

**HOFSTRA UNIVERSITY
SCHOOL OF LAW**

BUSINESS DRAFTING - PLATT - 2792-B

PROF. JACK M. PLATT - SPRING 2018

SYLLABUS

Although there will be no *writing assignment* in preparation for the first class, there is a reading assignment for the first class, which is available on the TWEN site for this course.

For most other classes, there will be a writing assignment and, occasionally, a reading assignment. The assignments will be available on the TWEN site on-line, and I may also hand them out in class. The due date for each assignment will be announced when the assignment is given, but as a general matter, the written assignment will be due by 2:00 p.m. on the Saturday immediately preceding the next scheduled class, so that I can review them in anticipation of class. There is no assigned text, so you should be sure to do sufficient research independently to understand key concepts, such as representations, warranties, covenants, and other matters which we will discuss in class.

Purpose of the Course: The purpose of this course is to expose the student to many of the types of agreements with which lawyers deal, to familiarize the student with the drafting of such agreements, to understand how one comments upon drafts of such agreements prepared by others, to develop in the student an understanding of basic business agreements, their purpose, construction and operation, and to give the student insight into the thinking of a practical business lawyer. We will work on many, many typical and customary types of agreements, and some not so typical agreements. We will take them apart and examine them in depth. This Business Drafting course is eligible to satisfy the Writing II requirement or the experiential Skills requirement, but each student must elect, as the administration may request, which credit (but not both Writing II and Skills) she or he would prefer.

Attendance, Preparation and Participation: Your attendance, preparation and participation are required, and will contribute to your final grade. Please email me in advance in the event that you must miss a class. *If you miss a class, you must listen to the podcast for that class (assuming one is available) and submit to me promptly: 1. detailed notes of the content of that podcast, and 2. Your statement that "I hereby confirm that I have listened to the entire podcast of the missed class, and that the notes I am submitting in*

connection with that podcast are my own notes.” Please see “The Rules on Attendance and Listening to Podcasts,” below.

Class members are expected to participate and engage in an informed discussion of the materials in class. Those who are late to class or unprepared may be treated as absent. I reserve the right to raise or lower your grade by a half grade to reflect your attendance, preparation and participation.

My availability: You can generally reach me by telephone at my law office (212) 332-3332, or by email at Jack.Platt@hofstra.edu. To make an appointment, please call or email me at Jack.Platt@hofstra.edu, and we can set up a mutually convenient time.

Class web page: *You are required to register* on the TWEN site for this class with an email address that you check regularly. Go to www.lawschool.westlaw.com and select “TWEN” from the menu of items along the top of the page next to the current date. You will then be asked for your Westlaw password and for registration information, including your email address (which, incidentally, need not be the email address issued by the Law School). To maximize the effectiveness of the TWEN system, please provide all requested information. You will then be given the opportunity to register for the TWEN website dedicated to this course (by choosing “Drop/Add a Course”). ***Registration and participation are an essential part of this course.*** Students should check the website regularly throughout the semester.

Text: There is *no required text* for this class.

Assignments: The course will be graded on the basis of nine (9) or ten (10) weekly drafting assignments and class participation. Although you are free to select exemplars (forms) for drafting from any source on Earth, *you may not collaborate* with anyone else in preparing your work, unless I specifically authorize it. When you submit a written homework to me, you are deemed to certify to me that the material you are submitting is your own work and not the work of any other person.

The Rules on Attendance and Listening to Podcasts: The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly-scheduled classes. Thus, you may miss no more than 15% of your classes. As this course is a two-credit course, ***you may miss no more than four hours of class in a semester.***

In addition, to assure that you have been exposed to all of the available content of this course, I intend to have every class recorded and made available as a podcast. ***If you must miss a class for any reason, you are required to listen to the podcast for that class (assuming one is available), and submit to me promptly:*** 1. Detailed notes of the content of that podcast, and 2. Your statement that “I hereby confirm that I have listened to the entire podcast of the missed class, and that the notes I am submitting in connection with that podcast are my own notes.”

In addition to the other requirements that may be imposed upon students generally, ***no student will receive a grade for this course unless they have***

I. either A. attended all classes, or B.1. listened to the podcasts for any classes missed, and 2. provided to me promptly notes of the missed class and the written email confirmation previously described; ***and***

II. timely submitted all required homeworks.

It is ***very unlikely*** that I will grant exceptions to this policy, and ***expecting an exception in your case would be very unwise.***

I will provide a sign-in sheet for each class, which will be the dispositive evidence of your presence in or absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the number of permitted absences, whether by missing the class or just failing to sign in, you will be administratively withdrawn from the course. No prior notice must be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications with respect to your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

If you believe you must be absent from class for more than the permitted number of hours, you should speak with either 1. the Dean for Student Affairs or the Director of Student Affairs, or 2. me, in either case as soon as possible. Accommodations may be made for students who must be absent for religious reasons, medical reasons, or in cases of truly compelling hardship.

Also, please note that my schedule may require that I miss certain of your classes. I will endeavor to make those classes up at times that are convenient for most of the members of the class. If you are unable to attend those classes, *you will nonetheless be required to listen to the podcasts for them*, and to prepare any homework assigned in them, on the same schedule as if you had attended.

Please keep track of your absences, because it would be unfortunate and disappointing if you were to do a substantial part of the required work and not receive credit for it.

How is practicing law different from what you learn in law school?

Recently, I read an interview in which a rich, successful lawyer was asked “How is practicing law different from what you learned in law school?,” to which he replied, “How do I say this nicely? Law school taught me absolutely nothing about practicing law.” If that lawyer had taken this class, he would have added, “except, of course, Professor Platt’s ‘Business Drafting’ class, which helps me every time I write or review any legal materials, particularly agreements of any kind. And of course, I learned many things in Professor Platt’s class that I never heard anywhere else in law school, and that unquestionably helped me pass the bar exam.” Well, maybe he would have said that, anyway.

Every assignment in this class represents one or more drafting problems which I have had to address in practice.

JMP

Hofstra prohibits sexual and other discriminatory harassment, stalking, domestic and dating violence, sexual assault and other sexual misconduct (collectively, “Gender Based Offenses”). If you or someone you know believes they have been subjected to any of these Gender Based Offenses, help is available. To make a report, or for more information about Hofstra’s Student Policy Prohibiting Discriminatory Harassment, Relationship Violence, and Sexual Misconduct (available at <http://hofstra.edu/sexualmisconduct>), please contact the Title IX Coordinator at (516) 463-5841 or TitleIXCoordinator@hofstra.edu, or Public Safety at (516) 463-6606. Confidential resources and support are also available from clinicians in Student Counseling Services (516-463-6791), medical professionals at the Health and Wellness Center (516-463-6745), and clergy in the Interfaith Center.

Following are suggested (not required - *really, they're NOT required*) readings from Tina L. Stark's book, *Drafting Contracts (2007)*, and certain other materials:

UNIT I. *Listening to the Client, and Thinking About the Deal:*

TINA L. STARK DRAFTING CONTRACTS (2007):

Chapter 1, A Few Words about Contract Drafting and This Book; pages 3 - 8;

Chapter 2, The Building Blocks of Contracts: The Seven Contract Concepts; pages 9-10;

Chapter 3, Translating the Business Deal into Contract Concepts: Part 1 (Representations and Warranties & Covenants and Rights); pages 11 - 24;

Chapter 4, Translating the Business Deal into Contract Concepts: Part 2 (Conditions, Discretionary Authority, and Declarations); pages 25 - 34;

Chapter 25, Adding Value to the Deal, pages 303 - 318.

Proofreaders' Marks, Seichert & Wood, Inc. (These will be posted and provided to you.)

UNIT III. *Drafts, Memos and Cover Letters*

TINA L. STARK, DRAFTING CONTRACTS (2007):

Chapter 5, A Contract's Parts, pages 37 - 48;

Chapter 26, Organizing a Contract and its Provisions, pages 321 - 328.

UNIT IV. *Introductory Provisions; Defined Terms*

Naming and Dating the Agreement, Identifying and Aligning the Parties, Signature Lines, and Defined Terms.

TINA L. STARK, DRAFTING CONTRACTS (2007):

Chapter 6, Introductory Provisions: Preamble, Recitals, and Words of Agreement, pages 49 - 72;

Chapter 7, Definitions and Defined Terms; pages 73-94;

Chapter 17, Signatures, pages 187 - 198.

UNIT V. *Statements of Fact: Declarations, Representations and Warranties*

TINA L. STARK, DRAFTING CONTRACTS (2007):

Chapter 8, Action Sections, pages 95-112;

Chapter 9, Representations and Warranties, pages 113 - 124;

Chapter 10, Covenants and Rights, pages 125-132;

Chapter 11, Conditions to an Obligation, pages 133 - 140;
Chapter 12, Discretionary Authority and Declarations, pages 141 - 146;
Chapter 13, Will and Shall, pages 147 - 152;
Chapter 14, Drafting the Contract Concepts - A Summary Chart, pages 153 - 156.

UNIT VI. *It's Over (or is it?): Expiration, Termination, and Survival*

TINA L. STARK, DRAFTING CONTRACTS (2007):
Chapter 15, Endgame Provisions, pages 157 - 166;
Chapter 29, Amendments, Consents, and Waivers, pages 361 - 374.

UNIT VII. *Boilerplate.*

TINA L. STARK, DRAFTING CONTRACTS (2007):
Chapter 16, General Provisions, pages 167 - 186.

UNIT VIII. *Special Teams: Accounting Concepts, Formulas, Tables, Maps and Charts, Pictures, and Word Examples*

TINA L. STARK, DRAFTING CONTRACTS (2007):
Chapter 22, Numbers and Financial Provisions, pages 263 - 274.

UNIT IX. *Reviewing, Commenting Upon and Negotiating the Adversary's Draft*

TINA L. STARK, DRAFTING CONTRACTS (2007):
Chapter 27, The Drafting Process, pages 329 - 344;
Chapter 28, How to Review and Comment on a Contract, pages 345 - 360.

Proofreaders' Marks, Seichert & Wood, Inc.

UNIT X. *Drafting Letters: Demand, Cease and Desist, et alia*

TINA L. STARK, DRAFTING CONTRACTS (2007):
Chapter 18, Legalese, pages 201 - 208.

UNIT XI. *The Competent, Self-Critical Draftsman*

TINA L. STARK, DRAFTING CONTRACTS (2007):
Chapter 19, Clarity Through Format, pages 209 - 226;
Chapter 20, Clarity Through Sentence Structure, pages 227 - 234;

Chapter 21, Ambiguity, pages 235 - 262.

UNIT XII. *The Acquisition Agreement*

TINA L. STARK, DRAFTING CONTRACTS (2007):

Chapter 23, A Potpourri of Other Drafting Considerations, pages 275 - 292;

Chapter 24, Deconstructing Complex Provisions, pages 293 - 300.

UNIT XIII. *Drafting in Anticipation of Litigation: Expecting the Worst*

TINA L. STARK, DRAFTING CONTRACTS (2007):

Chapter 30, Ethical Issues in Drafting, pages 377 - 408.