

T/Th 4:00-5:25 p.m. Gates Hall, Room 212

**Instructor: Heath Dixon**  
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**Office Hours: By Appointment**

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### **Class Description:**

In law school you spend a great deal of time reading fusty old cases. You can be forgiven for thinking that if these are the most important cases, then the most effective lawyers should learn to write that way. As a newly minted lawyer you will be handed well-worn contract forms filled with hand-me-down provisions that don't necessarily fit the new agreement you need to document. You will be tempted to stuff the new agreement into the old contract language, assuming that if it was good enough for more senior attorneys, it must be good enough for you.

My goal is to teach you that the old ways aren't always the best ways when it comes to drafting business documents (that is, legal documents for business clients), and certainly not when explaining business documents to clients. This will be a hands-on learning experience, in which you will reinforce principles by practicing drafting skills to produce quality business documents.

### **Learning Objectives**

At the end of the class, you will be able to:

- find and evaluate a form business document to use for creating a first draft;
- edit a draft business document for clarity;
- determine what provisions to keep, remove, or edit in a draft business document;
- review, comment on, discuss, and edit a draft business document for a client as part of a negotiation;
- understand and explain the business purpose of standard contract provisions; and
- communicate effectively via email about draft business documents with business clients and fellow attorneys.

### **Textbook**

There will be no course textbook. The readings will be a mix of articles and cases.

### **Assignments**

To learn to draft, one must draft. Therefore, most weeks you will have drafting assignments and reading assignments. Drafting assignments are due by noon the day before class, which will give me time to review them before class so they can be incorporated into the class. Reading assignments should be completed prior to the class meeting to allow for more informed class discussion.

## **Grading**

Nondisclosure Agreement (30 points): four drafts (4-10 points each)

Master Services Agreement (80 points): eight intermediate drafting assignments (8 points each) and final draft (16 points)

Email messages (60 points): twelve email messages to clients or third parties (4-6 points each)

Class participation (30 points): attending and responding when called upon is worth one point per class, volunteering answers (without overdoing it) is worth two points per class.

## **Law School Attendance Policy and Class Participation/Expectations**

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance. At any time after the fifth week of a course (halfway through a summer session course), a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor's so indicating to the Academic Services Office.

Making attendance part of the grading scheme may make you wonder whether the class is so bad that students must be compelled to attend. That's fair, and so I won't tell you that you must attend for your own good. I will take attendance each class because participation is essential to maintaining a hands-on learning environment for the whole class. We will start, review, and revise written assignments in class, so if you aren't present you aren't contributing to the learning environment. If you must miss class, please let me know as soon as possible.

You are encouraged, but not required, to work with other students on your assignments. However, each student must turn in their own work for grading.

## **Laptops, Phones and Guests**

You will need a laptop in each class to work on the drafting classwork. You will not need a phone, so please put your phone away during class except for urgent matters. You are welcome to bring guests; please just let me know prior to inviting them to attend.

## **Research Services Librarians**

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library's [UW Law Students page](#) for more information about their services generally. To get help, you can email the Research Services librarians directly at [lawref@uw.edu](mailto:lawref@uw.edu). You are also welcome to visit the Reference Office on L1 to speak with the Research Services librarian on duty. If you have a detailed research question or would prefer to meet privately with a librarian, you may set up an [individual appointment](#).

## **Course Evaluation**

Course evaluations are open online during the last week of classes. Class time will be made available during the final class meeting for filling out your evaluation. Please bring a laptop or mobile device to class on this date to participate in the evaluation.

## **Access and Accommodation**

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability.uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

## **Class Meetings**

This is my first time teaching this course, so it is possible that I will need to change class meeting topics and reading or drafting assignments. If so, they will be announced as soon as they are planned and the revisions will appear on the Canvas version of the Syllabus.

### **CLASS 1 – Tuesday, March 27**

**Topic:** Introduction and Business Drafting Best Practices, Pt. 1 (Legal Writing in Plain English)

**Reading Assignments:** Syllabus

**Drafting Assignments:** None

### **CLASS 2 – Thursday, March 29**

**Topic:** Contract Drafting Resources (Guest Lecturer: Mary Whisner) and Business Drafting Best Practices, Pt. 2: (Reviewing and Revising Documents)

**Reading Assignments:** [Where Is the "Quality Movement" in Law Practice?](#), [The Illusion of Quality in Contract Drafting](#), [The New Associate and the Future of Contract Drafting](#)

**Drafting Assignments:** None

### **CLASS 3 – Tuesday, April 3**

**Topic:** Nondisclosure Agreement and Written Communication, Pt. 1

**Reading Assignments:** [Freund, James. \*Lawyering, a Realistic Approach to Legal Practice\*, 1979 \(Chapter 3: Written and Oral Communication\) pp. 31-86 \(to be provided\)](#)

**Drafting Assignments:** [Non-Disclosure Agreement \(NDA #1\)](#), [NDA Checklist](#)

#### **CLASS 4 – Thursday, April 5**

**Topic:** Nondisclosure Agreement and Written Communication, Pt. 2

**Reading Assignments:** [NDAs, Confidentiality Provisions And How To Make Sure Your IP Stays Yours](#)

**Drafting Assignments:** [Revised NDA \(NDA #2\), Client email \(Email #1\)](#)

#### **CLASS 5 – Tuesday, April 10**

**Topic:** Nondisclosure Agreement and Written Communication, Pt. 3; Letters of Intent and Memoranda of Understanding

**Reading Assignments:** *SIGA Technologies, Inc. v. PharmAthene, Inc.*, 67 A. 3d 330 (Del. S. Ct. 2013)

**Drafting Assignments:** [Revised NDA \(NDA #3\), Client email \(Email #2\), Transmittal email \(Email #3\)](#)

#### **CLASS 6 – Thursday, April 12**

**Topic:** Introduce Master Service Agreements

**Reading Assignments:** [What every Product Manager Ought to Know about Contract Negotiations](#) (Parts 1-4, clickthrough additional links)

**Drafting Assignments:** [Master Services Agreement \(MSA #1\), MSA Checklist](#)

#### **CLASS 7 – Tuesday, April 17**

**Topic:** Contract Building Blocks, Pt. 1: Recitals, Definitions, and Representations and Warranties

**Reading Assignments:** [A Lesson in Drafting Contracts: What’s Up with “Representations and Warranties?”](#); [Another View on Reps and Warranties](#); *CBS Inc. v. Ziff-Davis Publishing Co.*, 75 N.Y.2d 496 (1990)

**Drafting Assignments:** [Final NDA \(NDA #4\), Client email \(Email #4\), Transmittal email \(Email #5\)](#)

#### **CLASS 8 – Thursday, April 19**

**Topic:** Contract Drafting Best Practices, Pt. 4: Principles for Contract Drafting

**Reading Assignments:** TBD

**Drafting Assignments:** [Client email \(Email #6\); Revised MSA: Recitals and Definitions \(MSA #2\)](#)

#### **CLASS 9 – Tuesday, April 24**

**Topic:** Contract Building Blocks, Pt. 2: Covenants, Conditions, and Discretionary Authority

**Reading Assignments:** [How a Court Determines Obligation or Condition](#); *Howard v. Federal Crop Insurance Corp.*, 540 F.2d 695 (4th Cir. 1976)

**Drafting Assignments:** [Two examples of a Statement of Work \(MSA #3\) and “Guidelines for Drafting SOWs” \(MSA #4\)](#)

**NO CLASS on April 26.** Use the time to work on assignments.

**CLASS 10 – Tuesday, May 1**

**Topic:** Contract Building Blocks, Pt. 3: Declarations; Damages and Limitation of Liability, Indemnification, Other Remedies; Termination Rights

**Reading Assignments:** Restatement of Contracts (Second) Chapter 16, Remedies; [Reassessing the “Consequences” of Consequential Damages Waivers in Acquisition Agreements](#); [Limitations of Liability—Exceptions and Caps, Structure and Enforceability](#), and [Exclusion of Damages](#)

**Drafting Assignments:** [Client email \(Email #7\)](#); [Revised SOW \(MSA #5\)](#)

**CLASS 11 – Thursday, May 3**

**Topic:** Contract Building Blocks, Pt. 4: Audit Rights, Dispute Resolution, Choice of Law, Forum, Compliance with Laws

**Reading Assignments:** [Drafting Dispute Resolution Clauses, A Practical Guide](#)

**Drafting Assignments:** [Client email \(Email #8\)](#)

**CLASS 12 – Tuesday, May 8**

**Topic:** Contract Building Blocks, Pt. 5: Assignment, Third Party Beneficiaries, Confidentiality, Further Assurances, and the rest

**Reading Assignments:** [Rethinking the “No Assignment” Provision; It’s Time to Get Rid of Successors and Assigns](#); [On Naval Ramming Bows and Contractual Boilerplate](#); [Second Circuit Provides Cautionary Tale](#)

**Drafting Assignments:** [Client email \(Email #9\)](#); [Revised MSA: Representations and Warranties, Declarations; Damages and Limitation of Liability, Indemnification, Other Remedies; Dispute Resolution, Choice of Law, Forum, Compliance with Laws \(MSA #6\)](#)

**CLASS 13 – Thursday, May 10**

**Topic:** Amendment and Incorporation by Reference

**Reading Assignments:** [Unilaterally Amending “Virtual Attachments”](#); [Making an Ancillary Document Part of a Contract](#); [Side Letters, Incorporation by Reference and Construction of Contractual Relationships Memorialized in Multiple Writings](#)

**Drafting Assignments:** [Two contract amendments, annotated \(MSA #7\)](#); [Client email \(Email #10\)](#)

**CLASS 14 – Tuesday, May 15**

**Topic:** Online Agreements

**Reading Assignments:** [Guidelines for Creating Enforceable Contracts Online](#)

**Drafting Assignments:** [Revised MSA: Dispute Resolution, Choice of Law, Forum, Compliance with Laws, Assignment, Third Party Beneficiaries, Confidentiality, Further Assurances, and the rest \(MSA #8\)](#); [Client email \(Email #11\)](#)

**CLASS 15 – Thursday, May 17**

**Topic:** Client Communication; Final Thoughts and Questions; Course Evaluation

**Reading Assignments:**

**Drafting Assignments:** “[Guidelines for Drafting SOWs](#)” (MSA #8); [Client email \(Email #12\)](#)