



Contract Drafting (Law 556, Section 1001)
Eric Goldman
Spring 2005

1. SESSIONS. This course will meet every Tuesday from 2:00 to 3:40 from January 18 to April 26, excluding March 22 (Spring Break).

2. TEXTS.

(1) **Course Supplement.** The supplement includes chapters from Tina L. Stark's draft book *Drafting Business Contracts*, and she has generously given permission to include the chapters in this supplement. Two notes about Tina's materials: (1) her book is a draft, so you will notice some errors, notes to herself, incomplete sections, etc., and (2) I don't agree with everything she says (or, for that matter, the other commentators in the supplement), so you will see different styles and choices that drafters make. At the end, the supplement also includes an article and sample agreement from Ward Classen.

(2) Henry D. Gabriel and Linda J. Rusch, *The ABCs of the UCC: (Revised) Article 2: Sales* (2004; ISBN #1-59031-305-4)

3. GRADING.

(a) Participation/Attendance. 25% of your final grade is based on participation and attendance. In addition to other consequences from absences, I may either drop you from the course or issue a failing grade if you have 4 (or more) unexcused absences.

(b) Exercises. 15% of your final grade is based on the exercises described in Appendix A.

(c) Final Project. 60% of your final grade is based on a final project. I anticipate that the final project will ask you to critique and redraft a contract. The final project will be due no later than May 6, 2005 at 5 pm.

4. EMAIL LIST. YOU MUST REGISTER FOR THE COURSE'S TWEN SITE NO LATER THAN JANUARY 19 AT 5:00 PM OR I MAY DROP YOU FROM THE COURSE. I send important course-related emails to the TWEN email list, so please use an address you check regularly.

5. SCHEDULE (subject to adjustment).

Supp = course supplement

ABCs = The ABCs of the UCC: (Revised) Article 2: Sales

Date	Topics	Reading/Assignment
January 18	Course Introduction Review Contract Law/Article 2	Supp 34-35 (Scott, Why Johnny Can't Draft Technology Agreements) ABCs 1-12 and 29-51 (Chapters 1 and 3)
January 19		DEADLINE: Register for TWEN
January 23		DEADLINE: Exercise #1 due 5:00 pm in my email account
January 25	Review Exercise #1 Why Do Contracts?	ABCs 131-160 (Chapter 8) Supp 293-297, 322, 323-325 (Classen, §III(B)(6), §III(C)(5), (7)) Optional: CALI tutorials on damages and remedies (access through TWEN)
January 30		DEADLINE: Exercise #2 due 5:00 pm in my email account
February 1	Review Exercise #2 Mechanics of Drafting/Negotiating	Supp 36-40 (Toedt, excerpt from 300+ Things I'm Glad I Knew) Supp 41-43 (Stark, How to Review and Comment on a Contract) Supp 44-46 (Goldman, Managing the Contracting Process) Supp 47 (Goldman, Agreement Signing/Maintenance Protocol) Supp 48 (Goldman, Internet Term Sheets) Supp 49-54 (Stark, The Drafting Process) Supp 55-62 (Martin, 50 Tips) Supp 63-75 (Stark, Chapters 2 and 9)
February 8	Mechanics of Drafting/Negotiating (con't) Customer/Vendor Dynamics Overview of a Transaction	Supp 7-26 (XYZ End User License Agreement) Supp 27-33 (XYZ Terms and Conditions of Sale) Optional: Supp 362-446 (Classen, Software License and Services Agreement)
February 10		DEADLINE: Exercise #3 due 5:00 pm (by email or in hard copy)
February 15	Review Exercise #3 Boilerplate #1	Supp 76-127 (Stark, Chapters 3, 4 and 8) Optional: CALI lesson on drafting a contract for the sale of goods (access through TWEN)
February 22	Delivery/Acceptance	Supp 128 (Goldman, Acceptance handout) Supp 319-322 (Classen, §III(C)(3)-(4)) ABCs 93-130 (Chapters 6-7)

March 1	Licenses	Supp 251-267, 329-332 (Classen, §II, §III(A), §III(C)(11)) Supp 129 (Goldman, Licenses handout) Supp 130-147 (Goldman, Example License Grants)
March 8	Confidentiality	Supp 148-149 (Goldman, NDA Handout) Supp 150-151 (Goldman, Do Internet Companies Overuse NDAs?) Supp 152-160 (Goldman, Example Mutual Nondisclosure Agreement) Supp 341-347C (Classen, §V)
March 15	Services	Supp 161 (Goldman, Support handout) Supp 310-319, 322-323, 325-328 (Classen, §III(C)(1)-(2), (6), (8), (9))
March 29	Payment	Supp 162-174 (Stark, selections from Chapters 15 and 5) Supp 288-290 (Classen, §III(B)(4))
April 5	Term/Termination	Supp 175-182 (Stark, selections from Chapters 15 and 5) Supp 290-293 (Classen, §III(B)(5))
April 12	Risk Allocation	Supp 183-184 (Goldman, Risk Allocations in Contracts) Supp 185 (Goldman, Risk handout) Supp 186-188 (Stark, selection from Chapter 15) Supp 268-288, 297-303 (Classen, §III(B)(1)-(3) and (7)) Supp 189-230 (Stark, Chapters 1 and 6) ABCs 53-77 (Chapter 4) Optional: CALI lesson on shall/may/must (access through TWEN)
April 19	Boilerplate #2	Supp 231-243 (Stark, Chapter 7) Supp 303-310, 328-329, 336-338 (Classen, §III(B)(8)-(11) §III(C)(10), (13)) Supp 244-245 (Goldman, Drafting Enforceable Arbitration Clauses)
April 26	Wrap up	Supp 246 (Goldman, Ethics and Licensing)
May 6		DEADLINE: Final Project due 5:00 pm in hard copy in Room 109

6. OFFICE HOURS. I can schedule a time to speak with you at your convenience. Please email me to make an appointment. I'm also happy to discuss topics and answer questions by email.

7. CONTACT INFORMATION.

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In all emails to me related to this course, please put the words “Contract Drafting” in the subject line so that I can keep my courses straight (and avoid unintentional deletion as spam).

More course-related materials, including an electronic copy of this syllabus, are available at http://eric_goldman.tripod.com.

Appendix A Snowplowing Contract Exercises

We will do three exercises involving a contract for snowplowing services. My principal goal is to get you to see interconnections between legal doctrines and to consider different techniques that people use when strategizing, drafting and negotiating. Because these exercises come at the course's beginning, I will not grade you on your mastery of course material. Instead, grading is my way of making sure that you take the assignments seriously and do not let down your peers. You will earn 100% of the available points for these exercises by completing the exercises on time and evidencing a more-than-de minimis investment in the exercises.

Exercise #1

On the first day of class, I will divide the class into two groups: "homeowners" and "snowplowers." The contemplated transaction is for the homeowner to retain a snowplower to provide snow removal services for his/her home.

For Exercise #1, draft a list of key priorities (from your designated perspective) that you expect the contract to address. DO NOT TRY TO WRITE THESE IN CONTRACT-ESE (we'll do that later). As you make your list, consider: What do you care about in this relationship? What are you concerned about? What do you need from the other party? You may want to address remedies in your lists as well.

Please spend about 1 hour (*maximum* 2 hours) of thinking/drafting time on this exercise. DO NOT USE ANY EXTERNAL RESOURCES FOR THIS EXERCISE.

In the February 1 class, I will distribute everyone's lists (anonymized) and critique some of the lists for the whole class.

Exercise #2

For Exercise #2, please draft the "payment" and "services" sections of a snowplowing services contract from your designated perspective. You can consult any external resources you want, with 2 caveats: (1) if you borrow language, tell me what language you borrowed and where it came from, and (2) just because you can find precedents doesn't mean they are any good! Personally, I think you'll do better trying to write the language without tainting your thinking with bad precedents. Please spend no more than 2 hours on this exercise.

In the February 8 class, I will distribute everyone's sample language (anonymized) and critique some of the language for the whole class. I will also provide a "form" snowplower-favorable contract as your starting point for Exercise #3.

Exercise #3

For Exercise #3, I will pair up each homeowner with a snowplower. The homeowner should review the form, identify desired changes (including additional terms if applicable) and negotiate

those changes with the snowplower. Total negotiating time may not exceed 1 hour. The snowplower should revise the contract to reflect all agreed-upon changes and electronically submit a redlined contract to me.

Obviously, to complete this exercise on time, students need to coordinate with each other to find a one-hour block of time when they are both free. Please alert me ASAP if you're having scheduling difficulty.