

LAW-883
ADVANCED LEGAL WRITING FOR BUSINESS LAWYERS (FALL, 2019)
SYLLABUS

PROFESSOR CONTACT INFORMATION

Professor: Janis Penton

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Office hours: I will have office hours which can be scheduled before and after class. Please email to make an appointment. If you cannot see me during office hours, I am also available by phone.

COURSE DESCRIPTION

This course is designed for students interested in business law and other transactional practice areas. Students will develop the foundational skills necessary to communicate clearly, concisely, and appropriately in a business law setting. This will include identifying the audience and objective; structure and organization; clarity; consistency; and “plain English” best practices. Students will practice these skills through a series of exercises and simulations completed both inside and outside of class, both individually and collaboratively. These exercises and simulations, which include a variety of types of written communications, are intended to help students improve their analytical, drafting, and editing skills and develop sensitivity to the expectations of attorneys, clients and others with whom they may be working (such as government regulators and counterparties). Students will gain experience drafting and editing, thereby reinforcing the concepts they are learning and discussing in class.

COURSE OBJECTIVES AND CONTENT

Legal practice is generally divided into litigation and “transactional.” The term ‘transactional’ often is meant to refer to structuring, negotiating and drafting transactions. However, it includes a much broader array of practice areas requiring advice and counseling that are unrelated to any specific transaction or counterparty. This course is designed to reflect the types of assignments a young lawyer might receive in a broadly defined transactional practice. The semester is divided into two parts. Part 1 is designed to build a foundation to write clearly, concisely and unambiguously; focus on the intended audience and the objective of the communication; and emphasize the editing process. The course is designed to concentrate on writing rather than the substantive law underlying the writing so legal research should be negligible. Part 2 will focus on reviewing, analyzing and drafting contractual provisions, including proper use of forms and templates; understanding and drafting so-called ‘boiler-plate’ provisions; and completion of a group simulation exercise.

The graded assignments will require you to draft two research memos, two emails conveying legal advice, and several assignments as part of the simulation exercise.

COURSE DETAILS

- Unit Value: 2
- Grading Options: Numerical Only
- Schedule: T 10:00 am - 11:50 am
- Room Number: Room 12

- Exam: None
- Writing Requirement: Yes
- Skills/Experiential Unit Requirement: yes
- Participation: Required and graded
- Enrollment Limitation: 20 students; JD only

READING

- **Books**
 - ‘Plain English for Lawyers’ by Richard Wydick will be used only in Weeks 1 and 2 but students should find the text helpful for the balance of the semester
 - ‘Transactional Lawyering Skills’ by Richard Neumann
- **Other Materials:** other materials will be assigned and provided as indicated

ASSIGNMENTS AND GRADING

Graded Assignments. This course requires students to complete 7 graded writing assignments: (1) 2 traditional legal memos; (2) 2 emails conveying legal advice; and (3) 4 separate assignments as part of the transaction simulation. The assignments will be distributed during the weeks indicated in the list of weekly topics below and will be scored on a 100-point scale.

Writing Exercises. In addition, students will complete several shorter writing exercises designed to help you improve your writing habits.

Assignment due dates are indicated in the schedule of weekly topics below. Late submission of an assignment will result in a proportionate point deduction on the grade for that assignment. No assignment will be accepted more than 72 hours late unless you have received my prior written approval.

Please submit assignments via email, in Word format, double-spaced, and Times Roman 12 pt. font.

This course is graded numerically, and there is no CR/D/F option. There is no final exam for this course. Grading will be allocated as follows:

- Memo 1: 15%
- Memo 2: ungraded
- Email 1: ungraded
- Email 2: 25%
- Simulation exercise assignments:
 - Issues memo to senior partner – 20%
 - Issues email to client - 30%
 - Contract revision – ungraded
 - Final draft of contract provisions, a collaborative (group) project - ungraded
- Class participation 10%

“Class participation” includes satisfactory and timely completion of ungraded assignments and exercises, as well as class attendance and overall participation. It will also include my assessment of your in-class negotiation session in Week 14.

ATTENDANCE AND OTHER COURSE POLICIES

1. The class meets for 100 minutes once per week. Because much of what you learn will be through participation in in-class exercises and in-class discussions of any take-home writing exercises, attendance is mandatory. Students will be allowed one unexcused absence.
2. Please try to arrive in class early enough to get settled before we begin. Arriving late is distracting and disruptive to other students.
3. Laptops are recommended for class. Certain assignments may be edited, revised and resubmitted in class.
4. I will be using Blackboard to post announcements, scheduling information, assignments, and other course materials. You are responsible for checking Blackboard and your email account regularly.
5. Collaboration: You may collaborate on the assignments only as indicated on the weekly topics or as I state in class. With the exception of assignments to be completed collaboratively and in-class peer review editing, you may not show (or read) any of your written work—including any lists, drafts, or outlines—related to any of the assignments to anyone but me, and you may not look at the written work of anyone else in the class unless I expressly tell you that you may do so. All school academic integrity rules apply, and you may not copy anyone else’s writing without proper attribution. In other words, you may not plagiarize.

WEEKLY TOPICS, READING, ASSIGNMENT

Following is a general plan of topics that we will cover in class, an approximate assignment schedule, and an approximate schedule of mandatory readings. These are subject to modification depending on the pace of in-class discussion. The details for each week follow the overview.

Overview of Weekly Topics

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|---------------|----------------------------------------------------|
| Week 1 | Introductions, how this class will work |
| Week 2 | Building a strong foundation for effective writing |
| Week 3 | Drafting legal memos |
| Week 4 | Drafting legal memos continued |
| Week 5 | Drafting legal memos continued |
| Week 6 | Drafting emails to effectively convey legal advice |

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| Week 7 | Drafting emails to effectively convey legal advice continued |
| Week 8 | Drafting emails to effectively convey legal advice continued; letters sent in transactional practice |
| Week 9 | Introduction to working with contracts – use of templates and forms Guest Lecturer – Learn to think like a litigator |
| Week 10 | Introduction to working with contracts - boilerplate |
| Week 11 | Contract Simulation – introduction to the agreement and identifying issues |
| Week 12 | Contract Simulation– getting ready to negotiate |
| Week 13 | Contract Simulation – negotiating and drafting |
| Week 14 | Contract Simulation – finalizing terms |

Detail for Weekly Topics, Reading and Assignments

Prior to Week 1

- Write 2 paragraphs about yourself; your academic background and anything else you want to include; and explain why you are taking this class and what your goals are for the class. Do not exceed 250 words.
- Read:
 - ‘Why lawyers can't write’ by Bryan A. Garner
http://www.abajournal.com/magazine/article/why_lawyers_cant_write
 - ‘Transactional Lawyering Skills,’ chapters 1- 3, pg. 9 - 26

Week 1: Introduction

- Introductions
- How the class will work
- Class discussion of assignment
- ASSIGNMENT FOR WEEK 2:
 - *Plain English*: read chapters 1 – 7 (pg. 3 – 67). Do not read Exercises that have not been assigned (which comprise at least 50% of the reading)
 - Complete Exercise 8 (4 and 6), Exercise 13(2), Exercise 15 (2) in *Plain English*. Note that although sample answers are at the back of the book, they are not the only nor even necessarily the best answers. This assignment will not be graded.
 - Read handout: ‘How to Write Good Legal Stuff’ (University of Indiana).

Week 2: Building a strong foundation

- Discuss 'Plain English' chapters 1 – 7
- Review assignments
- Using acronyms, buzz words and jargon
- Discuss assignment for Week 3
- ASSIGNMENT FOR WEEK 3
 - Read Gould hand-outs on Memos: Office Memo Handout; IRREAC Handout; IRREAC Application Handout (same as used in 1st year writing class)
 - *Transactional Lawyering*: read Chapters 4 and 5, pgs. 27 - 50

Week 3: Drafting Memos

- Discuss
 - Memo hand-out
 - Know your audience; determine who's the client
 - Understanding the facts and the question being asked
- Discuss Memo 1 assignment
- ASSIGNMENT FOR WEEK 4:
 - Memo 1 to be sent to client's in-house lawyer

Week 4: Drafting Memos continued

- Discuss Memo 1 and actual response
- Peer review exercise to edit Memo 1
- Class review of Memo 1
- In-class revision of Memo 1 and submission to professor by end of class
- Discuss Memo 2 assignment
- ASSIGNMENT FOR WEEK 5:
 - Memo 2 to be addressed to senior lawyer in your firm

Week 5: Drafting Memos continued

- Discuss Memo 2 and actual response
- Peer review exercise to edit Memo 2
- Class review of Memo 2 – Professor edits and discussion
- In-class revision of Memo 2 and submission to professor by end of class
- ASSIGNMENT FOR WEEK 6:
 - Resubmit Memo 1 responding to professor edits
 - Read hand-outs on Emails:
 - 'Emails in a Professional Legal Setting' (Gould);
 - ABA for Law Students – 'A young attorney's most important writing: Emails'
 - Penton (sample emails and how emails are perceived);
 - *Transactional Lawyering*: read Chapters 5 – 8 pg. 37-66

Week 6: Drafting Emails

- Discuss hand-out on Emails
- Discuss emails

- ASSIGNMENT FOR WEEK 7:
 - Resubmit Memo 2 responding to professor edits
 - Email 1: prepare an email response to a client inquiry.

Week 7: Drafting Emails continued

- Peer review exercise to edit Email 1
- Class review of Email 1 – Professor edits and discussion
- In-class revision of Email 1 and submission to professor by end of class
- ASSIGNMENT FOR WEEK 8:
 - Email 2: redraft Memo 2 as an email to be sent to the client line-officer you deal with.
 - *Transactional Lawyering*: read Chapters 9 – 11, pg. 67 -86

Week 8: Drafting Emails continued and discussion of types of letters

- Discuss Email 2 and actual response
- Peer review exercise to edit Email 2
- Class review of Email 2
- Learning when not to write an email
- Third-party closing opinions and related practice, Cal Bar form
- ASSIGNMENT FOR WEEK 9:
 - Resubmit Email 1 responding to professor edits
 - Read *Transactional Skills: How to Structure and Document a Deal*, Sepinuck and Hilson (chapter 3); for class discussion, complete exercise 3-4 (will not be graded)
 - Read, *Modernizing Your Contracts and Living to Tell the Tale*, by Tina Stark

Week 9: Introduction to working with contracts – Use of Forms

- Introduce guest lecturer: Paul Hall, DLA Piper
- Learn to think like a litigator when drafting and reviewing contracts
- Use of forms and templates
- Discuss Exercise 3-4
- ASSIGNMENT FOR WEEK 10
 - Resubmit Email 2 responding to professor edits
 - Read *Transactional Skills: How to Structure and Document a Deal*, Sepinuck and Hilson (chapter 4); complete following exercises which will not be graded:
 - 4-1: also think about how the wording would change if there are multiple contracts between the same parties as part of a single transaction;
 - 4-8: think about the provision from both parties' perspective;
 - 4-11;
 - 4-15; and
 - 4-19: in addition to the questions asked in the chapter, include in your revision the modes of communication available and think about why parties would or wouldn't want to use any specific mode as well as appropriate receipt/send rules.

Week 10: Introduction to working with contracts - Boilerplate

- 'Boilerplate' provisions: what are they and why do we need them?

- Discuss Week 10 assignment and following types of provisions:
 - merger (or integration) also discuss “conflict provision” (if multiple agreements, which one controls);
 - notices;
 - amendment;
 - force majeure;
 - assignment of rights/delegation of duties and assignment of proceeds;
 - counterparts;
 - disclaimer of punitive and other damages – what have we learned from the *Bones v. Fox* litigation? and
 - choice of law and forum (*Zeeco, Inc. v. JPMorgan Chase Bank, N.A.*, Case No. CV-2016-01440 (Dist. Ct., Tulsa Co., OK) & Case No. 17-CV-384-JED-FHM (U.S. Dist. Ct., N.D. OK) [this case is a placeholder for class discussion; you need not read it])
- Discuss upcoming simulation exercise, distribute ‘fact sheet’
- ASSIGNMENT FOR WEEK 11
 - Review fact sheet for simulation exercise
 - Review template Escrow Agreement recitals, Articles 6 and 20, and Sections 11, 12, 13, 16, and 17 and begin to annotate focusing on your client

Week 11: Escrow Agreement Simulation – introduction to the agreement and identifying issues

- Discuss:
 - Escrow Agreement template and the fact pattern
 - Perspective of each party and which provisions might be impacted by that perspective including boilerplate
 - Recitals and their importance
 - Defined terms
 - Distribution provisions – how and when the money is distributed
- Divide into groups
- ASSIGNMENT FOR WEEK 12
 Individually prepare a memo to the partner in your firm running the deal (Issues Memo) and a separate email to the client (Client Email) listing the sections you think should be revised to reflect the underlying deal and your client’s best interests and either specify conceptually how you think those sections should be revised or actually draft revisions – whichever you think more effective. The goal of the memo is to give the partner all the information he needs to discuss the contract with the client. The goal of the email is to list the problems you see in the contract, explain why they are problems and present solutions. Limit to recitals, Articles 6 and 20, and Sections 11, 12, 13, 16, and 17. You should use the resources introduced earlier in the course (texts and hand-outs).

Week 12: Escrow Agreement Simulation – getting ready to negotiate

- Class discussion about escrow agreement – what provisions didn’t you understand
- Peer review exercise to edit Issues Memo and Client Email
- Class discussion about negotiating

ASSIGNMENT FOR WEEK 13

- *Transactional Lawyering*: read Chapters 12 – 16 (pg. 89-123)

Week 13: Escrow Agreement Simulation – negotiating and drafting

- Class discussion – questions from the reading
- Meet in groups – simulate an in-person negotiation session among all parties.

ASSIGNMENT FOR WEEK 14

- By 11/26, in pairs or threes prepare the revised draft of the recitals, Articles 6 and 20, and Sections 11, 12, 13, 16, and 17 reflecting the negotiated terms. Submit a redlined draft showing all the changes made and a clean version incorporating all the changes to the professor.
- Those who are supposed to prepare the group draft (the official draft), send the others in the group a redlined draft showing all the changes made and a clean version incorporating all the changes.

Week 14: Escrow Agreement Simulation – finalizing terms

- Meet in the same groups as you did in Week 13. Using the official draft, each pair (or trio) in the group sign off on the new draft or request and negotiate further changes. If further changes are to be made, select another pair to do the drafting.
- Work on final draft in class and submit to the professor by the end of class (if you cannot meet that deadline, we will mutually agree on an alternate deadline).

STATEMENT ON ACADEMIC CONDUCT AND SUPPORT SYSTEMS

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

<https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class.

<https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC

Tabs for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students. <https://diversity.usc.edu/>