



## **NATIONAL PARALEGAL COLLEGE**

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### **Drafting Contracts and Contract Provisions**

#### **PLG-403-1206**

#### **Syllabus and Course Guide**

The NPC Drafting Contracts and Contract Provisions course meets 15 times over the course of the 8-week term in the NPC Interactive classroom. Each session consists of approximately 60 minutes of online lecture by the course instructor. After the lecture, students may ask questions and make comments on the material being studied.

Unless otherwise noted, all lectures begin at 9:00 P.M., **Eastern Time**.

All class sessions are recorded and may be viewed by students at any time.

To successfully complete the course, each student must satisfactorily complete:

- 5 written assignments
- 3 examinations

#### **COURSE DESCRIPTION:**

This course deals with the drafting of contractual agreements. The course will teach the students the “building block” components that make up a contract and how each component of the contract is drafted. The students will have a “behind the scenes” look at the conversations and negotiations that take place prior to getting to the drafting stage, and what happens during and after the drafting stage. This course will also teach the students how to draft in simple terms so that the contract is easy to read. The students will learn how to simplify complex sentences, agreements, and statutes into plain English. Some of the most basic grammar principles will also be refreshed in this course.

#### **INSTRUCTOR AND CONTACT INFO:**

**Instructor: Howard Leib** ([howardleib@aol.com](mailto:howardleib@aol.com))

**Course Grader: Jessica Borden** ([jessbordennp@gmail.com](mailto:jessbordennp@gmail.com))

## **COURSE OBJECTIVES:**

At the completion of this course, the student will be able to:

- Explain the importance of a contractual agreement and what the agreement means;
- Explain and apply the 7 contractual concepts;
- Apply and explain to clients and co-workers the risk allocation involved in entering into a contractual agreement;
- Draft contracts and contract provisions in plain English and convert terms written in “legalese” into plain English;
- Understand the difference between contractual terms of art and apply them to various circumstances in which they should be used;
- Draft standard contractual clauses and insert them into contracts;
- Draft a contractual provision clearly and without ambiguities;
- Explain the organization and chronology of a contract;
- Reviewing a contract that has already been drafted and spot areas that need to be added to, removed, corrected, etc.; and
- Avoid or overcome ethical dilemmas in contract drafting.

## **TEXTBOOK AND READING ASSIGNMENTS:**

The textbook for this course is:

Drafting Contracts: How and Why Lawyers Do What They Do

Author: Tina L. Stark

Publisher: Aspen Publishers

**ISBN-10:** 073556339X

**ISBN-13:** 978-0735563391

It is expected that each student will obtain a copy of the textbook prior to the beginning of the course. The book may be obtained in any manner the student chooses to do so, including:

Direct from the Publisher:

[http://www.aspenlawschool.com/books/stark\\_contracts/default.asp](http://www.aspenlawschool.com/books/stark_contracts/default.asp)

Amazon.com:

<http://www.amazon.com/Drafting-Contracts-Lawyers-What-They/dp/073556339X/>

Textbooks.com:

<http://www.textbooks.com/Search.php?CSID=Q2K0QUA0QUU0MQUCMCUUCQAA&TYP=I&TXT=073556339X+&PART=PRINT>

Unless otherwise noted, all reading assignments refer to the above referenced textbook. Any additional materials assigned in this syllabus may be posted on the NPC site for reading or download. All statutes and regulations referenced in the text can be downloaded or viewed through Lexis.

All reading assignments should be completed prior to the corresponding lecture. Lecture slides and additional documents can be found on the “Documents and Slides” page on the NPC student website.

Please note that the instructor may review and explain certain drafting exercises in your textbook for practice purposes. Therefore, it is important for students to review the drafting exercises that are provided in the textbook prior to class time to get a better understanding of how the contractual drafting works. All relevant slides for each class are available for viewing and/or download from the “Slides and Documents” page.

## **WRITTEN ASSIGNMENTS:**

Five assignments will be posted on the “assignments and exams” page at the outset of the course. The 5 assignments will cumulatively count for 40% of the student’s grade for the course. Assignments are to be submitted via the section of the student menu entitled “assignments and exams.”

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (on the next page) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

It is highly recommended that assignment answers be composed in a word processing program and then pasted into the NPC system rather than composing it in the assignment answer window. This is important because an inadvertent page refresh or login timeout could cause you to lose all unsaved work typed into the NPC assignment window.

Pdf documents and images may also be submitted as part of your assignment. For a short tutorial on creating and submitting pdf documents, please see:

<http://tinyurl.com/assignmentpdf>

In addition to a grade, students will receive written feedback from the instructor on their assignments.

## Assignment Grading Rubric

| Factor   | 4 (Excellent)   | 3(Good)   | 2(Satisfactory)   | 1 (Poor)  | 0 (no credit)  |
|--|---|---|---|---|--|
| <b>Thoroughness</b>  | Answered all questions in the exercise completely and in the appropriate order.   | Answered all questions in the exercise but not completely and/or not on the appropriate order   | Answered most of the questions in the exercise but not completely and/or not on the appropriate order   | Did not answer many of the questions in the exercise but did make some reasonable effort to do so.  | Made little or no reasonable effort to answer the questions posed in the assignment                |
| <b>Demonstrated Understanding Of the Assignment and has come to an appropriate conclusion</b>  | Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.  | Response demonstrates an understanding of the exercise and comes to a conclusion.   | Response demonstrates some understanding of the exercise. The conclusion that the students comes to may not be appropriately justified by the rest of the essay.                          | Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay. | Response demonstrates a very poor understanding of the subject matter presented by the assignment. |
| <b>Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)</b> | Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.   | Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment. | Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.                                    | Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.   | Student has not cited any legal authorities or has cited authorities that are irrelevant.          |
| <b>Organization</b>  | Essay is organized very well; the reader can clearly understand where the essay is going at all point and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas. | Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.                      | Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs. | Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.   | Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.      |
| <b>Critical Thinking and Analysis</b>  | Shows excellent critical thinking and analysis. The student was able to apply the cited law to the facts of the given case in a clear and convincing manner.  | Shows good critical thinking and analysis. The student's points are well argued and well supported.   | Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.   | Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.  | Shows no effort critical thinking or analysis. The student's points make no sense.                 |

## **EXAMINATIONS:**

Examinations will be posted on the NPC website as posted on this syllabus. The examinations consist entirely of “short essay” or open ended questions. The examinations may also consist of small drafting exercises as well. The 3 examinations will cumulatively count for 60% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that has been covered since the previous examination. The instructor will provide specific information regarding the content of each examination as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within an amount of time to be determined and set by the instructor. More information about the contents and time limits of exams will be discussed during class.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)
- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

The following factors are generally NOT taken into account in grading examinations:

Legal research; Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer); Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would

rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

## **WEEKLY INTERACTION REQUIREMENT**

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least one during each week, either:

1) Attend a live lecture

OR

2) Submit at least one assignment

OR

3) Take at least one examination

OR

4) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be simple and straightforward and will cover material covered in class that week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

This student response (which is necessary only if the student does not attend a live class or take an exam or submit an assignment in the given week) will be graded on a pass/fail basis. The interaction questions will be posted no later than Monday of each week and must be answered on or before the following Monday.

The weekly interaction questions will be posted alongside the assignments. Students who do not attend a live class or take an exam or submit an assignment in the given week will be required to answer the questions presented. Students who did attend a live class or take an exam or submit an assignment in the given week may ignore the question.

Any student who does not fulfill this requirement during a given week will receive a reduction in his or her over-all grade of 2 percentage points from his or her over-all average. Conversely, any student who demonstrates excellent participation either through message board participation or through relevant in class discussion may receive an increase in his or her over-all grade, in the discretion of the instructor.

## COURSE GRADES

The following formula will be used to calculate final grades

Cumulative exam scores + (assignment points x 10) = raw score

Because exams are worth up to 100 points and exams up to 4 points each, the maximum raw score is 500. 10 raw points (2% of the raw point total) are deducted for each missed weekly interaction. Extra credit may be available for certain in class activities as may be announced by the instructor.

The following conversion chart is then applied based on the total raw points you have earned:

|         |   |    |
|---------|---|----|
| >474    | = | A+ |
| 445-474 | = | A  |
| 420-444 | = | A- |
| 395-419 | = | B+ |
| 365-394 | = | B  |
| 340-364 | = | B- |
| 315-339 | = | C+ |
| 285-314 | = | C  |
| 260-284 | = | C- |
| 230-259 | = | D  |
| <230    | = | F  |

**All examinations and assignments are due no later than Monday, September 3, 2012, 11:59 PM EASTERN TIME.**



## **Lecture and reading assignments schedule**

### **CLASS ONE      Tuesday, June 5, 2012      9:00 PM EDT**

This class will provide an introduction to the concept of drafting legal contracts. We will focus on what the contract does, basic drafting terminology, the risks involved with each party signing the contract, remedies and warranties for non-compliance, and covenants and conditions.

#### **Assigned Reading:**

Chapters 1-4; Pages 1-34.

### **CLASS TWO      Thursday, June 7, 2012      9:00 PM EDT**

This class will focus on the introductory provisions of the contract that outline the parties entering into the agreement, and the reasons that the parties are entering into the agreement. Also, this class will focus on performance provisions, closing provisions, substantive business provisions, and general contract provisions.

#### **Assigned Reading:**

Chapters 5-6; Pages 37-72.

### **CLASS THREE      Tuesday, June 12, 2012      9:00 PM EDT**

Tonight's class will discuss the effectiveness of providing a definition section within the contract for commonly used terms that will appear throughout the contract, and the guidelines for doing so. The class will also focus on what is commonly referred to as the "action sections" of a contract that tell the parties how performance will be made to achieve the overall objective of the contract.

#### **Assigned Reading:**

Chapters 7-8; Pages 73-111.

**CLASS FOUR**      **Thursday, June 14, 2012**      **9:00 PM EDT**

In this class, we will discuss drafting representations and warranties in the past, present, and future tenses; drafting the substance of covenants; and drafting contractual conditions.

**Assigned Reading:**

Chapters 9-11; Pages 113-139.

**CLASS FIVE**      **Tuesday, June 19, 2012**      **9:00 PM EDT**

In this class, we will discretionary authority within a contract by giving one of the parties to the contract a choice or permission to do something as it relates to fulfilling the contract. We will also discuss the difference between the terms *will* and *shall* and how to appropriately use these terms within a contract.

**Assigned Reading:**

Chapters 12-14; Pages 141-156.

**Examination # 1 will be administered at this point.**

**CLASS SIX**      **Thursday, June 21, 2012**      **9:00 PM EDT**

This week we will be discussing the art of drafting termination, default, and dispute resolution provisions within a contractual agreement. We will also discuss how to draft provisions concerning assignment and delegation of duties and rights, severability, amendments, merger provisions, and counterparts.

**Assigned Reading:**

Chapters 15-16; Pages 157-185.

**CLASS SEVEN**    **Tuesday, June 26, 2012**    **9:00 PM EDT**

This week we will discuss the importance of the signatures on the contractual agreement, and ensuring that the contract is properly executed; and we will move into the area of drafting a clear and unambiguous contract and discuss the importance of drafting the contract in plain English.

**Assigned Reading:**

Chapters 17-18; Pages 187-208.

**CLASS EIGHT**    **Thursday, June 28, 2012**    **9:00 PM EDT**

Tonight's class continues with our discussion of drafting the contract clearly and unambiguously. We will discuss the importance of the format, or the look of, the contract for legibility purposes; and the importance of drafting clear and concise sentences within the contract.

**Assigned Reading:** Chapters 19-20; Pages 209-233

**CLASS NINE**    **Thursday, July 5, 2012**    **9:00 PM EDT**

Since contractual ambiguity can be a major source of litigation and confusion, tonight's class will be largely devoted to how ambiguities can arise in a contract, and what can be done to make a contract less ambiguous. We will also look at the proper way to draft numerical and financial provisions within a contract.

**Assigned Reading:** Chapter 21 and 22; Pages 235-274.

**CLASS TEN**    **Tuesday, July 10, 2012**    **9:00 PM EDT**

Tonight's class will focus on the proper way to draft gender-neutral statements and provisions, contractual exceptions, and miscellaneous contract provisions. We will also focus on simplifying complex contractual language and provisions.

**Assigned Reading:** Chapters 23-25; Pages 275-318.

**Examination # 2 will be administered at this point.**

**CLASS ELEVEN****Thursday, July 12, 2012****9:00 PM EDT**

Tonight's class will discuss the importance of organizing a contract in a way that causes the contract to flow in a logical manner. We will also discuss the initial thought process that must be taken into consideration when preparing to draft a contract, and the initial research that needs to be done in preparing to draft the contract.

**Assigned Reading:** Chapters 26-27; Pages 321-344.

**CLASS TWELVE****Tuesday, July 17, 2012****9:00 PM EDT**

This class will discuss things to look out for, and good comments and suggestions to make when one lawyer reviews a contract drafted by the opposing lawyer representing the other party to the agreement. We will also look at amendments, consents and waivers, what they mean and how they differ. Finally, we will discuss ethical issues that lawyers may face when drafting contracts, what they are, and how you can remain ethical while advocating for your client.

**Assigned Reading:** Chapters 28- 30; Pages 345-407.

**CLASS THIRTEEN****Thursday, July 19, 2012****9:00 PM EDT**

Now that you know all about drafting contracts, we will look at some actual contracts, used in the real world, discuss why they are written the ways they are, and how different wording would change the meaning of the agreements.

**Assigned Reading:** Class Thirteen Contracts in Course materials

**CLASS FOURTEEN****Tuesday, July 24, 2012 9:00 PM EDT**

We continue our look at real world contracts and discuss why we choose the language we choose.

**Assigned Reading:** Class Fourteen Contracts in Course materials

**CLASS FIFTEEN**

**Thursday, July 26, 2012**

**9:00 PM EDT**

This is it, the final class. This time we will actually draft a contract in class, so that you can see the process, live and in real time.

**Assigned Reading:** Form Contract and Client Notes in Course Materials

**Examination # 3 will be administered at this point.**

**All examinations and assignments are due no later than Monday, September 3, 2012, 11:59 PM EASTERN TIME.**

*Extensions will only be granted if unforeseen circumstances make it unreasonable to expect the student to make the deadline. Extensions must be requested prior to the passing of the deadline and can only be granted by the course instructor or education director.*

*In addition, extensions MAY NOT be granted unless at least one assignment or exam has been submitted prior to the course deadline and no extension may be granted for more than 30 days beyond the original deadline under any circumstances.*