

Contract Drafting / Spring 2012
Adjunct Professor Richard Benham
Class Meeting Time: Monday 11:00 a.m. – 12:50 p.m. (Room 326)
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SYLLABUS AND CLASS INFORMATION

COURSE DESCRIPTION & OBJECTIVES

This course will teach the basics of contemporary commercial drafting, introduce documents typically used in a variety of business transactions, and provide an overview of principled contract negotiation techniques. Students will be exposed to:

- the business purpose of major contract concepts;
- translating the business deal into contract concepts;
- drafting each of a contract's parts; and,
- techniques for principled negotiation (win-win negotiation).

The primary objective of the class is to familiarize students with the drafting process and prepare them to work with contracts in the business world. The examples will be drawn from typically negotiated contracts. The course will not cover development of standard consumer adhesion contracts.

REQUIRED AND RECOMMENDED TEXTS

The required text for this course is:

Stark, Tina. Drafting Contracts: How and Why Lawyers Do What They Do, Aspen Publishers, 2007. [ISBN 978-0-7255-6339-1]

You should bring this text with you to each class meeting.

I also recommend the following materials be on every student's (and every lawyer's) bookshelf. These are not required, but they are very useful:

Fisher, Roger et.al. Getting to Yes. (2nd ed. OR more current edition)

Wydick, Richard. Plain English for Lawyers. (4th ed. OR more current edition)

I will refer to these books occasionally and may suggest students review particular sections before a class. However, it is not necessary to bring either book to regular class meetings.

The Law Library has a large variety of useful form and drafting reference materials. Other useful materials can be found online through your Lexis and Westlaw accounts.

Throughout the semester students will be introduced to online resources.

REQUIRED TECHNOLOGY

Exercises will be submitted electronically and will often require use of “redlining” to clearly show changes/additions/deletions in work product. Each student must have access to Microsoft Word (2007 or later) or an equivalent compatible program. One freely downloadable office package is OpenOffice.org 2.0 which can be found at www.openoffice.org.

CLASS ATTENDANCE & PARTICIPATION

Class attendance is required for this course and participation will be a substantial factor in calculating the class grade. I will take attendance at the beginning of each class. In accordance with the Law School's accreditation requirements (ABA), if you miss more than 20% of the scheduled class meetings (more than 2 classes for the spring semester), you will not receive credit for the course. **Please be in class on time.** It is disruptive for students to walk in late and being late to meetings is viewed very unfavorably by the practicing business bar.

All students are expected to be prepared for each class. The reading load is not particularly heavy and the exercises done outside of class should not be time consuming. Discussion of the assigned reading and review of the exercises will be a major part of each class.

GRADING

The course grade will be based on class participation (30%), performance on out-of-class exercises (30%), and a final drafting project (40%).

Class Participation

Woody Allen is generally credited with the quote “80% of life is showing up.” In this class, showing up prepared and actively participating in the discussion and in-class exercises will determine 30% of the overall grade. If you do not attend, or are late to class, your grade will be adversely affected. In addition to the objective attendance roster, I will maintain subjective notes of class participation and will be glad to discuss “how you are doing” throughout the semester. Of course, students who are ill should not come to class. If you are unable to attend class due to an illness, you must provide notice in advance; note that absence due to illness does not excuse the student from completing the class work or relieve you from the minimum attendance (ABA) requirement. Similarly, if you cannot avoid being late for class, you must notify me by email or phone before the start of the class period.

Out-of-Class Exercises

Most weeks I will assign one or two exercises from the text or other sources for you to complete outside of class. These assignments will typically be submitted for review electronically (by email or by other methods as instructed). When assigned, the exercises will be due by 12:00 noon Thursday. Generally, I will not return these to you, but will review them and use them as examples (no names) during the next class session. The factors I will use to grade these exercises will be that you make a good attempt to work the problem, demonstrate a level of understanding of the concepts, and turn the work in on-time. Late work will only be accepted in extraordinary circumstances. **Technical difficulties**, e.g., email failure, **are not** considered extraordinary. Use your time wisely and plan to deliver your work well before the deadline; then, if you experience technical problems, you will have time to recover or make alternate arrangements to complete the assignment on time. As with class participation, I will be happy to discuss your performance on these exercises with you throughout the semester.

Final Project

In lieu of an exam, I will assign a final project. The project will be a comprehensive drafting exercise. The projects will be submitted using BAGS numbers, will be graded blindly, and will comprise 40% of your overall grade.

FSU HONOR CODE

Cheating, plagiarism, or any dishonesty in your work is not tolerated at this university. Please refer to your student handbook for more information about FSU's academic honor system, and come to see me if any part of the code is unclear.

STUDENTS WITH DISABILITIES

Students with disabilities needing academic accommodations should register with and provide documentation to the Student Disability Resource Center (SDRC). The Center's phone number is 644-9566. Please bring a letter to class from the SDRC indicating you need academic accommodations. This should be done within the first week of class. Please talk to me if you have any questions or concerns.

OFFICE HOURS AND GENERAL ADMINISTRATION

Officially my office hours will be the one hour period following the end of each class meeting. As an adjunct, I am not frequently on campus, but I will be glad to make an appointment to meet with you in person or by telephone. Questions are welcome by email at any time. In my experience email typically provides an efficient way to handle routine questions.

CLASS ASSIGNMENTS

The assignments are numbered below by week. *Each assignment is tentative* and may be changed by prior announcement in class or through the Blackboard system. At times we may slow down on particular topics, and at times we may add in problems or exercises to give us extra practice in an area. You should see these assignments as merely a rough approximation to be clarified later.

Week	Topics	Reading Assignment
1 (1/09)	Course Overview A Few Minutes on Technology Exercise: <i>Making a Deal – Negotiating a Used Car Purchase</i>	Please read the Syllabus and Come Prepared with any Questions Chapter 1 & 2 of the Stark Text
2 (1/16)	NO CLASS/ MLK Holiday	
3 (1/23)	Contract Drafting Fundamentals The “Translation Skill”	Chapters 3 & 4 Chapter 5
4 (1/30)	Introductory Provisions Definitions and Defined Terms	Chapter 6 Chapter 7 Chapter 23, § 23.9.3 -- Exhibits Appendix A&B – Skim the definitions Appendix C– Read this Appendix
5 (2/6)	“Action Sections” Use of Precedents	Chapter 8 Chapter 27, § 27.6.2 – Using a Precedent Appendix A (Asset Purchase Agreement) Appendix B (Website Development Agrmt.)
6 (2/13)	Representations and Warranties Covenants and Rights Conditions Precedent Discretionary Authority and Declarations Use of “Will” and “Shall”	Chapters 9 – 14
7 (2/20)	Endgame Provisions Signature Formalities Boilerplate (General Provisions)	Chapter 15 Chapter 17 Chapter 16 – read but do not study
8 (2/27)	Guest Lecture: Reference Sources for Precedents	Chapters 19-21
9 (3/5)	No Class – Spring Break	None
10 (3/12)	Group Appointments, Review of Auto Agreements <i>Final Project Assignment</i>	None
11 (3/19)	Deconstructing Complex Provisions Organizing a Contract The Drafting Process <i>Q&A Opportunity on Final Project</i>	Chapter 24 Chapter 26 Chapter 27
12 (3/26)	Adding Value to the Deal Reviewing and Commenting on a Contract	Chapter 25 Chapter 28
13 (4/2)	Amendments, Consents, and Waivers Ethical Issues in Drafting	Chapter 29 Chapter 30
14 (4/9)	Review Q&A	None.
4/16	NO CLASS, <i>FINAL PROJECTS DUE</i> 12:00 NOON	