled to try the principled negotiation model because they felt it was expected of them given its reported effectiveness in all manner of disputes. The Rules of Engagement did mention the use of creative options and given the weight both unit conveners and tutors placed on the model, it should not be surprising that students felt this compulsion. It should be stated that neither unit convener promoted the principled model above any other model – in fact both conveners made it clear that their units are not about advocating negotiation or dispute resolution in any way, rather, to simply introduce students to the methods of dispute resolution being commonly practiced around Australia and the rest of the world. Another explanation for this result is that

students seemed to have considered the materials they had encountered in the teaching of the units and adopted those theoretical propositions in support of their own reflective understanding of the activity. This could have been done for assessment reasons or because subconsciously they thought the unit conveners expected this sort of an approach.

2 *Question 1(a) – ‘Why was principled negotiation used’ - Theme 2 – ‘The structured approach’*

A number of students wrote that they chose the principled negotiation model because it set out a structure for their dispute resolution exercise. Some students were of the view the principled model gave them a clear path - that path being the steps as set out in the Harvard Principled Negotiation Model. In particular, these students relied upon the seven elements of principled negotiation as stated by the Harvard Negotiation Project to conduct their negotiation and to write their reflective journals. An adjunct theme that emerged was one of a desire to have a ‘starting point’, that is, a way to begin the process of unravelling the facts, positions and interests and to allow students to move forward in a way that would be outcome focussed. By using the seven elements as espoused by the Harvard Negotiation Project, students felt safe in the knowledge that they will address all the issues surrounding a negotiation of this variety.

Thus, it seems that these students appreciated the guidance that the principled model could provide during the course of their on-line negotiation. This desire for structure or a path is particularly important in this discipline. It is conceivable that the inherent flexibility of dispute resolution might be confronting to law students who are largely used to a more structured approach to their studies and, together with the fact that most law students lack experience in dispute resolution, these students felt drawn to the principled negotiation model.

3 *Question 1(b) – ‘Why was principled negotiation not used’ - Theme 1 – ‘Relationships’*

A small number of students chose not to use the principled negotiation model because they believed that the parties in dispute were ‘commercial parties’ and therefore, they would not be concerned with ‘feelings and interests’, rather they would be more concerned with making a profit and the potential monetary compensation. This theme illustrates a lack of understanding or interpretation regarding the very nature of the principled negotiation model. It is interesting that students made a clear division between commercial practice and what they described as ‘feelings’. These types of comments seem to disclose that students believe that business is purely rational, tangible and devoid of any emotions or other personal characteristics.

Some students felt that the model threw them into a very personal style of negotiation that was difficult to justify given the lack of time to establish a rapport with the other side. Interestingly, the fact pattern established a history between the two chief protagonists, being the Chief Executive Officers of the respective companies, but some students could not accept this relationship in an artificial sense as a way to ‘break-the-ice’ and kick start the negotiation with an acceptance of the history between the two parties.

4 *Question 1(b) – ‘Why was principled negotiation not used’ - Theme 2 – ‘Strategic disadvantage’*

A small number of students explained that they did not use the principled negotiation model because the ‘fact scenario did not provide enough background information’. They elaborated by saying that this lack of information meant that parties could enter into the negotiation in positions of undue strength or weakness because they created artificial ideas about ‘company market share’, ‘past business relationships’ and ‘financial background’, and this in turn affected the interests that they wished to satisfy. Some students were more concerned about being perceived to be at a strategic disadvantage during the course of the negotiation than discovering the interests of the other party and trying to produce an interest-based result, or for that matter, any result.

This theme is an interesting one particularly because the rules of engagement stated, and the unit conveners promoted, the idea that sensible adlibbing of facts would be required to make the negotiation more accurate and to enable some movement on negotiating. Clearly it is not within the realms of possibility to include every single detail about the parties and the dispute in the fact pattern. Therefore, some sensible adlibbing was promoted, but students were warned that their good faith commitment to the negotiation, required of all participants, meant they could not adlib situations that would destroy the other party’s arguments and options for settlement. Notwithstanding this, a small sample of students still avoided the principled model because of a perceived strategic disadvantage.

5 *Question 1(b) – ‘Why was principled negotiation not used’ - Theme 3 – ‘Deficiencies in the model’*

Some students reflected that they felt the principled negotiation model had certain defects or deficiencies in it that prevented the negotiation from progressing. A small number of students were concerned that the principled model did not allow them to be aggressive in their approach to outcomes. Comments such as the model being ‘too soft’ were common amongst this sub-set of students not using the principled model. Others reflected that they rejected the principled model only when it failed to deliver a settlement or when the parties had difficulty understanding and running the fact pattern through to finality. Nearly all of the students in this small number who abandoned the principled model of negotiation stated that the trigger mechanism for abandoning the model was when an impasse was reached.

From a teaching perspective, this last point is an interesting one because given the short time these ‘survey style’ units must be taught in, there is not a lot of time to deal with micro skills issues such as impasse breakers. Being university units in degree programs, they are not entirely skills-based units. Traditionally, Australian university units have to be theoretical, philosophical or doctrinal type learning experiences. In dispute resolution, it is largely left to private providers to train negotiators and mediators in skills-based training that leads to accreditation based on the learning of practical skills. Therefore, university students studying a ‘survey style’ unit in dispute resolution will not be introduced to micro-skills such as impasse breakers which would lead this group of students to abandon the principled model of negotiation at the first sign of trouble.

6 *Question 2 – ‘Why did you use other models’ – Theme 1- ‘Adversarial negotiation’*

The second question asked, ‘If you used other models of negotiation please briefly explain which model or models you used and why?’ Of the 111 responding students, 87 stated that they used a model other than principled negotiation during the course of the activity. Logically, given the fact that the participants are law students, of the 87 students who admitted they used different models of negotiation, 52 students reflected upon the fact that they used the adversarial model of negotiation throughout the entire negotiation or part way through the negotiation. Twenty-six students said they used the integrative model while nine students were conscious that they used the distributive model of negotiation.³¹ Again, the reasons for using other models of negotiation fitted into a number of themes.

The first theme of why students selected other negotiation models to use in this activity was based around the use of adversarial negotiation. Some students in this group preferred an adversarial model of negotiation over any other because they felt it was more efficient in discussing liability and legal issues. They reflected that it allowed them to ‘cut to the chase’ without going through the laborious task of assessing interests and trying to gear a settlement to take account of those interests. In particular, when it came to the issue of quantum of any payment, it was easier to have a ‘Dutch auction’ rather than establish the real interest in compensation as being a purely financial one that needs no assessment of the interests behind the positions. Given the nature of the fact pattern that being a commercial agreement negotiated at arm’s length that involved financial compensation, students in this group reflected that it is easier to ‘just agree on a figure’ and promote creative option generation on other issues.

Some students reflected that they used the adversarial model of negotiation because, ‘it came more naturally’ – their justification for this being that they were used to the adversarial system that was the subject of their studies throughout their time at law school and that it was second nature to simply negotiate in an adversarial manner. A great hindrance to the teaching of dispute resolution in law schools is that as legal academics we spend five or more years teaching our students the law from a system of adversarial justice only to suggest to them in the dying days of their legal education that there is another way. Both authors expected this type of response from students given the prescribed curriculum, set by the various admitting authorities around Australia that teaches the doctrines of law through the lens of adversarial justice.

Other reflections from students in this group suggested that the reason they used the adversarial model towards the end of a principled negotiation, was as a way to ‘fine tune the settlement’. Others in this group justified their use of the adversarial model by reflecting that using it was easier and faster than the more lengthy approach of the principled model. A further observation by some was that they used the adversarial model because they felt, ‘their client was in a position of power, due to the facts and therefore believed an adversarial approach was most appropriate’.

³¹ For a description of the difference between the four models of negotiation see D Spencer and T Altobelli, *Dispute Resolution in Australia: Cases, Commentary & Materials* (Lawbook Co, 2005) ch 3.

Once again relationships raised their head as a rationale for using an adversarial model over any other model. Some students defaulted to the adversarial model when distrust surfaced between the disputants or when negative communication started to flow between the parties - in particular, when the other party seemed unreasonable or mistaken and in response to perceived attacks by the other party.

7 *Question 2 – ‘Why did you use other models’ – Theme 2 – ‘Integrative negotiation’*

A small number of students used the integrative model of negotiation because of the characteristic of ‘concessions and trade-offs’. The fact pattern deliberately allowed for the possibility of settlement being reached through trade-offs and concessions in the guise of discounted future orders, reductions in compensation, and projects for mutual gain amongst many other possibilities. In other words, the potential was always present for non-monetary solutions, albeit limited in the commercial reality of the fact pattern. Some of the small number of students that employed the integrative model rationalised it by reflecting that it was a strategy, ‘in response to an adversarial strategy by the other party’. Others saw the integrative model of negotiation as, ‘a good compromise between principled and adversarial negotiation’. Finally, most students in this group considered that the integrative model did not send the message that they were ‘caving in’ to the other side’s demands.

8 *Question 3 – ‘What prevented effective negotiation?’ – Theme 1 – ‘Absence of instantaneous communication’*

Overwhelmingly the common complaint from the cohort of responding students was that the on-line negotiation suffered because of a lack of instantaneous communication and that this factor alone prevented effective communication. In particular, many students reflected that the medium of the internet made it, ‘difficult to clarify comments immediately so they don’t drag on the confusion’. Further, the lack of non-verbal communication played a hindering role in the negotiation. Other student comments included:-

- ‘It was difficult to convey the tone I wanted to use.’
- ‘Lack of spontaneity due to formality of writing.’
- ‘It was difficult to clarify what was being meant...because we couldn’t use additional communication to explain ourselves, eg intonation and body language.’
- ‘Lack of personal interaction led to a weak relationship.’
- ‘It would be more effective if asked face-to-face so they can’t avoid questions.’

The theme of time played an important role in the identification of elements of the negotiation that prevented effective negotiation. In particular, some students observed that, ‘it was difficult to know how long to wait after sending an email before continuing on regardless of a response’. Although students were not encouraged to use, or discouraged from using, MSN instant messaging, a small number of students did so and overcame the lag in time between emails. Student comments on this issue included:

- ‘The absence of “immediacy of response” prevented effective negotiation.’
- ‘Lack of an opportunity to iron out issues immediately.’
- ‘Misunderstandings were exacerbated by this lack of immediacy of response.’

- ‘The time delay became stressful.’
- ‘Gaps of 3-4 days.’
- ‘There was a loss of momentum over the weekend during option-generation.’
- ‘The fact that you did not know when the other party was going to respond meant you had to keep checking.’
- ‘There was not enough time to reality test solutions or even brainstorm a number of options.’
- ‘I did not have adequate time to explore the details.’
- ‘I had no time to read emails effectively and respond thoughtfully.’

A derivation of the time issue unrelated to the time lag between communications was the student’s own time commitments to the task. A small number of students were brave enough to reflect that their own work and study commitments were a very real hindrance to the negotiation. This prevented a total commitment to the activity but allowed for an element of reality in the assessed task. In a real on-line negotiation, chances are that the disputants’ own commitments external to resolving the dispute will come into play and affect the process of negotiation and potentially any outcome. This is certainly in contrast to the intense engagement of a face-to-face negotiation.

9 *Question 3 – ‘What prevented effective negotiation?’ – Theme 2 – ‘Technological difficulties’*

Some students in this group reported that technological difficulties prevented effective negotiation. In particular, a small number of students complained that the technological disadvantage was due to the proximity between the content of the exercise, the emails for the other party, and ‘junk mail.’ A smaller number of students reflected upon lost emails, particularly in one case, of a student who did not receive the final agreement and thought the other side had reneged on the perceived deal.

It should be noted that there was a system outage over the middle weekend of the activity at the Macquarie University end, which affected access for all students. This related to general complaints about availability of service that impacted negatively on effective negotiation. Notwithstanding this, it should be noted that it is somewhat surprising that so few participants reported this as a problem. Perhaps this relatively low quantity of problems relating to technology is due to how technologically savvy modern day students are or simply this group of law students are. Importantly however, this may be an indication that technological difficulties may not be such a barrier to the acceptance of on-line negotiation.

10 *Question 4 – ‘What promoted effective negotiation?’ – Theme 1 – ‘Contemporaneousness and instantaneity’*

Question 4 asked students to look more critically at the factors of on-line negotiation that assisted the process of resolution. The most common response to this question was that the absence of pressure to communicate instantaneously promoted effective negotiation. In particular, students reflected that in on-line negotiation there was an ability to take a reasonable amount of time in replying, which translated into having the time to consider all of one’s options. Consistent with this theme was the observation by some students that the mode of engagement gave students the opportunity to read and re-read an email before responding and in this respect to aim to address all the issues

raised in a single response. Other reflections included: 'Being able to think before - so nothing rash was said'; and 'Allowing for reflection and editing'. The opportunity granted to students in an on-line negotiation led many students to reflect further on the opportunity to think before responding, rather than the often knee-jerk reaction taken in a face-to-face negotiation. The opportunity to not act in an impulsive manner was seen by many students as the main benefit of the on-line milieu. Some students noted that having the time to respond also meant they could better creatively option generate and this was clearly to the benefit of the parties in a principled negotiation.

Another interesting reflection, admittedly by a small number of students, was that the ability to arrange convenient times to negotiate assisted the process of resolution. Students noted that when they were sitting at their computers during the designated times for negotiation, the process ran efficiently because of the commitment to complete the process during these allocated segments only. In other words, there were clear time parameters set because of the medium being used by the students to negotiate within.

11 *Question 4 – 'What promoted effective negotiation?' Theme 2 – 'Nature of the communications'*

Many students reflected that they thought on-line negotiation was an effective process for resolution because of the nature of the medium itself. There were a number of elements to this theme of effectiveness. Some students reflected upon the fact that certain ground rules had to be set, which included common courtesies and only responding to one email and waiting for the other side's response, which reportedly worked very well to keep the negotiation moving smoothly forward. Some students set a 24 or 36 hour guarantee within which to respond to emails.

Other students noted that the use of clear written communication promoted effective negotiation. Some students noted that the medium of on-line negotiation prevented emotional outbursts by allowing parties to shield their frustrations and focus on the issues rather than worrying about personalities and emotions. Many students reflected that they thought the medium promoted rational rather than emotional thinking and decision-making.

Another interesting reflection that supported the effectiveness of the medium was that using an email system provided clear documentation of previous communications, and in turn, that allowed students to provide good options summaries and use tables for data. Some students reflected that the medium neutralised any imbalances between the parties – in particular: power imbalances; age disparity; personal appearance; cultural background; and lack of experience - were factors hidden or neutralised by the medium.

12 *Question 4 – 'What promoted effective negotiation?' Theme 3 – 'Understanding the need to compromise'*

Students own learning throughout the respective dispute resolution units seemed to promote effective negotiation. This understanding of the 'willingness to compromise' played an important role in producing an engagement in the process of negotiation that sometimes led to resolution. In that respect, some students reflected that they thought effective negotiation was promoted when both sides of the dispute used the same model of negotiation. Interestingly, a number of students noted that effective negotiation was

achieved when both students had a working knowledge of the principled negotiation model. Further, a large number of the respondents to this question noted that effective negotiation was facilitated by the parties understanding and focussing on interests as opposed to positions, even if the traditional principled model was not used as the driving force behind the negotiation. In other words, students believed that being conscious of interests assisted them in effectively negotiating despite the fact that they may not have stuck to a principled negotiation model.

A number of students reflected that compromising attitudes manifest by conciliatory language assisted them to effectively negotiate. Examples of this sort of behaviour included responses such as, 'Using thank you, please etc' and 'Offering a concession that doubled as an apology. From then on, no blame game was in operation and the rest of the settlement proceeded quite smoothly.' Other responses on this theme included a sizeable number of students reflecting that the joint desire to reach a settlement promoted effective negotiation. This last observation needs to be put in context by accepting that while students were not compelled to settle the dispute, the task was still an assessed piece of work that carried a large portion of the final marks for the units and on this basis students may have felt that better marks were available for a settled dispute.

13 *Question 5 – 'Briefly list the components of any settlement reached'*

The best way to present responses to this question is to group the responses into logical themes. As stated above, there were 214 students participating in the assessed task of which 53.5% returned questionnaires. As the questionnaires were anonymous we have no way of matching responses therefore, the following figures will contain elements of duplication amongst paired student teams.

- The settlements of 71 students involved an amount of monetary compensation.
- The settlements of 53 students incorporated a discounted price for future coal purchases between the parties into their settlement.
- The settlements of 14 students included future business dealings, unrelated to the sale and acquisition of coal, as a component of the agreed settlement.
- The settlements of 37 students incorporated measures relating to the quality control of coal shipments into their settlements.
- 1 participant did not settle.
- 9 participants did not reach a settlement.
- 8 participants did not respond to this question.

The Rules of Engagement stated, 'Try to come up with creative options for settlement that do not necessarily involve one side writing a cheque. Let us see who can come up with the most creative options!' Notwithstanding this, students reflected that they found it difficult to come up with creative options on a fact pattern that was a commercial type dispute. In reflecting on these types of comments, it occurs to the authors that two issues come into play that affected the outcome of this assessed task. Firstly, students' perception of the 'real world' nature of the dispute may have limited them to pecuniary solutions. After years of practising law and teaching undergraduate law students, the authors are confident in stating that a law student's perception of 'real world' legal practice and the reality of legal practice are two very different things. Students' perceptions of what is or is not acceptable in 'real world' legal practice may have

tainted their ability to creatively option generate. Secondly, it must not be forgotten that at the stage of the assessed task, students had only experienced about five or six weeks' theory in negotiation, delivered in a lecture format with supporting materials, coupled with some role play style tutorial activities. Therefore, their experience in option generation was very limited and that would affect their ability to creatively option generate a commercial dispute where fiscal issues seemed paramount. It is possible that the same exercise run with postgraduate students who had experienced the vicissitudes of legal and/or business practice could have creatively option generated in a different way. In this respect Patton's view that teaching skills-based units at universities is inappropriate, is confirmed.³² University academics often struggle with the content of their units and try to balance the requirements of scholarly learning with equipping graduates with skills attributes that will stand them in good stead in the professional world they will enter after university. Both the authors have struggled with this balancing act and of course err on the side of scholarly pursuits in order to satisfy university and professional accreditation standards. The result of this skewing towards the scholarly is highlighted in this result of the students' abilities to creatively option generate.

14 *Question 6: 'If you did not settle, did you agree on how to move forward with resolution of the dispute? Briefly explain.'* – Theme 1 – 'Third party outcome'

In crafting this question, the authors were keen to test the students' ability to take a failed negotiation and still obtain some benefit from the process. Both units engaged with students at the theoretical level in how to deal with this situation and this final question sought to test learning and teaching outcomes. Most responses left open the door to further meetings and negotiations. Only in one reported case were the students resigned to a curial solution to the dispute.

A number of the negotiations that did not settle reported that they had agreed to pursue third party solutions outside of the negotiation. In particular, the carriers of the coal (being an identified third party in the fact pattern) were a common target of potential compensation. One student noted that a further set of negotiations regarding a cleaning service for the Greater Manu (the ship carrying the coal from Tasmania to New South Wales) had been organised.

15 *Question 6: 'If you did not settle, did you agree on how to move forward with resolution of the dispute? Briefly explain.'* – Theme 2 – 'Future engagement'

Future engagement was either positive or negative. Most were positive, with agendas for future engagement being agreed upon, such as further meetings and the setting of topics to negotiate, while a number of others agreed to negotiate in the future only on the issue of the level of compensation. On the negative side, students reflected that the negotiation failed because, 'The relationship deteriorated during the course of the negotiation.' Others noted that time had run out and they did not put a plan in place to cater for this eventuality.

³² Patton, above n 7, 9-12.

V DISCUSSION

The overall objectives of the assessed on-line negotiation were to enable students to realise the learning aims and outcomes set down for this component of the units being taught at Macquarie University and the University of Tasmania, and for the authors to test the teaching of negotiation in an on-line setting against some of the theoretical frameworks mentioned in the earlier part of this paper.

In relation to the first objective, the authors feel they were successful in achieving the teaching aims of the exercise and that students were successful in achieving their learning aims. From a learning and teaching perspective, students were given the opportunity to engage in an on-line negotiation and to apply the theory and philosophy of negotiation to the simulated role play provided for in the on-line negotiation. The reflective journals and responses to the questionnaires evidenced consideration of the various models of negotiation, both before and during the on-line negotiation – they also evidenced reflection on the appropriateness, efficiency and positives and negatives of the models in the simulated role play.

The other aim of developing students' interpersonal and communication skills is a little harder to gauge in an objective sense. Clearly students came to the exercise with varying degrees of interpersonal and communication skills. While some reflections in the journals and responses to the questionnaires indicated reflective thought about the type of communication skills being exhibited by the students in the negotiation, whether there is evidence of students developing those skills is somewhat inconclusive. A more thorough and better directed questionnaire may have provided the authors with a more conclusive result but it would be supposition to comment further on the success or otherwise of this particular identified learning and teaching aim.

With regard to the anticipated learning and teaching outcomes - students were engaged in the exercise because it was a substantial component of their assessment for their respective units of study at the two Universities, and so the outcome of participation was guaranteed when students agreed to enrol in the units. The second outcome, that of displaying an understanding of the difficulties and advantages of the on-line setting in conducting a negotiation, was tested by the journals and questionnaires. In particular, the answers to the qualitative questions 3 and 4 evidenced the students' understanding of the advantages and disadvantages of negotiating in an on-line setting. In this respect the authors were pleased with the depth of understanding students displayed in coming to grips with the problems and solutions thrown up by the milieu they were negotiating in. Further, the results of the questionnaires for qualitative questions 3 and 4 showed some similarities with theoretical observations of the advantages and disadvantages of on-line negotiation.³³

The third outcome, that of applying the theoretical models of negotiation, in particular, principled negotiation in a simulated negotiation exercise – was achieved by the cohort of students mainly through subtle instruction via the Rules of Engagement. While students were not directed to use the principled model of negotiation, references to

³³ See, for example, Schultz, Kaufman-Kohler, Langer and Bonnett, above n 30, 285-310; Hardy, above n 30, 216.

creative option generation encouraged most students to attempt a principled negotiation even if they abandoned it part-way through the negotiation. There was an adequate sample of students who responded to the questionnaire who reflected upon using models other than the principled model and most importantly, many of those students noted success in the use of a model other than the principled model - the rationale for which has been explained above.

The final outcome, that of reflecting on the conduct of a simulated on-line negotiation with particular emphasis on the on-line setting and the theoretical and philosophical principles of negotiation, was achieved through the submission of a 2000 word reflective journal and negotiation log which recorded all of the electronic communications between the parties. The authors do not have ethics approval to expand upon the written work submitted by students through their journals in this paper. However, suffice to say that both authors were satisfied that this outcome was satisfactorily achieved through the reflections of students that displayed an understanding of the process of on-line negotiation and the shortcomings or otherwise of the milieu in which the negotiation was conducted.

In relation to the second objective, that of testing the teaching of negotiation in an on-line setting against some of the theoretical frameworks mentioned in the earlier part of this paper, the authors make the following observations.

Patton's 'ethics challenge' has already been raised by example above,³⁴ but requires further comment. The ethics challenge of teaching students how to negotiate and how to relate to one another more effectively is highly problematic in a university unit that requires an emphasis on scholarly activities, as opposed to skills-based activities. In the study of law in Australia, skills are largely separated from the teaching of scholarly doctrinal law, the former being taught in a separate course of 'practical legal training' at the conclusion of a degree in law. The lack of development of this type of skills-based learning was evident in this assessed task. Significant numbers of students responding to the questionnaire reflected on the fact that an absence of instantaneous communication prevented effective communication,³⁵ particularly over issues such as a lack of personal interaction and clarity in what was being promoted at any one point in time during the negotiation. It is difficult to separate this problem out from the overall level of interpersonal and communication skills the students themselves brought to the negotiation. The only way to test this would be to take the same students and place them in a face-to-face negotiation setting to assess if the problems they highlighted in the on-line negotiation dissolved. Sadly, that was well beyond the abilities of this research activity. Patton's flagging of the problematic nature of teaching the theory and philosophy of negotiation with skills-based practice was evident in this assessed task.

Student responses to the assessed task supported the established proposition that an on-line negotiation task assists students with their reflective analysis because their interactions can be recorded, retrieved and sorted with ease.³⁶ Question 4, theme 1, established that students needed time to reflect upon a received communication before responding and that this valuable time actually translated into promoting effective

³⁴ Patton, above n 7, 9-12.

³⁵ See above, question 3, theme 1 results.

³⁶ Conley Tyler and Cukier, above n 4, 83.

negotiation in the on-line setting. This lack of instantaneous communication enhanced the learning experience for students by allowing better reflection of the various stages of the negotiation. Further, such built-in delays assisted students to carefully craft a response before actually communicating the response to the other student in the negotiation.

As stated above, Lempereur set out some key lessons when conducting on-line negotiation simulations which require some comment based on our findings.³⁷ The first lesson is that technical difficulties can sometimes make negotiation exchanges a nightmare, obliging students to wait until they can obtain the correct e-mail address or an efficient Internet connection. Our own experience is consistent with Lemperuer's proposition. With 214 students participating in the on-line negotiation assessed task, there were bound to be some problems with students simply connecting with each other electronically. This turned out to be painfully true, as the authors made urgent phone calls to students who had not responded to their negotiating partner's first communication once the negotiation period had opened. There were approximately 12 students who had such difficulties in the opening 48 hours of the negotiation. Some of the more interesting reasons for a failure to respond to an opening communication were that the technology in far north-western Australia was 'hit-and-miss'; one student was away with the army reserve on manoeuvres; together with the usual plethora of crashed computer hardware and networks. After about three to four days, all problems were sorted out and all students were negotiating with their designated partners. However, the impact of such an early problem is hard to calculate – students who had failed to make contact were unduly inconvenienced and that added to the stress of the assessed task and may have had an adverse effect on the outcome of their negotiation.³⁸

Technological difficulties were noted as being an element that prevented effective communication. Question 3 theme 2 highlighted this problem, particularly frustrating in the event of lost emails and junk mail clogging the system. As noted above, Macquarie University experienced a system outage over the middle weekend of the assessed task, which made life very difficult for a number of students and had an adverse impact on the effective nature of the medium.

The second of Lemperuer's lessons is that students often waited longer than they expected before receiving an answer from their counterpart. Judging from the responses to question 3 theme 1, this was of concern to a number of students and again caused the sort of angst that teachers try and avoid in an assessed task, albeit realistic in a 'real world' sense. Lemperuer's third lesson is that students grew accustomed to the fact that some students were not as skilled in the use of e-mail and needed to accept that time differences could pose an obstacle for exchanges, though it also allowed more time for reflection between messages. There was only one reported case of this type of problem which, given the age and computer-literacy of the cohort of students, was not surprising.

³⁷ Lemperuer, above n 19, 143.

³⁸ This problem has now been solved by instituting a 'test communication' two weeks before the assessed task commences, in order to highlight and solve any such problems. The assessed task has now been put back to the end of semester so that students get the benefit of a full semester's worth of theory and philosophy in the unit and the chance to get to know other students before embarking upon the assessed task.

The fourth lesson, that of students being able to read and reread messages and take the time to decide how to answer in the most appropriate way, has already been discussed above in our findings and certainly proved to be correct in our assessed task. This turned into quite a positive for the student respondents to the questionnaire but again, there is no surprise in this result given the work pressures experienced by most tertiary students today, many of whom need to work to pay off compounding Higher Education Contribution Scheme debts accumulated through their studies. Kőszegi and Kersten³⁹ reported that other studies of teaching negotiation to law students using an on-line medium allowed students more time for preparation, the assessment of offers and counter-offers, and the possibility of integrating time pressures as a tactic. Question 4, theme 1, supports the veracity of this proposition with students reflecting that having time to reflect on and edit responses before sending them, and having time to creative option generate, assisted the whole process of negotiation.

The fifth of Lemperuer's lessons was that students found that the use of e-mail as a medium altered their negotiation style. Kőszegi and Kersten⁴⁰ suggested that teaching negotiation using on-line technology reduces social pressures, by giving students the ability to remain anonymous, and thus the opportunity to experiment with different approaches, or to conceal their gender or ethnicity. Questions 1 and 2 of the qualitative responses asked students to address why they did or did not use the principled model of negotiation and why other models were used. While a range of responses has been reported above, there were no reported responses that held the medium of negotiation responsible for any change in the use of one model over another or any experimentation being conducted by students. The fact that the task was an assessed one may account for this conservative approach to the negotiation. Further, there were no direct questions relating to whether negotiating styles were changed or whether students experimented with different approaches to negotiation because of the medium of the on-line setting.

The penultimate lesson according to Lemperuer was that a majority of students thought that e-mail tended to keep the relationship at a superficial level. Similarly, Kőszegi and Kersten,⁴¹ suggested that teaching students' negotiation via an on-line setting made it difficult for students to establish rapport, a good relationship and build trust, as it can be difficult to interpret others' behaviour. Question 3 theme 1 highlights the problem on-line negotiation creates by not allowing relationships to develop. Further, the responses to question 4, theme 2, showed that in the view of the responding students, emotions were suppressed by the on-line medium and rational not emotional decision making was a characteristic of the medium.

Lemperuer's final lesson was that this type of negotiation did not appear easier or more difficult than face-to-face interactions and did not clearly make students more or less tense. Once again, this proposition is supported by qualitative responses that showed that students perceived that some aspects of on-line negotiation appeared less effective, such as the opportunity to build relationships and to utilise non-verbal communication, but that those disadvantages were balanced with the advantages of timely responses and a record of the events unfolding around the negotiation. As can be seen from the answers to questions 3 and 4 of the qualitative responses, the factors that promote

³⁹ Kőszegi and Kersten, above n 14, 7.

⁴⁰ Ibid.

⁴¹ Ibid.

effective negotiation were balanced with the factors that prevented effective negotiation using the on-line medium. This balancing of responses would seem to support the notion that students were not insistent that on-line negotiation appeared easier or more difficult than a face-to-face negotiation.

VI CONCLUSION

Overall, the students participating in the Macquarie University and University of Tasmania on-line negotiation assessed task seemed to confirm research carried out to date in Australia and overseas that the medium of negotiating on-line does have an effect on what we understand are the dynamics of face-to-face negotiation. Several key issues including: the difficulty with communicating through prevailing technology; the delay factor; the skill differential; and the difficulties with building relationships, are some of the elements that either promote or prevent effective negotiation. The one interesting element to flow from this exercise is that the promotion and prevention of effective negotiation through the on-line medium does not seem to hinder negotiation to the point of considering its abandonment. Even if it were found that the on-line medium prevented effective negotiation, technology itself will ultimately solve the inhibitive elements, as technology is a part of everyday life and certainly an integral part of legal practice as we know it today and into the future. The difficulties that have been highlighted through our study and the other research reported in this paper will be solved by advancements in technology and on-line negotiation will continue to grow at a healthy rate.

APPENDIX 1 – The statistical breakdown of the results of the questionnaires

Combined Results of Universities Questionnaire						
	<i>Strongly Agree</i>	<i>Agree</i>	<i>Neutral</i>	<i>Disagree</i>	<i>Strongly Disagree</i>	Total
Question 1	51	58	1	1	0	111
	46%	52%	1%	1%	0%	100%
Question 2	66	41	3	1	0	111
	59%	37%	3%	1%	0%	100%
Question 3	7	48	36	19	1	111
	6.5%	43%	32.5%	17%	1%	100%
Question 4	8	23	30	37	12	110*
	7.5%	21%	27%	33.5%	11%	100%
Question 5	5	44	40	21	1	111
	4.5%	39.5%	36%	19%	1%	100%
Question 6	50	47	8	5	1	111
	45%	42.5%	7%	4.5%	1%	100%

* One student failed to answer this question

Macquarie University Questionnaire Results						
	<i>Strongly Agree</i>	<i>Agree</i>	<i>Neutral</i>	<i>Disagree</i>	<i>Strongly Disagree</i>	Total
Question 1	43	48	1	1	0	93
	46%	52%	1%	1%	0%	100%
Question 2	55	34	3	1	0	93
	59%	37%	3%	1%	0%	100%
Question 3	5	37	32	18	1	93
	5.5%	40%	34%	19.5%	1%	100%
Question 4	6	19	23	32	12	92*
	7%	21%	25%	34%	13%	100%
Question 5	3	37	33	19	1	93
	3%	40%	35.5%	20.5%	1%	100%
Question 6	42	39	7	4	1	93
	45%	42%	8%	4%	1%	100%

* One student failed to answer this question

University of Tasmania Questionnaire Results						
	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Total
Question 1	8	10	0	0	0	18
	44%	56%	0%	0%	0%	100%
Question 2	11	7	0	0	0	18
	61%	39%	0%	0%	0%	100%
Question 3	2	11	4	1	0	18
	11%	61%	22%	6%	0%	100%
Question 4	2	4	7	5	0	18
	11%	22%	39%	28%	0%	100%
Question 5	2	7	7	2	0	18
	11%	39%	39%	11%	0%	100%
Question 6	8	8	1	1	0	18
	44%	44%	6%	6%	0%	100%