

Business Drafting, Fall 2017
Hofstra University School of Law
Professor Barry D. Goldberg

Course Objective: To provide you with an understanding of basic commercial business structures in their legal context and gain experience in drafting and negotiating documents typically encountered in a commercial practice.

Attendance and Class Preparation: Your attendance, preparation and participation are required and will contribute to your final grade. An attendance sheet will be circulated at the beginning of every regularly scheduled session.

IMPORTANT NOTE: If you miss more than 3 hours of class, for any reason (including arriving late), you will be automatically withdrawn from the course pursuant to University regulations. You will receive no prior notice, so you need to keep track of your absences.

With respect to class preparation and participation, class members are expected to read and understand the assigned materials so that they may engage in an informed discussion of those materials.

At our first session, please provide me with an e-mail address and phone number. My email address is bgoldberg@melohnprop.com.

How the course works: For purposes of this course, you are a newly-hired junior associate at Knowe, Goode Deed, LLP. The partners are very demanding. The firm is concerned with its reputation and is very interested in the professional development of our junior associates.

We have just landed a new client, an unpleasant man named Mark D. Pest. He buys and sells multi-million dollar companies, and despite his immense wealth, he is horribly cheap. He is quite rude, and also nowhere near as smart as he thinks he is. That said, we each want to keep our corner offices, so our main mission in life is to keep him happy. And for this course, that will be your mission as well.

This is not a research course, but you will have to do some research to figure out what statutory requirements are relevant, and what forms to use. By the end of the course, you should have a portfolio of documents – the seeds of your “precedent file” that you will hopefully refine, modify and expand as you progress through your career.

Assignments: The course will be graded on the basis of several drafting assignments, in class exercises, class participation and negotiation exercises. Most of the written assignments have two **parts- the actual documents that you draft and the cover memo to the client**, briefly explaining the *key* provisions of the documents. Remember, your

client is very unpleasant and demanding, so you will need to be careful in how you deal with him. You want to explain the provisions as clearly and concisely as possible.

All drafting assignments should be typed, double-spaced and using standard margins. Choose your language carefully: in the real world, typographical and grammatical errors make an otherwise presentable document look shoddy, and in our world, such mistakes will bear on your grade. This is a style of formal business writing and you should not resort to casual formats.

In order to earn full credit on any drafting assignment, please give me a hard copy in class and email a copy to me as well within 72 hours of the day when the assignment is due.

Grading: Your grade on each assignment will be based on the following criteria:

- Did you complete the assignment as required, in a timely fashion?
- Does your work reflect a substantive understanding of the assignment?
- Did you choose appropriate forms on which to model your work?
- Do your documents make sense, together and separately?
- Did you provide a coherent explanation to the client of the salient provisions in an explanatory memo?
- Did you show good attention to detail, producing work with no typos, no blanks, and no inconsistent provisions?
- Do your documents comply with any required statutory authority?
- Do your documents reflect the client's request?
- Would your documents work in the real world?

Writing requirement II: Law School policy dictates that for this course to satisfy writing Requirement II, the cumulative writing must be at least 20 pages, and the writing must involve legal analysis, legal reasoning, and/or philosophical reflection. The minimum acceptable grade for Writing Requirement II is C+. The grade of C+ must be for the paper itself, not a course grade that has been increased to reflect class participation.

A word of warning: you will have no trouble finding forms for the documents you will draft – (form books in the library, on line, exhibits to public documents filed with the SEC, McKinney's and Bender forms, BNA etc). But NEVER put anything in a document that you don't understand, even boilerplate. You will need to explain it all to your crabby client, so make sure you understand it yourself.

Another word of warning: while you are free to select forms from any source on earth, you may not collaborate with your colleagues here at Hofstra, nor may you seek guidance from, or collaborate with, any other individual, in the process of completing your assignments, unless I specifically authorize it. Using a document from a fellow student is plagiarism.

Expected Student Workload: The American Bar Association requires that you spend at least four hours per week outside of class studying, preparing and drafting for this two credit course. This is an average amount of time required for out of class work per week over the course of the semester. The time you will spend throughout the semester reviewing the readings below and researching, drafting and revising your papers for this course will satisfy (and likely exceed) that time commitment. This is in addition to the two hours of class time.

The text used for the course will be *The Elements of Contract Drafting: Fourth Edition*, by George W. Kuney. You may use earlier editions of this book if you can find them.

Session 1:

Topics:

- Course overview
- Forms of business organization
- How to choose which form of business [liability, control, transferability, tax issues.]

Reading for this session is Chapter 1.

Session 2:

- Where to find forms

Reading for this session is Chapter 3.

Session 3:

Topics:

- Components of a typical contract
- Introduction to commercial drafting

Reading for this session is Chapters 2, 6 and 7.

Session 4:

Topics:

- Employment agreements
- Non-competes

Reading for this session is Chapter 13 (*Covenant Not to Compete*)

Session 5:

Topics:

- TBD

Reading for this session is Chapter 4.

Session 6:

Topics:

- Financing the deal
- Loan agreements

Reading for this session is TBD.

Session 7:

- Covenants: affirmative and negative
- Mortgage financing

Drafting assignment due: Employment Agreement

Reading for this session is Chapter 5.

Session 8:

Topics:

- Due diligence
- Letters of intent
- Reading for this session is Chapter 11.

Session 9:

Topics:

- Purchase agreements
- Reading for this session: Chapters 9 and 12.

Session 10:

Topics

- Purchase agreements [continued]
- Reading for this session is Chapters 8 and 10.

Session 11:

Topics:

- Closing documents

Session 12:

Topics:

- Shareholder buy/sell agreements
- Rights of first refusal

Session 13:

Topics:

- Negotiation techniques

Session 14:

- Negotiation exercise

Drafting assignment due: Purchase Agreement and exhibits; individual term sheets; written summary of results of negotiation exercise.