Contract Drafting

New York University School of Law
Spring 2018

Naveen Thomas
Office: Furman Hall Room 526
Email: naveen.thomas@nyu.edu

Course hours and room
Section 1: 11:00 AM–1:50 PM on Tuesday in Furman Hall Room 212
Section 2: 4:00–6:50 PM on Tuesday in Furman Hall Room 326

Course description

This simulation course will teach you the principles of contemporary commercial contract drafting, introduce you to documents typically used in a variety of business transactions, and provide you with many opportunities to practice your drafting skills with personal supervision and feedback. The skills you gain will apply to any transactional practice and will also be useful to litigators. On finishing the course, you will know:

• the business purpose of each contract concept;
• how to translate a business deal into contract concepts;
• how to draft each of a contract’s parts and to ensure that they work together properly;
• how to draft and review common commercial contract provisions;
• how to draft clearly and unambiguously;
• how to add value to a deal;
• how to work through the drafting process;
• how to review and comment on a contract; and
• how to strategically negotiate contract terms with a counterparty.

Materials & Homework

Our textbook is Drafting Contracts: How and Why Lawyers Do What They Do (2nd edition) by Tina L. Stark, which you may purchase from various outlets, including NYU’s bookstore. Readings that are not from this book are available in the Course Materials section of the NYU Classes course site or on the Practical Law website, which you can access through WestLaw.

It is important that you do all of the assigned reading before each session. We may not cover every chapter or article in class, and we will devote most of our class time to hands-on exercises that assume that you have already read the underlying material.
For most classes, you will have drafting assignments in addition to reading assignments. For some drafting assignments, the documents with which you will work are available on the course site or will be distributed by email. Please submit each week’s assignment through the Assignments section of the course site in advance of class, no later than the deadline indicated on the site.

We will thoroughly review selected homework assignments in class, and you will also receive written comments on several assignments. Homework that is submitted late will result in grade deductions and may not receive individual comments. In any case, you are always welcome to schedule an appointment with the professor to discuss your work.

For each week’s assignment, please do the following unless asked otherwise:

- Complete all exercises for that week in the same document and use headings to introduce each exercise
- Put your name on every page in the document header
- Save the document in Microsoft Word format, not as a PDF or any other file type
- Name each electronic document that you submit as follows: [Your last name] - [Exercise/assignment number].docx (e.g., “Smith - Exercise 31-1.docx”)

Assignments and due dates may vary from the syllabus depending on our progress. At the end of each class, we will confirm the homework exercises for the following week.

Grades

Grades will be determined as follows:

- **One-third:** class participation, attendance, and performance during in-class exercises, including the ability to work with others
- **One-third:** homework assignments
  - The shorter homework assignments for each class will be given up to five points based on effort, completeness, and timeliness
  - Four longer homework assignments (as indicated below) will be given up to 10 or 20 points based on quality, in addition to the three factors mentioned above
- **One-third:** a final take-home assignment (to be discussed in more detail during our last class)

Collaboration and Outside Sources

Except as otherwise instructed, you are encouraged to cooperate with each other in all aspects of this course and should feel free to share ideas with each other. However, you each must
do your own writing for the assignments, except for those which expressly require you to work with other students. You may not solicit or receive the aid of anyone outside this class.

Although you are always welcome to consult outside sources for ideas, you should not copy text from outside sources except as otherwise instructed. Toward the end of the course, we will discuss and practice working with forms and precedents. Before that, however, it is crucial that you focus on developing the ability to draft contract language on your own, and most of our exercises will be directed toward that goal.

Registration

Registered students must attend the first class session to maintain their enrollment. Students not enrolled who seek to register in the course must attend the first class. Any vacancy that arises during the add/drop period is filled by lottery among unregistered students who attend the first class in either section. No student who confirms her registration during the first class may later withdraw from the course.

Each section is limited to 12 students without exception; there are no discretionary additions. No unregistered person may audit the course.
❖ Prior to Class #1
   ▪ Read Chapters 1–5.

❖ Class #1 (January 16): Translating the business deal into contract concepts
   ➢ Agenda
      ▪ Introduce course and review syllabus.
      ▪ Discuss Chapters 3–5.
      ▪ Do Exercise 5-2 and 5-3 (if time permits).

   ➢ Homework for Class #2
      ▪ Do Exercise 5-1, using the template on the course site (three-page limit).
      ▪ Read Chapters 6–7 and the corresponding portions of the Website Development Agreement in Chapter 32, Document 2 (i.e., introductory provisions, definitions, and defined terms).

❖ Class #2 (January 23): Introductory provisions, definitions, and defined terms
   ➢ Agenda
      ▪ Review homework.
      ▪ Discuss Chapters 6–7.
      ▪ Review effective date provisions of the Website Development Agreement.
      ▪ Do Exercises 6-4, 7-1, and 7-6.

   ➢ Homework for Class #3
      ▪ Do Exercise 7-7 in Track Changes using the document named “Exercise7-7APAwithlinenumbers.doc” on the course site; review only the preamble, the recitals, and the definitions of Agreement, Aircraft, Assigned Contracts, Aviation Fuel, Contract, and Engines.
      ▪ Read Chapter 8; the corresponding portion of the Website Development Agreement in Chapter 32, Document 2 (i.e., action sections); Chapter 32, Document 4 (The Action Sections of an Asset Purchase Agreement); and Chapter 18.
❖ Class #3 (January 30): Action sections

➢ Agenda

▪ Review homework.
▪ Discuss Chapter 8.
▪ Review and discuss Chapter 32, Document 4 (*The Action Sections of an Asset Purchase Agreement*).
▪ Do Exercises 8-3 and 8-5.

➢ Homework for Class #4

▪ Do Exercise 8-2.
▪ Read Chapters 9–10 and 22 (pp. 325–333 only).

❖ Class #4 (February 6): Representations, warranties, covenants, and rights; numbers and financial provisions

➢ Agenda

▪ Review homework.
▪ Discuss Chapters 9–10 and acknowledgements.
▪ Do Exercises 9-1, 9-2, 9-3, 10-1, and 10-2.
▪ Discuss Chapter 22.

➢ Homework for Class #5

▪ Do Exercises 10-3 and 22-2.
▪ Read Chapters 11–14.

❖ Class #5 (February 13): Conditions, discretionary authority, and declarations

➢ Agenda

▪ Review homework.
Discuss Chapters 11–13.

Do Exercises 11-1, 11-3, 11-4, 12-1, and 14-2 (if time permits).

Homework for Class #6

Do Exercises 11-2 and 14-1.

Read Chapter 15; the corresponding portion of the Website Development Agreement in Chapter 32, Document 2 (i.e., endgame provisions); and Chapter 32, Document 6 (Endgame Provisions in Acquisition Agreements).

Class #6 (February 27): Endgame provisions

Agenda

Review homework.

Discuss Chapter 15.


Homework for Class #7

Do Exercise 15-6, following instructions on the course site.

Read Chapter 16 (but consider section 16.3 optional).

Read Indemnification Clauses in Commercial Contracts, Practical Law Practice Note 5-517-4808.


Optional: Read It’s Time to Get Rid of the “Successors and Assigns” Provision by Kenneth A. Adams

Optional: Read “Direct vs. Consequential Damages: Use the Road Sign Test to Tell the Difference” by Joshua Glazov and Ridgely J. Jackson.

Class #7 (March 6): Indemnification; general provisions

Agenda

Review homework.
• Discuss indemnification provisions.
• Discuss Chapter 16.
• Do Exercises 16-1 and 16-2.

➢ Homework for Class #8
• Read Chapters 17, 26, and 30. Read and be prepared to discuss (but do not do) Exercises 30-2 through 30-5.
• Read Confidentiality and Nondisclosure Agreements, Practical Law Practice Note 7-501-7068 (focus on sections 2 and 3, “Form and Structure of Confidentiality Agreements” and “Key Provisions and Issues”).

❖ Class #8 (March 20): Confidentiality provisions; signatures; organizing a contract and its provisions; ethics in drafting

➢ Agenda
• Discuss confidentiality provisions and agreements.
• Discuss Chapters 17, 26, and 30 (including Exercises 30-2 through 30-5).

➢ Homework for Class #9
• Do Exercise 31-10, following instructions to be distributed separately (Note: this assignment is worth 10 points).
• Read Chapters 18–21 (feel free to skip section 19.7, but please read that chapter’s appendix) and 23 (sections 23.2 and 23.3 only).

❖ Class #9 (March 27): Legalese; clarity and ambiguity

➢ Agenda
• Review homework.
• Discuss Chapter 18–21.
- Discuss Chapter 23.2 and 23.3.

Homework for Class #10
- Read Chapters 25 and 27, and skim the prompts for (but do not do) Exercises 25-1 and 25-2.
- Read the instructions for (but do not do) Exercise 31-1.
- Download or print endgame chart for Exercise 31-1 from course site and bring it to class.

Class #10 (April 3): Adding value to the deal; the drafting process

Agenda
- Discuss Chapter 25.
- Do Exercises 25-1 and 25-2.
- Discuss Chapter 27 and how to locate and use precedent and template agreements.
- Discuss endgame chart for Exercise 31-1.

Homework for Class #11
- Do Exercise 31-1, except the memo described in item 8 of the instructions (*Note*: this assignment is worth 20 points).
- Read Stark Chapter 28.
- Read materials for (but do not do) Exercise 28-1 (available on the course site) and bring them to Class #11.
❖ Class #11 (April 10): Reviewing and commenting on contracts

➢ Agenda

▪ Review homework.

▪ Discuss Chapter 28.

▪ Begin Exercise 28-1.

➢ Homework for Class #12

▪ Finish Stark Exercise 28-1 (Note: this assignment is worth 20 points).

▪ Read materials for negotiation exercise (to be distributed by email).


▪ Optional: Read NYU Lawyering materials on negotiation (chapters 9 and 10) (Note: this is especially encouraged if you have not taken Lawyering or have otherwise not previously read these materials).

❖ Class #12 (April 17): Contract negotiation (part 1)

➢ Agenda

▪ Review homework.

▪ Discuss contract negotiation.

▪ In assigned pairs, begin negotiation exercise.

➢ Homework for Class #13: None

❖ Class #13 (April 24): Contract negotiation (part 2)

➢ Agenda

▪ Do course evaluations.

▪ Continue negotiation exercise.
➢ **Homework for Class #14**

- Complete negotiation exercise and submit one document for each pair (*Note*: this assignment is worth 10 points for each student).
- Read Chapter 29.

❖ **Class #14 (May 1): Amendments, consents, and waivers**

➢ **Agenda**

- Review homework.
- Discuss the final take-home assignment.
- Discuss Chapter 29.