

Advanced Contracts: Drafting (2 Hours)

SMU Dedman School of Law

Spring Semester, 2016

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Office hours: Call or email to set up a time to meet

Course hours: Wednesday – 7:50-9:30 p.m. – Room 201F

Course Description

This course will teach you the principles of contemporary commercial drafting and introduce you to documents typically used in a variety of transactions. The skills you will gain will be applicable to any transactional practice and will even be useful to litigators. On finishing the course, you will know

- the business purpose of each of the contract concepts;
- how to translate the business deal into contract concepts;
- how to draft each of a contract's parts;
- how to draft with clarity and without ambiguity;
- how to add value to a deal;
- how to work through the drafting process; and
- how to review and comment on a contract.

Homework

Our textbook is *Drafting Contracts: How and Why Lawyers Do What They Do (Second Ed.)(2014)*. It is available in the bookstore. Unless stated otherwise, all readings and drafting assignments are from this book. There is a website for this Second Edition of the textbook at http://www.aspenlawschool.com/books/stark_contracts2/default.asp. (NOTE: Do not use website for First Edition, as homework

assignments are different.) Click on “Student Materials” in order to download selected materials.

I will also set up this course on TWEN and will post materials there from time-to-time.

The homework assignments are the focus of much of the in-class work and are critical to the learning process. I will individually review some but not all of the homework. I will, however, review each homework assignment in class. Students who put significant effort into the homework assignments learn the most from the course and generally perform well in the course. The converse is also true.

With respect to each ungraded drafting assignment that you submit, unless told otherwise, please

- put your name on every page in the header;
- use a font at least as large as the font in this document (Arial, 12 point);
- use one inch margins all around;
- insert a blank line between paragraphs;
- paginate any document longer than one page;
- e-mail me a copy no later than 6:00 p.m. on the day before class;
- e-mail my assistant, Shirley Robinson at sarobinson@lockelord.com, a copy no later than 6:00 p.m. on the day before class; and
- print out one copy and bring it to class.

The same rules apply with respect to graded assignments, but those assignments are not due until noon the day of class. (Again, e-mail copies to both my assistant and me.)

Conferences

I will hold individual student conferences mid-semester. I will provide information concerning the conferences later in the semester.

Grades

Course grades will be based on the following:

- Redraft of the Car Purchase Agreement – 20%
- National Security Exercise – 5%

- First draft of the Aircraft Purchase Agreement – 25%
- Carrie Richards Exercise – 25%
- Second draft of the Aircraft Purchase Agreement – 25%

Attendance

Class attendance, timely submission of ungraded and graded homework assignments, and participation in class are critical to mastering the material in this class. While I do not give a grade for class participation, I reserve the right to increase or decrease your final grade by 1/2 a grade based on (1) poor class attendance, (2) untimely submission and/or lack of effort on weekly ungraded homework assignments, and/or (3) exceptionally good or bad class participation.

As for class attendance, it is your responsibility to make sure that your name is on the attendance sign in sheet when you arrive at class. If it is not, I must assume that you were absent without excuse.

- Disability Accommodations. Students needing academic accommodations for disability must first be registered. To verify the disability and to establish eligibility for accommodations. Students may call (214) 768-1470 or visit <http://www.smu.edu/provost/atec/class> to begin the process. Once registered, students should then provide the letter of accommodation to Assistant Dean Steve Yeager to put accommodations in place in the law school.
- Religious Observances. We religiously observe that students wishing to be absent on holidays that require missing class should notify me in writing at the beginning of the semester and should discuss with me, in advance, acceptable ways of making up any work missed because of the absence.
- Excused Absences For University Extra Curricular Activities. Students participating in an officially sanctioned and scheduled university extracurricular activity are given the opportunity to make up the class assignment or other graded assignment missed as a result of their participation. It is the responsibility of the student to make arrangements with me prior to any missed scheduled assignment for making up the work.

If a student misses without sufficient excuse three or more classes, he/she will receive an F for the course.

Collaboration with Students and Others

I encourage you to cooperate with each other in all aspects of this course. You should feel free to share ideas with each other. You each, of course, must do your own

writing, except for those instances when you are assigned to work with another student as a member of a team. You may not solicit or receive the aid of anyone outside this class, such as practicing lawyers or students who previously took this course. In addition, you may not refer to any texts, precedents, forms, or other material, except if explicitly permitted.

Students will be assigned to work on several ungraded assignments in teams.

Other Matters

Because each class of students works through the textbook at a different pace, the assignments may vary from the syllabus that follows. Exercises intended for homework may be done in class, and in-class exercises may be assigned for homework. At the end of each class, I will tell you of any changes in the syllabus to the homework exercises for the following week and what must be submitted. **Due dates for assignments may change depending on how quickly or slowly we progress through the material.**

Please feel free to ask questions and to give me feedback throughout the course. I look forward to our semester together.

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Class 1 - January 13, 2016

Translating the Business Deal into Contract Concepts. This unit provides the framework for the course. It teaches students the analytic skill that deal lawyers use when drafting and reviews the basic contract concepts from a deal lawyer's perspective.

Reading Assignment

Chapter 1 – A Few Words.

Chapter 2 – The Building Blocks of Contracts.

Chapter 3 – Translating the Business Deal – Part 1.

Chapter 4 – Translating the Business Deal – Part 2.

Chapter 5 – A Contract's Parts.

Drafting Assignment

None.

Class 2 - January 20, 2016

Translating the Business Deal into Contract Concepts. Continued.

Legalese. Legalese annoys almost anyone who reads contracts. Through the reading and the exercises, you will learn how to write clear, contemporary contracts.

Reading Assignment

Chapter 18 – Legalese.

Chapter 19, § 19.4 – Numbering schemes.

Chapter 32 – Document 2 (Website Development Agreement) – Read the introductory provisions.

Drafting Assignment

Exercise 5-1 – (Draft Car Purchase Agreement).

Exercise 5-2.

Exercises 18-1 through 18-7.

Class 3 - January 27, 2016

Drafting the Preamble, Recitals, Words of Agreement, and Definitions. This unit focuses on the preamble, recitals, words of agreement, and definitions. The unit covers, among other questions, stylistic variations in the preamble and words of agreement, when recitals are significant, and why contract definitions can be critical.

Reading Assignment

Chapter 6 – Introductory Provisions.

Chapter 7 – Definitions and Defined Terms.

Chapter 5, § 5.10 – Schedules and Exhibits.

Chapter 32 – Document 2 (Website Development Agreement) – Skim the definitions.

Drafting Assignment

Exercises 6-1, 6-2 and 6-5.

Exercises 7-1, 7-2, and 7-4.

Class 4 - February 3, 2016

Drafting the Action Sections. The action sections state the objectives each party wants from the contract (to buy property, to hire an employee, to rent space), the consideration each party will pay to gain its objectives, and how the performance of the parties will be executed. In this unit, we discuss why the action sections are “where the action is” and how to draft these sections to minimize disputes.

Reading Assignment

Chapter 8 – Action Sections.

Chapter 32 - Document 2 (Website Development Agreement) – Read Sections 2 through 5 and 7 through 10.

Exhibit (Escrow Agreements), pp. 555-556 in textbook.

Drafting Assignment

Exercise 7-7 (you must review Purchase Offer in Ex. 6-5 as well).

Exercise 8-3, Version 1.

Draft action sections for Trademark Licensing Agreement described in Exercise 5-3 (Ralph Products LP).

Class 5 - February 10, 2016

Drafting Representations and Warranties, Covenants and Rights, Conditions, Discretionary Authority, and Declarations. In this unit, we turn to the multiple issues inherent in drafting representations and warranties, covenants, conditions, discretionary authority, and declarations.

Reading Assignment

Chapter 9 – Representations and Warranties.

Chapter 10 – Covenants and Rights.

Chapter 11 – Conditions to an Obligation.

Chapter 12 – Discretionary Authority and Declarations.

Chapter 13 – Will and Shall.

Chapter 14 – Drafting the Contract Concepts – A Summary Chart.

Chapter 27, § 27.6.2 – Using a Precedent.

Drafting Assignment

Exercise 8-2 (Draft Action Sections of Aircraft Purchase Agreement) (Use precedent of Ch. 32-Doc 4)

Exercises 11-2.

Exercise 12-1.

Using the information in Exercise 5-2, draft Adele Administrator's representations and warranties from the perspective of HHI.

Class 6 - February 17, 2016 - NO CLASS – NEED TO RESCHEDULE

Drafting the Endgame Provisions and Signatures.

Reading Assignment

Chapter 15 – Endgame Provisions.

Chapter 17 – Signatures.

Drafting Assignment

Draft the endgame provisions for the Trademark Licensing Agreement described in Exercise 5-3 (Ralph Products LP).

Exercise 17-1.

Class 7 - February 24, 2016

Drafting Clearly and without Ambiguity. Articulating the agreement of the parties is the goal of drafting contracts. In this unit, we explore the drafting problems that impede the realization of this goal as well as ways to cure the problems.

Reading Assignment

Chapter 19 – Clarity through Format.

Chapter 20 – Clarity through Sentence Structure.

Chapter 21 – Ambiguity – (We will do Ex. 21-8 in class).

Drafting Assignment

Exercise 31-1. This is the Redraft of the Car Purchase Agreement, first drafted for Exercise 5-1. Note: New facts added in Ex. 31-1. (Grade: 20%)

Exercises 19-2.

Class 8 - March 2, 2016

The Drafting Process. In this class, we consider the drafting process from the initial consultation with the client to the drafting of the final agreement.

Drafting Numbers and Financial Provisions. Drafting financial concepts is critical to memorializing a deal accurately. This unit focuses on how to draft mathematical formulae, including those that rely on accounting concepts.

Reading Assignment

Chapter 22 – Numbers and Financial Provisions

Chapter 27 – The Drafting Process.

Drafting Assignment

Exercise 21-5.

Exercise 31-6 - National Security Exercise (Grade: 5%).

Class 9 - March 9, 2016

A Potpourri of Other Drafting Considerations; Deconstructing Complex Provisions;. Organizing a Contract and Its Provisions. In this class, you will learn technical drafting points not covered in earlier classes. In addition, you will learn a six-step process that you can use to deconstruct complex provisions so that you can redraft them clearly and without ambiguity. Finally, using in class exercises, you will learn how to organize an agreement and its provisions.

Reading Assignment

Chapter 23 – A Potpourri of Other Drafting Considerations.

Chapter 24 – Deconstructing Complex Provisions.

Chapter 26 – Organizing a Contract and its Provisions.

Drafting Assignment

Exercise 21-4 and 21-7.

Exercises 23-1 and 23-2.

MARCH 16, 2016 – NO CLASS – SPRING BREAK

Class 10 - March 23, 2016

Drafting the General Provisions. The general provisions include the following clauses: choice of law, anti-assignment, severability, waiver of jury trial, no oral amendments, merger, and notices. Drafters often give short shrift to these provisions because they are at the end of a contract and thought of as “boilerplate.” They are, however, more than mere housekeeping rules. Through class discussion and exercises, you will learn the business terms and legal issues that a drafter must address and analyze when drafting each of these provisions.

Reading Assignment

Chapter 16 – General Provisions.

Drafting Assignment

Exercise 31-2. First Draft of Aircraft Purchase Agreement. (Grade: 25%).

Class 11 – March 30, 2016

Adding Value to the Deal. This class focuses on the lawyer’s role as business counselor. You will learn

- how to look at a deal from the client’s business perspective; and
- how to add value to a transaction by identifying business issues that are buried in the principals’ deal.

Reading Assignment

Chapter 15 – Endgame Provisions (review again).

Chapter 25 – Adding Value to the Deal.

Drafting Assignment

None.

Class 12 - April 6, 2016

Reviewing and Commenting on a Contract. You will not always be the drafter of a deal’s contract. Therefore, to protect and advance your client’s interests, you

must know how to analyze and comment on the other side's drafts. This class will teach you techniques that you can use so that you can do this.

Reading Assignment

Chapter 28 – How to Review and Comment on a Contract.

Drafting Assignment

Exercise 28-1. Carrie Richards Exercise (on TWEN website) (Grade: 20%).

- As Carrie's lawyer, draft memo to attorney for Station suggesting what terms should go in or come out and why. Don't draft these suggested terms.

Class 13 - April 13, 2016

Reviewing and Commenting on a Contract. Continued.

Reading Assignment

Chapter 29 – Amendments, Consents and Waivers.

Drafting Assignment

Exercise 28-1 (Carrie Richards Exercise continued). Submit a joint draft of paragraphs 2 through 4 of the Employment Agreement. (Not graded).

Class 14 - April 20, 2016 (LAST CLASS)

Drafting Ethically. In this class, we will work through a series of exercises that raise ethical issues that can arise when negotiating and drafting contracts.

Reading Assignment

Chapter 30 – Ethical Issues in Drafting.

Drafting Assignment

Exercise 31-3. 2nd Draft of Aircraft Purchase Agreement. (Grade: 25%).