

## THESIS SUMMARY

Legal negotiation is a fundamental skill, used daily by legal practitioners. Consequently, it is an important part of legal negotiation education. However, Australian legal education currently mandates legal negotiation training *only* during postgraduate pre-admission studies.<sup>1</sup> Further, key scholarship on legal negotiation is riddled with unclear terminology,<sup>2</sup> and lacks precise definitions of the terms *legal negotiation*, *legal negotiation preparation*, and *legal negotiation ethics*. This creates significant challenges for law students learning about legal negotiation preparation. My research rests on the premise that, due to the current lack of clarity in this field, law students do not have the requisite skills to prepare for a legal negotiation and are consequently poor legal negotiators.<sup>3</sup> Indeed, the current curriculum in Australian Law Schools requires law students to prepare for a legal negotiation while ‘properly having regard to the circumstances and good practice,’<sup>4</sup> but does not provide definition or guidance about these terms.

My thesis is situated in the field of negotiation legal education. It analyses the important role that legal negotiation takes in legal education and addresses the deficiencies in legal negotiation education in four ways. I first explore definitions of legal negotiation, examining the divergent history that has led to the acceptance of legal negotiation definitions in the absence of clear rationale. I conclude that an all-encompassing definition would fail to recognise the nuances inherent in legal negotiation, and I instead propose a Taxonomy of Legal Negotiation that situates legal negotiation in legal practice. Through this analysis, I identify three interconnected factors that are foundational to legal negotiations conducted by legal practitioners: preparation, ethics, and client-centrality.

Second, I create the Legal Negotiation Preparation Framework, a framework of ‘good practice,’ informed by original data from 146 law student entrants in Legal Negotiation Competitions, surveyed about their legal negotiation preparation. I conclude that, while law

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<sup>1</sup> Law Admissions Consultative Committee, *Practical Legal Training Competency Standards for Entry-Level Lawyers* (2015) (‘*PLT Standards*’).

<sup>2</sup> Andrea Kupfer Schneider, ‘Shattering Negotiation Myths: Empirical Evidence on the Effectiveness of Negotiation Style’ (2002) 7 *Harvard Negotiation Law Review* 143, 151-2.

<sup>3</sup> See, eg, David Spencer and Marilyn Scott, ‘ADR for Undergraduates: Are We Wide of the Mark?’ (2002) 13(1) *Australasian Dispute Resolution Journal* 22. See also: Nadja Alexander and Jill Howieson, *Negotiation Strategy, Style, Skills* (LexisNexis Butterworths, 2<sup>nd</sup> ed, 2010) 106; Roger Fisher and Danny Ertel, *Getting Ready to Negotiate: The Getting to Yes Workbook* (Penguin Books, 1995) 4.

<sup>4</sup> Law Admissions Consultative Committee, *PLT Standards* (n 1) [5.10] ‘Lawyers’ Skills’ Element 6.

students understand *some* of the requirements of legal negotiating preparation, including the importance of client-centrality, they struggle with practical application. Law students also fail to appreciate that legal negotiation ethics is critical to legal negotiation preparation and must be explicitly embedded in this process. This leads to my analysis of legal ethics, through which I integrate extant literature with my data to pinpoint the difficulties in applying legal ethics to legal negotiation, exemplified through a case study on deception, which again underscores client-centrality.

My research culminates in the development of a Conceptual Framework that synthesises legal negotiation preparation, ethics, and client-centrality in a way that has never been done in Australian legal education. I use this Conceptual Framework to operationalise legal negotiation preparation by identifying a series of specific legal negotiation minimum competencies that law students must achieve to reach the standard of entry level legal practitioner. I develop questions to prompt client discussion, thereby centralising the client in the legal negotiation preparation process. My original contribution to legal education, therefore, is the creation of a novel way of teaching and guiding legal negotiate preparation, to enable law students to become competent legal negotiators for the purposes of admission to legal practice.