

**LAW 708 - Contract Drafting, Analysis and Negotiation
Spring 2024**

Professors:	Mehdi Sinaki
Office Hours:	After class or by appointment
Email:	msinaki@law.usc.edu
Classroom:	LAW 224
Schedule:	Wednesdays: 4:00 p.m. to 5:50 p.m. (subject to adjustment based on academic calendar)
Units:	Two (2) Unit Course
Course Materials:	Recommended/Optional. Getting to Yes: Negotiating Agreement Without Giving In

Course Description: This course offers an introduction to the essential skills of drafting, analyzing contract language, and understanding negotiation principles.

Throughout this semester, participants will gain a comprehensive understanding of the core elements of business contracts, including basic structure, standard provisions, and commonly used boilerplate language. Additionally, students will engage in practical exercises designed to enhance their contract drafting abilities.

A significant portion of the course, will be dedicated to the fundamentals of contract negotiation, focusing on preparation techniques and strategic considerations. The course will prioritize practical negotiation skills over psychological or theoretical aspects. It will also include simulated negotiation sessions for all students to actively participate in.

While this course is designed as an introduction, it also offers valuable insights for foreign lawyers and legal professionals, enhancing their proficiency in technical legal terminology and providing a deeper understanding of standard contract provisions.

For students without practical legal experience, this course will serve as a foundational step to understanding the typical structure of contracts, how contractual provisions are organized, and the language commonly encountered in most 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.

Since the majority of learning in this course will be through class lectures and participation in exercises and discussion in class, attendance and active participation are crucial. Please join the class on time. A limited number of absences can be made up with make-up assignments.

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 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	TYPE OF CONTRACT
1	Counterparts – Facsimile	Loan Agreement
1	Assignment – Delegation	Services Agreement
1	Successors and Assigns	Lease Agreement
1	Third Party Beneficiaries	Construction Agreement
2	Attorney’s Fees	Licensing Agreement
2	Force Majeure	Supply Agreement
2	Transaction Costs	Merger Agreement
2	Confidentiality	Employment Agreement
3	Further Assurances	Asset Purchase Agreement
3	Entire Agreement – Merger	Services Agreement
3	Compliance with Laws (Covenant)	Asset Purchase Agreement
3	Disclaimer of Warranties	Agreement for Purchase of Goods
4	Notices	Asset Purchase Agreement
4	Enforceability	Employment Agreement
4	Severability	Services Agreement
4	Survival	Merger Agreement
5	Waiver of Jury Trial	Agreement for Purchase of Goods
5	Meet and Confer	Employment Agreement
5	Mediation	Employment Agreement
5	Arbitration	Asset Purchase Agreement
6	Venue – Jurisdiction	Loan Agreement
6	Governing Law	Supply Agreement
6	Liquidated Damages	Construction Agreement
6	Irreparable Harm	Licensing Agreement
7	No Consequential Damages	Supply Agreement
7	Time is of the Essence	Construction Agreement
7	Controlling Provisions / Conflict of Provisions	Services Agreement
7	Termination	Merger Agreement

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)**

Title of Provision	Counterparts and Facsimile
Example of Actual Contract Language (sample provision)	<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>
Description of Provision. What does it do?	<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>
How would this provision be helpful and who does it benefit? Give one example.	<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>
How would this provision be harmful and who does it harm? Give one example.	<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>
How could you modify the example provision to make it less harmful? What are some of the ways you can modify the language?	<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 28.** 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 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 Scamps in Part B, Section 11, “Behavior Violating University Standards,” <https://policy.usc.edu/files/2020/07/SCampus-Part-B-2.pdf>. Other forms of academic dishonesty are equally unacceptable.

Support Systems:

COVID-19 Emergency Assistance Funds for Students <https://we-are.usc.edu/faqs/faq-support-funds/>

USC has several resources available for students. Eligible students can apply for assistance from the COVID-19 Emergency Assistance Fund and the USC Student Basic Needs Department (<https://studentbasicneeds.usc.edu/>). This webpage answers FAQs for each resource and describes important university resources for low- income students: Food Insecurity (<https://studentbasicneeds.usc.edu/resources/food-insecurity/>) Housing Insecurity (<https://studentbasicneeds.usc.edu/resources/housing-insecurity/>) Tech Assistance (<https://studentbasicneeds.usc.edu/resources/technology-assistance/>)

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://studenthealth.usc.edu/counseling/>. See also this guide for Gould students to facilitate access to mental health resources on campus: <https://gould.usc.edu/assets/docs/directory/Mental-Health-Services-at-USC.pdf>

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. www.suicidepreventionlifeline.org

Relationship and 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://studenthealth.usc.edu/sexual-assault/>

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

Bias Assessment Response and Support

Incidents of bias, hate crimes, and micro-aggressions need to be reported allowing for appropriate investigation and response. <https://eeotix.usc.edu/>

The Office of Disability Services and Programs

Provides certification for students with disabilities and helps arrange relevant accommodations. <https://dsp.usc.edu/>

Student Support and Advocacy

Campus Support and Information is where members of the Trojan Family go to seek support for themselves, for others, and for the community. It is a one-stop-shop for care and support, troubleshooting and advocacy. <https://cwci.usc.edu/campus-support-and-intervention/>. If you are concerned about a fellow Trojan challenged with personal difficulties, you can file a report through Trojans Care for Trojans. The form can be found at: <https://campussupport.usc.edu/trojans-care-4-trojans/>.

Diversity at USC

Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. <https://diversity.usc.edu/>. Gould-specific information can be found at <https://gould.usc.edu/about/race-equity/> (Law, Race and Equity page) and

<https://gould.usc.edu/students/diversity/> Students can submit anonymous EDI-related comments/complaints through the law portal: <https://mylaw2.usc.edu/about/contact/anonymous-comments>

USC Emergency Information

Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible. <https://emergency.usc.edu/>

USC Department of Public Safety – UP: (213) 740-4321 – HSC: (323) 442-1000 – 24-hour emergency or to report a crime.

Provides overall safety to USC community. <https://dps.usc.edu/>