University of Washington School of Law

Drafting Business Documents

Autumn 2017

Tues/Thurs 1:30-3 pm William Gates 212-213

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SYLLABUS

Textbooks

- Tina Stark, Drafting Contracts: How and Why Lawyers Do What They Do (2nd ed. 2014)

    - http://www.aspenlawschool.com/books/stark_contracts/custom1materials.asp

- Paul A. Swegle, Contract Drafting And Negotiation For Entrepreneurs And Business Professionals (2018)

- Chapter 1, Dennis Hubbard, How to Measure Anything: Finding the Value of Intangibles in Business (2010) (available through Canvas)

- Other materials as may be distributed through the Canvas course site

Learning Objectives

Students will learn to:

- Distinguish "ex post" legal reasoning used in litigation and other forms of dispute resolution from "ex ante" legal reasoning used in transactional practice as well as governance, risk management and compliance.

- Apply "ex ante" legal reasoning skills to specific drafting business documents and problems:

- o Identify the "value proposition"[1] that the lawyer's client offers to its own customer or otherwise seeks legal advice to develop;

- o Factor that value proposition in to the process of drafting a business document adapted to meeting the client's requirements.

- o Investigate facts and law relevant to the process of drafting business documents adapted to meeting the client's requirements.

- o Develop, apply and assess the effectiveness of **explicit, deliberate** legal research strategies appropriate to legal issues arising in the ex ante drafting business documents context such as finding and evaluating the usefulness of:

  - Different types of models, templates or guides for drafting business documents in Gallagher Law Library and in the Westlaw, Lexis and Bloomberg databases; and

  - Business documents in the SEC EDGAR Material Contracts database as tools to assist drafting business documents;

- Draft business documents in such a manner that:

  - o Non-lawyer parties whose rights are governed by those documents can read and understand them;

  - o The likelihood of disputes among the parties working within the framework of those documents is minimized; and

  - o In the event of a dispute, the terms of those documents will be enforceable.

- Distinguish active from passive learning in order to exploit more fully active learning opportunities including:

  - o Reducing the scope of hasty, incomplete legal research strategies and expanding the scope of explicit, deliberate legal research skills.

  - o Transferring ideas from the textbook and homework assignments to class discussion and in-class team-based problem solving activities;

  - o Providing constructive, concrete feedback to other students on their drafting business documents work product in class or with Peerceptiv.

- Recognize the kind of ethical conflicts that may arise during the process of drafting business documents and develop strategies for resolving them that are consistent with the legal profession's standards of professional responsibility.

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[1] Value proposition is what your customer/client gets out of your product/service. See, e.g., 31 Value Propositions You Wish You Had: https://www.impactbnd.com/blog/10-value-propositions-you-wish-you-had

Course Description

This is a problem-based, lawyering skills course. Students will be given opportunities to develop diverse law practice skills relevant to drafting business documents including learning about a client's business strategy, identifying appropriate sources for drafting business documents, spotting and researching legal issues raised by integrating client business strategies into business documents, and personifying the ethical norms of the legal profession in transactional law practice.

Students will be provided with opportunities during class time to practice applying concepts they have not yet fully mastered in new situations. In this context, it is appropriate and even inevitable for students to make mistakes during class discussion and team based activities. For students accustomed to using class time for passive learning, this may initially be outside of their comfort zone. Empirical research has demonstrated that student learning outcomes are improved when class time is used to provide students with opportunities to test their own understanding, identify misconceptions and correct them. By using class time to identify and correct misconceptions, students can reduce the number of mistakes they are likely to make later outside of class.

Students will be asked to:

- Work on drafting problems from the Stark textbook (including trading hard copies of completed assignments with other students for informal peer review) and other sources;

- Discuss reading assignments, drafting assignments and other assignments in class, including responding to Poll Everywhere questions;

- Work through business and legal issues related to drafting business documents in teams followed by class discussion; and

- Submitting selected drafting projects to Peerceptiv and providing formal peer reviews to other students on the same assignments.

In addition, some class time may be allocated to guest lecturers.

Student work outside of class will include:

- Reading the textbook or other background information;

- Completing various law practice simulation assignments and printing them out or submitting them to Canvas or Peerceptiv to facilitate review;

- Developing "ex ante" legal research skills including:

  o Identifying and researching legal issues related to drafting assignments; and

  o Locating models, templates, guides and examples of business documents to assist in drafting documents; and

- Providing peer feedback on Peerceptiv drafting assignments.

Additional class or outside of class activities may be added as the course progresses.

Team-Based Learning

From time to time, students will engage in "Team Based Learning" activities in class. Teams in this class do not meet outside of class; teams are designed to provide a framework for class discussion.

After drop/add, I will randomly assign students to teams. These teams will remain the same for the entire quarter.

Minor team based discussion activities include discussing as a group answers to informal class discussion questions or Poll Everywhere questions.

Major team-based learning and discussion activities provide "review and synthesis" opportunities:

- Students take a multiple choice test as individuals, and turn in their answers;

- Students break into teams and answer the same multiple choice test as a group using a scratch-off sheet to record their answers (I will provide the "Immediate Feedback Assessment Technique" scratch off cards); and

- Students will be given a more complex problem to solve in teams; team results will be reported to class and followed by class discussion.

Before the end of the quarter, students will be asked to assess the performance of their team members by noting something that the team member has done well, and something that can be improved. The "team based learning" part of students' grades will be based on my observation of their behavior in class as well as the feedback students provide to each other and receive from each other. For example, writing "Well done!" for what peers did well and "Keep up the good work!" for what could be improved will result in a student receiving 0/10 possible points.

Although students are free to meet as teams outside of class, they are not required to do so. I will not assign any team activities other than those that take place during class time.

Canvas Assignments and ePortfolio

Some drafting assignments will be designated as Canvas assignments. Each Canvas assignment will have two deadlines:

- Class hard copy deadline: bring a hard copy printout of your work on an assignment to class with your 3 digit PIN number. Hard copies will be exchanged before class discussion of the assignment.

- Canvas upload deadline: after class discussion, students will have time to revise and polish their work before submitting it to Canvas for grading.

At the end of the quarter, students will review all their Canvas involving complete business document, select two for grading, revise them as much or as little as desired, and place them in an ePortfolio for grading.

Peerceptiv Assignments

Peerceptiv is a collaborative learning management system. Compared to Canvas, it offers fewer functions, but for the peer review functions that it does offer, they are much more advanced than anything available in Canvas.

Some drafting assignments will be designated as Peerceptiv assignments. Each of these assignments will have a deadline and after the deadline, Peerceptiv will assign each student the work of five other students to review by a second deadline. All student peer reviews are anonymous for the students but as Instructor, I will know which student's work is being reviewed and which student is submitting the review.

Some or all of the Peerceptiv drafting assignments may be based on single transaction: a student hiring a pet sitter/house sitter while the student is away for a month to complete an externship in another state.

Ex Ante Legal Research Strategies

Lawyers almost never draft business documents starting from scratch; they normally refer to a model, template, guide or other document as a model. However, looking for information about how to organize a business document or how to draft specific provisions in a business document is a specific legal research that often differs from other legal research skills because of the issues can be less well defined and broader than "ex post" legal research issues.

Law school students are not usually provided with much training in legal research strategies customized to issues arising in "ex ante" transaction practice rather than "ex post" litigation practice. These strategies include the use of formbooks or their online equivalent, but models for drafting business documents can come from many sources. In addition, training in locating relevant examples of business documents in the EDGAR Material Contracts database will also be provided.

Grades

Class participation	10%
Team based learning	10%
Peerceptiv drafting exercises	30%
Canvas ePortolio drafting exercises	50%

Disability-Related Needs

To request academic accommodations due to a disability, please contact Disability Resources for Students (DRS), 448 Schmitz, (206) 543-8924 (V), (206) 543-8925 (TTY). If you have a letter from DRS, please present the letter to Winn or Raigrodski so you can discuss the accommodations you might need in this class.

Law School Attendance Policy

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance.

Office Hours

TBD

I am happy to meet with students outside of class as needed. If you would like to speak with me outside of class, please feel free to stop by my office, telephone me or send me an email to schedule a meeting.

Rescheduled Classes

Due to unavoidable schedule conflicts, I regret that I will be out of town on Thursday October 4, Tuesday October 16, Thursday October 18, and October 25.   These classes may be made up through a combination of video lectures, online quizzes, homework, or makeup classes.

Podcasts

Audio podcasts will be made of all classes, but if I forget to wear the microphone, the audio may be unintelligible.

Class Media/Computer Use Policy

Students may make use of any kind of computer device during class but should use them only to work on class-related activities during class time.

The policy regarding mobile phone use during class is different than the policy regarding conventional computer use during class because the way people interact with them is often different: recent empirical research suggests mobile phone use is more likely to interfere with effective use of class time than conventional computer use.[2] For this reason everyone (student & faculty alike) should keep mobile phones turned off or on silent and put away out of sight during class (barring a personal emergency brought to my attention before class).

Week 1 assignments

Tuesday September 25

- Introduction (pp. 1-3) from Paul Swegle, Contract Drafting and Negotiation for Entrepreneurs and Business Professionals (2018)

- Chapters 1 and 2 (pp. 3-10) Tina L. Stark, Drafting Contracts: How and Why Lawyers Do What They Do (2nd edition 2014)

Thursday September 28

Stark, Exercise 5-1 drafting a car purchase agreement: use the carpurchaseagmttemplate.pdf template from Canvas to draft a car purchase agreement, print it out in hard copy and bring the hard copy to class to hand in after the class discussion.

Begin discussion of Swegle, Chapter 1.

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[2] Martha C. White, Your Cell Phone Is Killing Your Productivity, but Not for the Reason You Think, Time.com, July 19, 2015 http://time.com/money/3956968/cell-phone-alert-productivity/