

USC Gould School of Law
Contract Drafting and Negotiation
Fall 2017
Professor Craig Cooper

Overview

This course is designed to provide students with an introduction to the fundamentals of contract drafting and negotiation in a transactional practice, with an emphasis on developing practical drafting skills that each student can utilize in his or her practice of law after graduation. This course will introduce students to the anatomy of a contract, as well as a broad array of drafting techniques, contractual provisions and types of commonly used contracts, ranging from license agreements, to employment agreements, to asset purchase agreements. Students will develop both drafting and negotiating skills, both in individual and collaborative settings. During this class, students will be exposed to various drafting and negotiating strategies and theories, which will assist them to develop their own personal approaches. “Real-world” practical advice and contracts will be used in conjunction with a text.

Grading

Grades for this class will be based on three components: (1) class attendance and participation in in-class exercises will comprise 15% of your grade; (2) homework drafting assignments will comprise 15% of your grade; and (3) a final exam will comprise 70% of your grade.

The final exam will be an “open book,” take-home exam. In your future legal practice, you will be able to refer to your own form files and notes, so I want you to be able to use those in working on your exam. You will have 72 hours from the time you pick up your exam to complete it. You will be asked to analyze a fact pattern and draft a complete contract. You may also be asked to provide edits and comments on already drafted contract provisions. Advance preparation will not be necessary for the final exam.

I expect you to attend class and complete your assignments on time; points for attendance, participation and homework are yours to lose. You will lose attendance credit for each week that you are not in class, and your participation in class discussions and exercises will be considered when I compute final grades. I expect everyone to participate in class discussions, which will help create a dynamic and enjoyable learning experience.

The periodic assignments are intended to prepare you for the practice of law and the final exam. I will do my best to always return homework assignments with comments; however, even if I do not, I will always review the assignments and award credit for their completion. I will also review assignments in class on an anonymous basis to provide students with examples of common drafting techniques and errors. Primarily, however, I will be looking to see that you spent some time thinking about and completing the exercises, and that you applied creativity and analytic elements that were discussed in class and in the text.

The best preparation for the final exam will be regular class attendance, participation in class, and completion of all homework assignments.

Collaboration on individual assignments with other students, attorneys or other persons in or out of this class is prohibited unless specifically assigned. You are free, however, to consult any written materials, including form books and exemplar banks, whether in the law library or elsewhere. Remember to look critically at all examples and forms you use and to tailor them to reflect the standards of this class, including plain English. It is no defense to claim: “This is how the form book did it.”

Contact Information

The best way to reach me is via email at craig.cooper@wonderful.com. If you need to speak with me, please call me at my office (310.966.5728) or on my cell phone (310.220.9900). If your question is not urgent, I prefer to be reached by email; I will respond at my earliest convenience.

I will usually be available after class for questions. If you would like to set up a private conference to discuss any matters relating to your work or the class, please contact me and we can arrange a mutually convenient time and place at USC or my office. I will hold formal office hours before class at USC, on dates and times to be announced, two or three times during the semester.

Text

The following text is required for this class: Charles M. Fox, Working with Contracts: What Law School Doesn't Teach You (2d Edition) (ISBN -13: 978-1-4024-1060-4). This text was preordered through USC and is also available online. I will also be using two Harvard Law School case studies, which are required to be purchased through USC Law School.

Course Outline

This is my current expectation of what the course will cover, but this outline is subject to change. I will be posting class materials on Blackboard and communicating with you via email to deliver assignments and other class information.

Class No.	Date	Class Subject	Assignments
Prior to Class 1			For Class 1: Read Fox, ch. 1 (1:1 to 1:4 only) & ch. 2 (2:6 to 2:6.5 only)
1	Aug. 21	Introduction; Concise Writing; Defined Terms	For Class 2: Read Fox, ch. 3 (3:1 to 3:4.6 only) and ch. 4 (all); turn in drafting assignment by 8/25 at 3 p.m.
2	Aug. 28	Drafting Problems; Non-Compete Discussion; Drafting Rules	For Class 3: Draft non-compete provision (details given in class); read Shell and Steinberg articles; turn in drafting assignment by 9/1 at 3 p.m.
	Sept. 4	No Class / Labor Day	
3	Sept. 11	Drafting Rules Con't; Negotiation Strategies; Non-Compete Review; Intro for 9/18 negotiation	For Class 4: Read Fox, ch. 6 (all, excluding 6:4.4 to 6:4.9)
4	Sept. 18	Hollywood Club (in-class negotiation); Term Sheets; Consideration	For Class 5: Draft term sheet and email it to me by 9/22 at 3 p.m.; Read Fox, ch. 8 (all)
	Sept. 25	No Class / Canceled	
5	Oct. 2	Term and Termination; Signature Blocks; Anatomy of a Contract	For Class 6: Prepare Franklin Inn Drafting Assignment and email it to me by 10/6 at 3 p.m.

6	Oct. 10 (Tuesday)	Franklin Inn Model Answer; Letters of Intent; Due Diligence; Entity Types; Business Combinations; Use, Assignment & Subletting Clauses	No homework
7	Oct. 16	<i>[Guest Lecturer: Danielle Criona]</i> Intellectual Property (Trademarks; Patents; Copyrights); Trademark License Agreement	For Class 8: Read Discount Marketplace Case Study and sample provisions for 10/23
8	Oct. 23	Discount Marketplace Case Study (in-class negotiation); Contract Interference	For Class 9: Draft use, assignment & subletting clause; Email draft to me by <u>Thursday</u> , 10/26 at 3p.m.; Read Fox, ch. 5 (all) and ch. 9 (9:4 to 9:4.4)
9	Oct. 30	Asset Purchase Agreement (Assets; Liabilities; Purchase Price; Representations & Warranties); iPod in-class drafting assignment	For Class 10: Read article on ADR
10	Nov. 6	Indemnification; Alternative Dispute Resolution (Mediation & Arbitration vs. Litigation)	For Class 11: Complete Young Pierce drafting assignment and email to me by 11/10 at 3 p.m. Read Shelowitz article on NDAs; Read Fox, ch. 10 (10:1 to 10:2.13) [boilerplate]
11	Nov. 13	Review Young/Pierce; Right of First Refusal; Covenants; Confidentiality; Boilerplate; Amendments	For Class 12: Read Theotis Wiley case study materials

12	Nov. 20	Theotis Wiley (in-class negotiation) & discussion; Opinion letters	For Class 13: Complete Theotis Wiley drafting assignment and email to me by 11/24 at 3 p.m.; Read Fox ch. 9 (9:3, pp. 177 to 197 only) and ch. 10 (10:3 only)
13	Nov. 27	Financing; Bankruptcy; Remedies; Settlement Agreements	