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# **AIR GONDWANA AND THE TEACHING OF NEGOTIATION SKILLS: IMAGINATION IN DESIGN AND IMAGINATION IN LEARNING**

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## **ABSTRACT**

*The skill of negotiation is a skill that is crucial for lawyers to master. It is a skill which is now taught explicitly alongside the substantive law and a number of Australian law schools including that at the Queensland University of Technology. Methods of teaching the skill may vary but a traditional approach involves some form of instruction followed by a role play. This paper examines the author's imaginative use of technology to create an engaging and challenging learning environment in which students will themselves be required to exercise and imagination in development of their skills.*

## **INTRODUCTION**

The skill of negotiation is crucial not only to the practice of law but also other professions and indeed other walks of life. It is a skill now explicitly taught in the Faculty of Law at the Queensland University of Technology in Brisbane in a program that spans subjects in different years of the undergraduate Bachelor of Laws course. Until recently a traditional approach to this training for large groups (as opposed to, for example, specialist small group mediation courses) has been taken, in the form of lecture-style instruction on theory followed by role plays. However, from 2008 a greater use of technology will be employed in the form of a suite of online modules called *Air Gondwana*. The *Air Gondwana* program is the product of imagination employed with an attention to detail, and will engage students with authentic settings in which they will be required to exercise their own imaginations in practising and developing their attainment of the skill of negotiation.

## **NEGOTIATION TRAINING IN AN AUSTRALIAN LAW SCHOOL: A CONTEXTUAL SETTING**

For many years organisations including employer groups and government bodies called for review of the objectives of legal education and content-driven Law School curricula (Pearce 1987, McInnes and Marginson 1994). These calls were echoed by the Australian Law reform Commission in its 1999 *Managing Justice Report*, in which it championed the cause for a re-orientation of legal education around “*what lawyers need to be able to do*, [rather than remaining] anchored around outmoded notions of *what lawyers need to know*” (ALRC 1999, [2.21]). This recommendation mirrored the conclusions of a 1992 American Bar Association report which examined and reviewed the status of legal education in the United States. This report identified a number of fundamental skills and professional values that it felt law schools should seek to inculcate in their graduates (American Bar Association 1992). Negotiation was one of these skills identified.

In a seminal report, a project team in the QUT Faculty of Law recommended that graduate capabilities become an embedded component in the undergraduate law program (Christensen and Cuffe 2003). This report suggested that a student's development of skills should develop in three stages: stage 1 in the first year of their course, stage 2 in the second year and a final stage 3 in either third or fourth year. At stage 1 students are to be instructed to a basic level of attainment of the skill in question, being instructed on the theoretical framework and application of the skill, which might be practiced under guidance with feedback provided (Christensen and Cuffe 2003, 21; Christensen and Kift 2000, 219). The recommendations of the project team were adopted by the Faculty with an embedded graduate capabilities program introduced into the Law School undergraduate curriculum from 2004. Stage 1 of training of the negotiation skill became the responsibility of the first year subjects *Contracts A* and *Contracts B*. Responsibility for stage 2 in development of the skill was assumed by the second subject *Trusts* and stage 3 by the third/fourth year elective *Mediation*.

The two *Contracts* subjects (*Contracts A* is a prerequisite to *Contracts B*) are offered to both full-time and part-time internal students and external students and have annual enrolments in excess of 500 students. Some external students live locally while others are studying at a distance. Once a semester these external students are required to attend a three-day weekend attendance school at the Law School's Brisbane campus. The subjects are taught by a variety of staff, both full-time and sessional. From the introduction of the graduate capabilities program in 2004 until 2007 a traditional format of instruction and role play was utilised as a means of developing students' negotiation skills to the stage 1 level of attainment. In other words, students were lectured on a principled approach to negotiation before undertaking an exercise in their following tutorial groups in which they were provided with one of two two-page briefing sheets containing the background facts needed to conduct the negotiation. Students were then divided into pairs and expected to negotiate an outcome, which they then summarised in short form. This exercise was repeated in the second semester with a role play based on different facts, although on this occasion the "Heads of Agreement" document was graded. This traditional format of negotiation training was well received by students. As a student remarked in a formal survey of the subject *Contracts B*:

"Negotiation exercise was a useful and practical piece of assessment."

However, it might be queried the extent to which this contentedness had anything to do with the program itself, and how much could instead be attributed to its novelty value. There is no doubt that students regarded the program as welcome relief from the usual grind of studying legal principles and reading case reports. As another student pointed out in the same survey of the unit *Contracts B*:

"Doing negotiation once and calling it skills learning is a joke. Either do it more frequently to allow skills development or scrap it."

The traditional approach is deficit in its expectation that the initial instruction can on its own sufficiently equip students with the essentials that are necessary to conduct a successful role play and thereby attain a basic level of attainment of the skill. As Williams from Utah's Brigham Young University has stated

“Asking a new negotiation student to conduct a full negotiation is like asking a new violin student to play a complete musical piece on the violin – it calls for the performance of a large number of underlying skills, many of which have not yet been adequately developed.” (Williams 2004)

The notion that proper skills training requires the provision of greater opportunity to practice the “building blocks” of the skill was a sentiment that was also felt by one further student in the formal 2005 survey:

“I think in order for the negotiation exercise to be beneficial there should be practices leading up to it so that you can learn what you did wrong the first time and then put into practice any corrections.”

A more effective approach would be to break negotiation skills down into well-defined tasks which students may practice and upon which they could receive feedback (Williams 2004). Focusing exercises on these “building block” tasks also would emphasise to students the importance of the preparation stage of negotiation. At the same time it might correct any misconceptions, which may be unintentionally reinforced by the traditional role play-only approach, that the main or indeed sole focus should be on the bargaining phase of the negotiation (Roper 1983, 53). It was with these objectives in mind that the author applied for and was awarded a University Small Learning and Teaching Grant to develop a new program for the teaching and learning of the basic level skills of negotiation, to be called *Air Gondwana*. As at the time of writing, development of the program was almost complete, and it is planned for the program to replace the current approach from semester 1, 2008.

### ***AIR GONDWANA: AN IMAGINATIVE RESPONSE***

When designing a new approach to negotiation training it was important to recognise that students who are new to negotiation should ideally, in addition to receiving instruction concerning the theory and practice of negotiation skills, observe the conduct of a successful negotiation before being expected to participate in a role play themselves (Carr-Greg 1992, 37). Any new design also needed to accommodate the context in which the training was to take place, such as the large numbers of students and the different modes of offering. Apart from anything else, any in-person model negotiation would therefore need to be demonstrated on numerous occasions and would pose logistics problems. There is also the variety of staff teaching the subjects, not all of whom are confident or feel qualified in passing on effective feedback on negotiation, since in most cases they will not have had training in negotiation skills themselves.

However, it has been recognised that technology may be an effective means by which instruction may be given in negotiation skills and a positive model of negotiation practices may be demonstrated (Cukier 2006). Further, technology in the form of online modules also allows skills to be broken down into well-defined tasks which provide students with the ability to practise the essential elements of successful negotiation, and to provide consistent and effective formative feedback on their attempts, at their own pace and at a time of their convenience. In this way technology can be effectively used to facilitate better inculcation of negotiation skills before students engage in a face-to-face exercise themselves during a designated tutorial session, or at the attendance school in the case of external students.

*Air Gondwana* is based on the central theme of a fictional airline and the wide variety of negotiations with which it is involved. It utilises the well recognised interest-based approach to negotiation promoted by the Harvard Negotiation Project (Fisher and Ury 1999). This approach includes:

- a focus on interests – in the sense of the underlying needs, desires, hopes and/or fears of the parties – rather than the upfront positions;
- the invention of options which produce mutual gain (as opposed to outcomes that leave one party as a winner and the other as a loser);
- the adoption of objective criteria such as market value, precedent, scientific or professional standards, or determination by an independent third party; and
- the development of a BATNA (Best Alternative to a Negotiated Agreement) or fallback position, and WATNA (Worst Alternative to a Negotiated Agreement) or worst case scenario, to help set the parameters and context for the negotiation.

This approach is also used in the later subjects *Trusts* and *Mediation* and should ensure a smooth transition between the different levels of attainment pursued in the various subjects. *Air Gondwana* consists of six modules to be undertaken by students across the two *Contracts* subjects. *Air Gondwana* utilises a number of different platforms to achieve its overall objectives. The first five of the modules require students to access an online site, which features an interface screen depicting a pilots' lounge (see Figure 1).



**Figure 1: the *Air Gondwana* interface – a pilot's ready room**

In *Contracts A* the first module involves video instruction on the theory and practice of negotiation. This video, which features Law Faculty staff as actors, includes a demonstration of a poorly conducted negotiation, instruction on effective negotiation followed by demonstration of the same negotiation done properly. A professional actor was engaged to provide the formal instruction through presentations to camera and voice-over narrative for graphics. Two modules then require students to focus on particular aspects of good negotiation practice. These modules utilise *Authorware* software to present students with a series of scenarios. For each scenario a number of questions based on the “building blocks” of negotiation theory are asked, which require students to enter short responses. Formative feedback is then provided in the form of model answers against which students may compare their own responses.

*Contracts B* is generally undertaken by students in the following semester, usually after a break of several weeks. The first module in this subject – the fourth of the program – provides an opportunity for students to refresh their minds of the concepts to which they were introduced in *Contracts A*. Rather than simply adopt the text and image approach used in the preceding two modules, this module presents a single scenario (the purchase of an aircraft) by way of “machinima”, that is the rendering of three dimensional images by the use of an online virtual environment, in this case *Second Life*. The capabilities of *Second Life* and its potential as a synchronous form of interaction with students are beginning to be realised by educators (Kelton 2007, Conklin 2007). However, its capacity as a valuable asynchronous tool should not be underestimated. It is in this capacity that it is being used in *Air Gondwana*: to depict realistic scenarios using video using virtual “actors” and locations, thereby avoiding the cost and scale of using real actors and locations. (see Figures 2 and 3).



**Figure 2: examples of *Second Life* characters**



**Figure 3: an example of a *Second Life* setting**

In the case of module 4, the *Second Life* machinima provides a context in which to pose refresher questions focusing on the principles of negotiation and their practical application. This is then followed by the fifth module, which involves an actual face to face negotiation with a fellow student. This module is a summative exercise measuring students’ level of attainment of negotiation skills. Briefing material is provided via the on-line site in advance, and includes background information on the parties to be represented in the negotiation, and the subject of the negotiation. Further background information is provided by way of a second piece of *Second Life* machinima.

The final module explores the relationship between negotiation skills and the laws of contract law governing negotiation. Unlike the other five modules, this module forms part of the *Contracts B* broader tutorial program. The module therefore provides an interesting blending of the skills and the content aspects of the *Contracts* subjects.

The program is embedded within, and is accessed by students via, the university's Blackboard learning management system. It thereby takes advantage of the hyperlinking, "hotspot" linking, and tracking capabilities of that software. The overall appearance of the *Air Gondwana* is enhanced throughout by use of realistic images of aircraft, featuring an *Air Gondwana* livery, created with the use of the *Flight Simulator X* program, with the permission of the creators Microsoft (see Figure 4).



Figure 4: example of *Flight Simulator X* image of an *Air Gondwana* Avro RJ85

## DISCUSSION

Imagination, according to the *Shorter Oxford Dictionary*, is the "the mental consideration of actions and events not yet in existence; scheming or devising; ... the power which the mind has of forming concepts beyond those derived from external objects." *Air Gondwana* represents imagination in both its design and in the students' learning experience.

### Imagination in design

Imagination has been demonstrated in *Air Gondwana* in the creation of an authentic learning environment for students. "Authentic" is a term that has been given a variety of meanings. According to a study by Bennett, Harper and Hedberg (2001), interpretations described in the literature range from activities based on real situations to models that focus on applying conceptual knowledge or skills, such as critical thinking or problem solving. *Air Gondwana* provides an authentic learning experience by replicating the kinds of task that are undertaken in practice (Anker et al 2000, 124) in the form of the contract negotiations of the fictional airline. The name of the airline itself has been carefully chosen. Gondwanaland, or Gondwana, was the name of the prehistoric southern supercontinent, which later separated to become Australia, New Zealand, South America, Africa, the Middle-East, India and Antarctica. Hence *Air Gondwana* is the "Great Southern Airline" which now links these now distant lands.

The authentic theme is firmly embedded in a solid foundation of realistic detail which enhances rather than hinders the learning experience. This includes, for example, an introductory video using machinima created using Microsoft's *Flight Simulator X* (with permission) which describes the operations of the airline as an international and domestic passenger carrier, with charter and cargo divisions. This short video features the various types of aircraft flown by the airline, all shown in especially-designed *Air Gondwana* livery, as well as the range of destinations that the airline serves. The same background information could be provided simply in the form of text. However the realistic three dimensional depictions help to initiate what the poet Samuel Taylor Coleridge first called a "willing suspension of disbelief". A willing suspension of disbelief allows us to enjoy movies and books like *The Lord of the Rings*, *Star Wars* and the death-defying exploits of James Bond. As Herrington, Oliver and Reeves (2002) observed, the same willing suspension of disbelief is "highly applicable" to education. This is because it enables or facilitates engagement. As Laurel (1993) observed: "Engagement is what happens when we are able to give ourselves over to a representational action, comfortably and unambiguously. It involves a kind of complicity". (p. 115). The authentic learning environment created by *Air Gondwana* promotes students' willing suspension of disbelief. It therefore holds strong prospects for enhancing learning and promoting knowledge construction (Herrington, Oliver and Reeves 2002). Put succinctly, the angel is in the detail.

This attention to detail is carried throughout the program. For example, the role play undertaken in module 5 involves a scenario in which the airline wishes to purchase or lease a freehold island off the Queensland coast. It is forced to negotiate when a competing bid is received from a worldwide environmental foundation whose charter includes the establishment of nature preserves for wildlife. The island is portrayed as being located at a specific location, having been discovered on Cook's second voyage and named after the Earl of Lancaster, and having been granted in freehold by the then Governor of Queensland to a descendent of the Earl, "Sir Cecil Lancaster", as a sign of appreciation for his role in the colony becoming a State. The relevant fact sheet presents this portrayal in an economy of words and is therefore not burdensome for the student to consume. Nevertheless, when a learning designer who was associated with the project read the fact sheet, she was moved to ask: "Does this island really exist?"

### **Imagination in learning**

*Air Gondwana* also promotes and inspires imagination in the learning process. The instructional video in module 1 portrays a newly appointed *Air Gondwana* executive, Karl Keen, who has the task of interviewing a pilot for the purposes of the airline's new "island initiative". In the first part of the video Karl is shown as being poorly prepared and carries out the bargaining in a haphazard fashion which ultimately proves to be unsuccessful. In the second part of the video, instruction is provided on principled negotiation by a presenter. This instruction is illustrated by vignettes of the Karl character being mentored by a fellow *Air Gondwana* executive, Ally Albright. Ally in effect operates as the presenter's alter ego, translating the presenter's theory into practice by mentoring Karl in its application to the negotiation with the pilot. Thus, for example, the presenter explains the importance of focusing on interests rather than upfront positions: Ally tells Karl that the negotiation will not just be about the pilot's salary (ie the upfront position) and asks him to identify the respective interests of the airline and of the



pilot. The final stage of the video demonstrates a well prepared Karl conducting the bargain in a professional manner that ultimately proves to be successful.

The learning that takes place in this module is reinforced by modules 2 and 3 which provide a wide range of scenarios based on negotiations in which the airline is involved, for example, refurbishing an aircraft, arranging a charter and resolving an outstanding freight debt. These scenarios form the basis of questions that allow students to practise their understanding of negotiation principles. Each of these exercises in turn requires students to be creative and imaginative. Thus when identifying what they perceive may be the relevant interests, students must imagine what the various needs, desires, hopes or fears of the contracting parties might be (Fisher and Ury 1999). This is artificial to the extent that in reality a negotiating party may know his or her own or the client's/principal's interests. However, even in the real world the same cannot be said for anticipating the *other* side's interests, where imagination and best estimation is needed. Requiring students to imagine the interests of *both* sides is therefore an extension of that requirement of practice.

The other principles of negotiation are similarly, or even more, demanding of imagination. Imagination is a vital commodity in formulating options and opportunities that may result in mutual gain for both parties: the "win/win" as opposed to a "win/lose" outcome (Fisher and Ury 1999). The multiple scenarios are designed to inculcate an attitude in students that any problem need not have only one solution. Similarly, when developing the relevant BATNA (next best alternative) and WATNA (worst case scenario) in different circumstances, students are required to open their minds to imagining alternative endings to particular sequences of events. Further, in identifying useful criteria students must imagine how they can inject objectivity into their deals, thereby avoiding the possibility of disputes between the parties at a later date.

The student's preparation for the role play is completed when in the refresher module 4 the new *Air Gondwana* chairman, Remington Rich, serves as a vehicle for asking questions about the principles of negotiation and their practical application. Rich is portrayed as a former jetsetter playboy who is entrusted by his father, the owner of an industrial empire, with stewardship of the airline as a trial for an eventual succession. He is therefore a convenient neophyte to negotiation who requires an explanation of the principles of negotiation. His questions about negotiation, while ostensibly directed to Karl, are in fact answered by the student who has learnt about the principles of negotiation alongside Karl in module 1. In this sense, the *Air Gondwana* program involves the preparation cycle being completed by the student learning through assuming the role of teacher.

## CONCLUSION

A traditional approach to a basic level of negotiation training for large groups requires students to undertake a role play or role plays after some form of instruction. Such an approach is deficit in a number of respects, including the expectation that the instruction is sufficient to enable students to appreciate the nuances of the principles of negotiation and their practical application. A more desirable approach is to provide students with the opportunity to focus on the "building block" essentials of negotiation and to practise their application across a range of realistic scenarios. That opportunity will now be provided at the Queensland University of Technology by the *Air Gondwana* program.

*Air Gondwana* is the product of imagination in its design and is demanding of imagination in its use. A variety of multimedia platforms is used to create an authentic setting for student learning. The scenarios are practical and based on real world experiences, and the program involves an attention to detail which is presented in such a way that it enhances rather than hinders the students' learning. This rich and engaging environment enables students to willingly suspend their disbelief and to exercise their own imaginations in completing the necessary tasks before undertaking their face-to-face role plays. The package is then completed by a tutorial in which the connections between the law and the skill of negotiation are examined.

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