

Contract Drafting, Analysis and Negotiation
Fall 2023

Professors:	Mehdi Sinaki
Office Hours:	By appointment
Email:	msinaki@law.usc.edu
Classroom:	LAW 107
Schedule:	Wednesdays: 5:00 p.m. to 6:50 p.m.
Units:	Two (2) Unit Course
Course Materials:	No required text. Recommended/Optional. Getting to Yes: Negotiating Agreement Without Giving In

Course Description: This course is an introduction to drafting and analyzing contract language as well as negotiation principles.

Throughout the semester, you will become familiar with the fundamental elements of business contracts, as well as the basic contract structure, standard contract provisions, and boilerplate language. You will also be assigned exercises in contract drafting.

Approximately one-third of the course will be devoted to contract negotiation fundamentals, including preparation and strategy. The emphasis will be on practical concepts of negotiation as opposed to psychological or theoretical analysis. In addition, there will be a number of simulated negotiations in which all students will take part.

Even though this is an introductory course, foreign lawyers and legal professionals with practical experience should benefit by becoming more proficient in technical legal terminology and gaining a more in-depth comprehension of familiar contract provisions.

Students lacking practical legal experience should familiarize themselves with the common structure of a contract, the manner in which contractual provisions are organized, and the common language found in the majority of contracts.

Grading:

Class Attendance:	10% of your final grade will be based on class attendance.
Class Participation:	30% of your final grade will be based on active participation in class discussions and presentations.
Homework Assignments:	35% of your final grade will be based on the timeliness and effort of homework assignments.
Final Exam:	25% of your final grade will be based on a final exam.

Homework Assignments:

Analysis and Drafting of Specific Contract Provisions. Throughout the semester, students will be assigned homework. The list of assigned contract clauses is appended to this course outline. These assignments involve filling out an assignment grid. This syllabus includes both a blank assignment grid and an example assignment grid. You can complete the assignment grid by searching the Internet and textbooks for sample contract language. You are encouraged to complete your homework in small groups.

During an in-class review, all students must be prepared to discuss their homework assignments. The assignments will be announced at the conclusion of each class and are listed below. Instead of being graded and returned, assignments will be reviewed and discussed in class. If you wish to individually review an assignment, you may schedule an appointment.

Contract Writing Practices. During the semester, you will also complete three (3) contract drafting exercises. The exercises in contract drafting will be graded, but not returned, they will be reviewed and discussed in class. If you wish to individually review an assignment, you may schedule an appointment. Unless otherwise specified, all assignments and contract drafting exercises are due the following Sunday at 12:00 p.m. and must be submitted through Blackboard. Attached to this syllabus are instructions on how to submit papers using Blackboard.

Weekly Subjects. The class sessions will consist of (1) lectures, (2) reviews of assigned homework, and/or (3) negotiation exercises.

The following topics will also be discussed in lectures. The following is an outline of course topics, homework, and reading assignments. It will be revised throughout the semester based on the rate of discussion.

Course Schedule

- Week 1. Course Introduction
- Week 2. The Basics of Contracts
Basic Requirements for a Contract Why Enter into a Written Contract?
Basic Issues to Consider Before Drafting and Negotiating Top of the Contract
Bottom of the Contract
Homework: Prepare for Negotiation Exercise No. 1
Homework: Assignment No. 1
- Week 3. Review Assignment No. 1
Negotiation Exercise No. 1
Important Concepts and Styles in Negotiating Zone of Reasonable Opportunities (ZORRO)
Best Alternative Reasonable Transaction (BART) Underlying Interests, Factors, and Options
Homework: Contract Drafting Exercise No. 1
- Week 4. Recitals / Definitions
Attachments / Exhibits / Schedules Making Changes to Drafts Emphasizing Major Points
Duties / Obligations / Rights
Review Contract Drafting Exercise No. 1
Homework: Assignment No. 2
- Week 5. Termination
Rights/Obligations Following Termination
Review Assignment No. 2
Homework: Assignment No. 3
- Week 6. Representations & Warranties
Review Assignment No. 3
Homework: Prepare for Negotiation Exercise No. 2
Homework: Assignment No. 4
- Week 7. Remedies for Breach
Review Assignment No. 4
Negotiation Exercise No. 2
Homework: Contract Drafting Exercise No. 2
- Week 8. Methods to Ensure Ability to Pay
Swords and Shields (Offensive and Defensive Contract Language)
Review Contract Drafting Exercise No. 2
Homework: Assignment No. 5
- Week 9. Overview of Litigation
Critical Provisions in Litigation
Alternative Dispute Resolution
Review Assignment No. 5
Homework: Assignment No. 6
- Week 10. Review Assignment No. 6
Homework: Prepare for Negotiation Exercise No. 3
Homework: Assignment No. 7
- Week 11. Review Assignment No. 7
Negotiation Exercise No. 3
Homework: Contract Drafting Exercise No. 3
- Week 12. Review Contract Drafting Exercise No. 3

Week 13. Review for Final Exam.

Week 14. Final Exam Review

HOMEWORK ASSIGNMENTS

ASSIGNMENT	CONTRACT PROVISION	SAMPLE PROVISION
1	Counterparts – Facsimile	This Agreement may be executed in one or more counterparts, and each counterpart, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same instrument. The parties agree that facsimile signatures shall be deemed an original.
1	Assignment – Delegation	Esri may, in whole or in part, assign any of its rights or delegate any duties performance pursuant to this PSS Agreement, provided that Esri shall remain responsible for the performance of delegates.
1	Successors and Assigns	This Lease Agreement shall inure to the benefit of and bind the successors and assigns of the parties hereto. The signatories below each affirm they have the legal authority to execute this instrument on behalf of the named party and bind said party to the covenants and conditions herein.
1	Third Party Beneficiaries	The DCS is an "Intended Third Party Beneficiary" of this contract and as such, is legally entitled to enforce this agreement. In particular, it is expressly contemplated by the contracting parties that the DCS will have the authority to enforce the "Events of Default" (6.4) and "Actions Upon a Declaration of Default" (6.5) provisions of this Agreement if the LENDER does not exercise the rights of Articles 6.4 and 6.5. This provision in no way restricts any legal rights or remedies that the DCS may assert against the (city/county) for its failure to enforce the conditions and requirements of this agreement.
2	Attorney’s Fees	In any litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.
2	Force Majeure	Each of the parties hereto shall be excused from delays in performing or from failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party, including, but not limited to, forces of nature, acts of God, strikes, lockouts, wars, blockades, insurrections, riots, epidemics, restraints or requirements of any government or government agency, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, unavailability of raw material or supplies, standings, perils of the sea, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable means, and other cause, whether of the kind enumerated or otherwise, not reasonably within the control of the party claiming suspension. Failure to prevent or settle any strike shall not be considered to be a matter within the control of the party claiming suspension.
2	Transaction Costs	All transaction costs incurred by the parties hereto shall be borne solely and entirely by the party that has incurred the same; provided, however, that each of the Buyer and the Seller shall pay one-half of the filing fee(s) for filings made pursuant to Antitrust Laws.
2	Confidentiality	The employee agrees that the employee will not disclose to others or use, whether directly or indirectly, any confidential information for the employee’s own benefit or any purpose.
3	Further Assurances	Sellers, at any time after the Closing, at the request of Buyer and at Buyer’s sole expense, shall execute, acknowledge and deliver any further assignments, conveyances and other assurances, documents and instruments of transfer, and will take any other action consistent with the terms of this Agreement, that may reasonably be necessary for the purpose of assigning, granting and confirming to Buyer all Assets to be conveyed pursuant to this Agreement.
3	Entire Agreement – Merger	This Agreement contains and represents the entire agreement of the parties and supersedes all prior agreements, representations, or understandings with respect to the subject matter hereof. No representation, promise, or inducement has been made

		by either party hereto that is not embodied in this Agreement, and neither party shall be bound for any alleged representation, promise, or inducement not specifically set forth herein.
3	Compliance with Laws (Covenant)	To the Knowledge of Seller, the Product Development has been conducted by or on behalf of Seller in compliance in all material respects with all applicable Laws, rules and regulations, and none of Seller or, to the Knowledge of Seller, any of subcontractors have received any notice in writing, or otherwise has Knowledge of any facts, which have, or reasonably should have, led Seller to believe that the IND is not currently in good standing with the FDA
3	Disclaimer of Warranties	EXCEPT FOR SPECIFICATIONS REQUESTED BY BUYER, FOR ALL SUPPLIER PRODUCTS PROVIDED HEREUNDER, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SUPPLIER DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED , OR STATUTORY, OR ANY AFFIRMATION OF FACT OR REPRESENTATION, INCLUDING THE WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
4	Notices	All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if sent by registered or certified mail (receipt requested), facsimile transmission (with receipt confirmed), or receipted courier or delivery service, addressed as follows, and shall be deemed given when received at the office indicated below: If to Seller: SCP Communications, Inc. Address Attention: Donald Edwards Chief Financial Officer If to Purchaser: Medscape, Inc. Address Attention: Peter Frishauf Chief Executive Officer Any party may by notice change the address to which notice or other communications to it are to directed.
4	Enforceability	If any provision of sections 1.1 or 1.2 shall be held invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect. If any provision shall for any reason be held to be excessively broad as to time, duration, geographical scope, activity, or subject, it shall be construed, by limiting and reducing it, so as to be enforceable to the extent permitted by applicable law. The validity, legality, and enforceability of other restrictions shall not be affected by any judicial modification.
4	Severability	If any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not render the entire Agreement invalid. Rather, the Agreement shall be construed as if not containing the particular invalid or unenforceable provision, and the rights and obligations of each Party shall be construed and enforced accordingly.
4	Survival	No representations, warranties, covenants or agreements contained in this Agreement shall survive beyond the Effective Time.
5	Waiver of Jury Trial	Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of contemplated hereby.
5	Meet and Confer/Mediation	If the parties refer to mediation any controversy or claim arising out of or relating to this Agreement or the existence, validity, breach or termination thereof, whether during or after its term, they shall select a mutually acceptable mediator within forty-five (45) days thereafter. Neither party shall unreasonably withhold consent to the selection of a mediator. The parties shall share equally the costs of mediation. If the parties agree, they may substitute other forms of alternative dispute resolution, such as neutral opinion or mini trial. The scope of meeting and conferring in good faith between management representatives and representatives of recognized employee organizations includes, but is not limited to wages, hours, and other terms and conditions of employment

		within the employee representation unit.
5	Arbitration	Any dispute or difference arising out of or in connection with this contract shall be determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within fourteen days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators.
6	Venue – Jurisdiction	EACH BORROWER, AGENT AND THE LENDERS HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE NORTHERN DISTRICT OF CALIFORNIA.
6	Governing Law	The laws of the state of Vermont govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including, without limitation its validity, interpretation, construction, performance, and enforcement.
6	Liquidated Damages	(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of __ [Contracting Officer insert amount] for each calendar day of delay until the work is completed or accepted. (b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.
6	Irreparable Harm	Notwithstanding anything to the contrary contained herein, Licensor and Licensee each have the right when deemed necessary to prevent irreparable injury pending resolution by arbitration of the actual Dispute to obtain temporary restraining orders and temporary or preliminary injunctive relief, from a court of competent jurisdiction; provided that Licensor and Licensee must contemporaneously submit their Dispute for arbitration on the merits.
7	No Consequential Damages	NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS) OR ANY SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE AND REGARDLESS OF WHETHER ANY PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
7	Time is of the Essence	The parties hereby agree that time is of the essence with respect to performance of each of the parties' obligations under this Agreement. The parties agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday or state or national holiday, then the time for such performance shall be extended until the next business day thereafter occurring.
7	Controlling Provisions / Conflict of Provisions	In the event that there exists a conflict between any term, condition, or provision contained within this Amendment, and in any term, condition, or provision contained within the Agreement, the term, condition, or provision contained within this Amendment shall control.
7	Termination	In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.

ASSIGNMENT GRID

Title of Provision	
Example of Actual Contract Language (sample provision)	
Description of Provision. What does it do?	
How would this provision be helpful and who does it benefit? Give one example.	
How would this provision be harmful and who does it harm? Give one example.	
How could you modify the example provision to make it less harmful? What are some of the ways you can modify the language?	

**ASSIGNMENT GRID
(SAMPLE)**

<p>Title of Provision</p>	<p>Counterparts and Facsimile</p>
<p>Example of Actual Contract Language (sample provision)</p>	<p>This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.</p> <p>The parties to this agreement agree that facsimile signatures of this Agreement shall be deemed a valid and binding execution of this Agreement.</p>
<p>Description of Provision. What does it do?</p>	<p>This provision allows for the execution and signing of the agreement through multiple counterparts, or duplicate copies of the original. These counterparts or faxes will have the binding power of the original. Each of the counterparts is deemed an original, but all of them together constitute one agreement.</p> <p>When parties consent to this provision, the parties need not sign “one original contract” signed by all parties. It permits or forbids a contract to be executed with each side signing its own copy, rather than signing a single copy. Often respective copies are faxed back and forth, with each side retaining a copy of the signed document.</p>
<p>How would this provision be helpful and who does it benefit? Give one example.</p>	<p>To facilitate commercial transactions by permitting the execution of contracts between parties in different locations and on different signature page.</p> <p>Clarifies legal status of counterparts by indicating in the contract which document shall become the original, and in case there are more than one original, how they shall be valued.</p> <p>Facsimile – Provides for effectiveness of facsimile copies at closing.</p>
<p>How would this provision be harmful and who does it harm? Give one example.</p>	<p>It may cause disputes between parties regarding which version is the original agreement.</p> <p>It is difficult to verify that the counterparts which are not pieced together in fact came from the same parchment.</p>
<p>How could you modify the example provision to make it less harmful? What are some of the ways you can modify the language?</p>	<p>This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. <u>Original counterparts must be received within 5 business days of execution, the failure of which shall void this Agreement.</u></p> <p>The parties to this Agreement agree that facsimile signatures of this Agreement shall be deemed a valid and binding execution of this Agreement <u>so long as original executed pages are exchanged with 5 business days of execution of this Agreement.</u></p>

INSTRUCTIONS FOR SUBMITTING PAPERS USING BLACKBOARD

Contract Drafting, Analysis and Negotiation

Professor Mehdi Sinaki

All of your assignments must be submitted electronically through Blackboard. **Neither e-mail nor hard copy submissions will be accepted.** Please note that Blackboard provides an accurate time-stamping feature, which allows us to determine when your assignment was submitted.

1. **Submitting Assignments through Blackboard.** To submit assignments through Blackboard, please use the following procedure:

- i. Go to the Blackboard site for this class and click on "Assignments" in the column on the left side of the course home page.
- ii. Click on the name of the assignment you are submitting. For example, for the assignment due Sunday, August 28, you will click on "Assignment No. 1." **To submit a test document by 12:00 p.m. on Sunday, August 28, as explained further below, click on the folder labeled "Test Assignment."**
- iii. Next to "Attach File," click on "Browse My Computer." In the window that appears, find the file on your computer.
- iv. Double-click on the file or select it and click the "Open" or "Upload" button. The name of your file should now appear next to "Attached Files."
- v. Click the "Submit" button. You will see a "Submission History" page that shows the date and time when your assignment was submitted. **IMPORTANT: The Submission History page will say that the "assignment is complete" even if you have not attached a file. To verify that you properly attached your document, go to the "Review Submission History" part of the page, which includes a section "Submission Materials." You will be able to see the name of your document under "Attached Files" if you properly attached it.** Click "OK" to exit the assignment submission area.

2. **Submitting a Sample Document on Blackboard.** To ensure that you understand the e-submission procedure prior to handing in your first assignment, you will be required to submit a sample document to the "Test Assignment" folder using the procedure outlined under 1 above **no later than 12:00 p.m. on Sunday, August 27.** The sample document can be any document in Word format. It does not have to include any particular information, but it should not be completely blank.

Please let me know immediately if you have any questions about this procedure and e-mail us immediately if you run into any problems using it.

STATEMENT ON ACADEMIC CONDUCT AND SUPPORT SYSTEMS

Academic Integrity:

The University of Southern California is a learning community committed to developing successful scholars and researchers dedicated to the pursuit of knowledge and the dissemination of ideas. Academic misconduct, which includes any act of dishonesty in the production or submission of academic work, compromises the integrity of the person who commits the act and can impugn the perceived integrity of the entire university community. It stands in opposition to the university's mission to research, educate, and contribute productively to our community and the world.

All students are expected to submit assignments that represent their own original work, and that have been prepared specifically for the course or section for which they have been submitted. You may not submit work written by others or "recycle" work prepared for other courses without obtaining written permission from the instructor(s).

Other violations of academic integrity include, but are not limited to, cheating, plagiarism, fabrication (e.g., falsifying data), collusion, knowingly assisting others in acts of academic dishonesty, and any act that gains or is intended to gain an unfair academic advantage.

The impact of academic dishonesty is far-reaching and is considered a serious offense against the university. All incidences of academic misconduct will be reported to the Office of Academic Integrity and could result in outcomes such as failure on the assignment, failure in the course, suspension, or even expulsion from the university.

For more information about academic integrity see [the student handbook](#) or the [Office of Academic Integrity's website](#), and university policies on [Research and Scholarship Misconduct](#).

Please ask your instructor if you are unsure what constitutes unauthorized assistance on an exam or assignment, or what information requires citation and/or attribution.

Students and Disability Accommodations:

USC welcomes students with disabilities into all of the University's educational programs. [The Office of Student Accessibility Services \(OSAS\)](#) is responsible for the determination of appropriate accommodations for students who encounter disability-related barriers. Once a student has completed the OSAS process (registration, initial appointment, and submitted documentation) and accommodations are determined to be reasonable and appropriate, a Letter of Accommodation (LOA) will be available to generate for each course. The LOA must be emailed to the Student Affairs office, and to ensure anonymity where possible, the Student Affairs office will communicate with faculty as needed. For classroom accommodations, the student can work directly with faculty to determine how best to implement the modification. This should be done as early in the semester as possible as accommodations are not retroactive. More information can be found at osas.usc.edu. You may contact OSAS at (213) 740-0776 or via email at osasfrontdesk@usc.edu. You can also contact Student Affairs for more information about accommodations in the law school (studentcare@law.usc.edu).

Support Systems:

[Counseling and Mental Health](#) - (213) 740-9355 – 24/7 on call

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

[988 Suicide and Crisis Lifeline](#) - 988 for both calls and text messages – 24/7 on call

The 988 Suicide and Crisis Lifeline (formerly known as the National Suicide Prevention Lifeline) provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week, across the United States. The Lifeline is comprised of a national network of over 200 local crisis centers, combining custom local care and resources with national standards and best practices. The new, shorter phone number makes it easier for people to remember and access mental health crisis services (though the previous 1 (800) 273-8255 number will continue to function indefinitely) and represents a continued commitment to those in crisis.

[Relationship and Sexual Violence Prevention Services \(RSVP\)](#) - (213) 740-9355(WELL) – 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender- and power-based harm (including sexual assault, intimate partner violence, and stalking).

[Office for Equity, Equal Opportunity, and Title IX \(EEO-TIX\)](#) - (213) 740-5086

Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting

options, and additional resources for students, faculty, staff, visitors, and applicants.

[Reporting Incidents of Bias or Harassment](#) - (213) 740-5086 or (213) 821-8298

Avenue to report incidents of bias, hate crimes, and microaggressions to the Office for Equity, Equal Opportunity, and Title for appropriate investigation, supportive measures, and response.

[The Office of Student Accessibility Services \(OSAS\)](#) - (213) 740-0776

OSAS ensures equal access for students with disabilities through providing academic accommodations and auxiliary aids in accordance with federal laws and university policy.

[USC Campus Support and Intervention](#) - (213) 740-0411

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

[Diversity, Equity and Inclusion](#) - (213) 740-2101

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

[USC Emergency](#) - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

[USC Department of Public Safety](#) - UPC: (213) 740-6000, HSC: (323) 442-1200 – 24/7 on call

Non-emergency assistance or information.

[Office of the Ombuds](#) - (213) 821-9556 (UPC) / (323-442-0382 (HSC)

A safe and confidential place to share your USC-related issues with a University Ombuds who will work with you to explore options or paths to manage your concern.

[Occupational Therapy Faculty Practice](#) - (323) 442-2850 or otfp@med.usc.edu

Confidential Lifestyle Redesign services for USC students to support health promoting habits and routines that enhance quality of life and academic performance.

Use of AI in this Course

Except where expressly permitted by the instructor, all work submitted for this course, including exams and papers, must be completed by you, personally. Use of artificial intelligence (AI) tools to generate text as part of preparing your work is strictly prohibited. Submission or presentation of material generated by AI, including summarizing, paraphrasing, or editing such material, will be considered a violation of Academic Integrity. For additional information, please refer to the Academic Integrity and Plagiarism portions of the Gould Student Handbook and the USC Student Handbook.