

University of Missouri School of Law

University of Missouri School of Law Scholarship Repository

Faculty Blogs

Faculty Scholarship

1-27-2020

HOW TO CALCULATE AND USE BATNAS AND BOTTOM LINES WITH LIRA

John Lande

Follow this and additional works at: https://scholarship.law.missouri.edu/fac_blogs



Part of the [Dispute Resolution and Arbitration Commons](#)

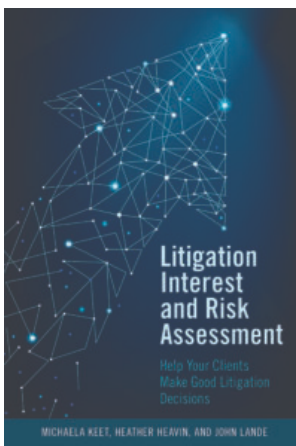
HOW TO CALCULATE AND USE BATNAS AND BOTTOM LINES WITH LIRA

JANUARY 27, 2020 | JOHN LANDE | 3 COMMENTS

Everyone talks about knowing one's **BATNA** in negotiation and mediation. But that's a lot easier said than done.

In litigated cases, the value of the BATNA usually is the expected trial outcome, but that is notoriously hard to predict for many reasons. The outcome of numerous legal and factual issues may depend on the evidence, witnesses' demeanor, lawyers' skills, and predispositions of judges and juries, among other things. Lawyers and litigants often are over-confident because of numerous cognitive and motivational biases. These problems are aggravated by awkwardness in lawyer-client relationships and lawyers' reticence to communicate clearly.

To make good decisions in legal cases, lawyers and litigants must supplement predictions of court (or arbitration) outcomes with estimates of both **tangible costs** of litigation and trial (legal fees and expenses) and **intangible costs** (such as personal stress, damage to relationships and reputations, losses of opportunities, and organizational dysfunction related to litigation). People often ignore or undervalue the intangible costs. To set an appropriate **bottom line** in negotiation and mediation, parties need a good understanding of their tangible and intangible costs of going to trial.



The new ABA book, *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions*, is designed to help lawyers, mediators, settlement conference judges, and litigants make better decisions by systematically considering all these factors.

The book describes how practitioners can:

- Recognize and avoid common decision-making errors in litigation

- Anticipate likely court outcomes more accurately
- Communicate with clients about what's most important to them in their case
- Help clients make better decisions
- Negotiate and mediate more effectively
- Learn about technological tools to help make decisions in litigation

This short video provides more information.



Written by Michaela Keet and Heather Heavin from the University of Saskatchewan and yours truly, this book is designed to help practitioners in their work, but law school faculty and students should be interested as well. In particular, in your simulations, you may want to use the appendixes for the lawyer's interview guide and neutrals' questions about litigation interests and risks.

[Click here to read the table of contents and introduction.](#) If you want to consider using this book as a required or recommended text for a course, [please let me know](#) and I will be happy to send you a review copy.

Michaela, Heather, and I think that the book is pretty darn good. That's way off the scale in Canadian.

But don't just take our word for it. Take theirs: [Peter Benner](#), [Sarah Cole](#), [Noam Ebner](#), [Brian Farkas](#), [Lainey Feingold](#), [Justice John Gill](#), [Steve Goldberg](#), [Dwight Golann](#), [Chris Honeyman](#), [Cheryl Jamison](#), [Léa Lapointe](#), [Michael Leathes](#), [Lela Love](#), [Paul Monicatti](#), [Bernie Mayer](#), [Larry Mills](#), [Ben Picker](#), [Spencer Punnett](#), [Len Riskin](#), [Colin Rule](#), [Andrea Schneider](#), [Donna Shestowsky](#), [Rick Weiler](#), [Hon. James Williams](#), and [Doug Yarn](#).

If you want more resources about LIRA techniques, including blog posts, videos, power-points, [click here](#).

If you want to get a copy of the book, [click here](#).

◀ ASSESSING INTERESTS AND RISKS ◀ BATNA ◀ BOTTOM LINE ◀ DISPUTE RESOLUTION PRACTICE
◀ FOR TEACHERS AND STUDENTS ◀ INTERESTS AND MOTIVATION ◀ LAWYERING ◀ MEDIATION ◀ NEGOTIATION
◀ RESOURCES ◀ SKILLS AND TECHNIQUES

3 THOUGHTS ON “HOW TO CALCULATE AND USE BATNAS AND BOTTOM LINES WITH LIRA”

Richard Faulkner

JANUARY 28, 2021 AT 1:11 PM

Looks like a great book! Wish this existed when I was training mediators. Just ordered it from ABA.

Thomas P. Valenti

JANUARY 28, 2020 AT 5:24 AM

Just ordered my copy from ABA and looking forward to reading this and sharing all of your knowledge and insights.

★ **John Lande**

JANUARY 28, 2020 AT 7:06 AM

Thanks very much, Tom. We hope that you and others will find it helpful and that clients will be even more grateful for your good work. I know that you are actively involved in student competitions and we hope that this book, especially the appendixes, will help students become more proficient in important skills.

This site uses Akismet to reduce spam. [Learn how your comment data is processed](#).

