



NYU

**ROBERT F. WAGNER GRADUATE
SCHOOL OF PUBLIC SERVICE**

PADM-GP.4115

CONTRACTS: What you need to know even if you are not a lawyer

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Course Description

This is a course in Contracts for the Non-lawyer. Every day we see contracts and may have to read them, sign them and/or perform them. Many organizations are not large enough to have their own in-house counsel and calling outside counsel is expensive. Thus, more and more executives and their staff have the responsibility of understanding the day to day contracts with which they come in contact. Maybe it is a lease for office space or office equipment. Perhaps it is an employment agreement or an agreement for an independent contractor's consulting services. It could be a one page "release" agreement giving permission for your organization's fundraising event to be filmed or shown on TV or in a documentary. Whatever the contract, if it is your responsibility, you want to understand to what you are agreeing.

Or maybe instead of you being presented with a contract, it is you initiating the agreement. You need to hire someone to cater an event and want a simple agreement covering the terms. What are those terms? What do you need to protect you and to what should you not agree?

Sometimes you may be asked to sign something or ask someone else to sign something you do not call a contract but a Company or University Policy. Is that a type of contract? Is it enforceable? Is it enforceable forever?

These are the types of issues we will discuss in this class. But first we will study the basic theory of contracts. We will analyze the terms of a contract and determine when a contract is enforceable.

We will also study some specific contracts related to the type of work many Wagner students may do, such as grant agreements, agreements with fundraisers (consultants) and commercial co-venture agreements. We will spend some time learning the terms of employment agreements and considering release agreements.

In the course of our studies, the ethical considerations in contracts will be considered and we will also be cognizant of terms that would make a contract unenforceable like a racially or ethnically discriminatory provision.

Learning Objectives:

The student who completes this course should understand the basic elements required to constitute a valid (enforceable) contract.

The student should be able to understand what he is signing if asked to sign a contract, and know what terms she should try to change or renegotiate. The student will study exclusivity provisions, options for renewals, and ownership and copyright clauses. The student will also learn the significance of what is called “boiler plate” language such as the applicable state law, insurance paragraphs, arbitration provisions, merger clauses, etc.

This course is not intended to make the student a lawyer, but it will teach the student to know when he needs one!

Grading

Contract Theory Exam I

This examination will be taken by the student on-line after Class III, the conclusion of the contract theory portion of the course, and before Class IV. The examination will test the student’s ability to identify legal issues in a provided fact pattern and apply legal analysis to a given situation. The examination is a thinking, analysis and application exercise. This exam is valued at 35% of the final grade.

In Class Participation and Presentation Assignment

Each student is expected to have read and prepared each assignment in advance of every class. Students will be called upon to discuss the assigned readings, present their written assignments and provide analysis. Student participation will be valued at

5% of the final grade.

Each student will be assigned an in-class Presentation Assignment which will be valued at 15% of the final grade.

Written Assignments

There are two written assignments, listed under Class II and Class V, each due at that class. They will be valued together at 10% of the final grade.

Contracts Exam II:

This exam will test your understanding and ability to apply the contract provisions and concepts studied in the second half of the course to a given fact pattern. It must be taken by you on-line at a time of your choosing within three days after the final class, Class VI. This exam is valued at 35% of the final grade.

Evaluation/Grade Criteria:

Class Participation and discussion	5%
Written assignments (class II/V together)	10%
In class Presentation Assignment	15%
Contracts Exam I	35%
Contract Exam II	35%

Grading Criteria

Grades will be assigned according to the following criteria:

- A Excellent:** Exceptional work for a graduate student. Work at this level is unusually thorough, well reasoned, creative, methodologically sophisticated, and well written. Work is of exceptional, professional quality.
- A- Very Good:** Very strong work for a graduate student. Work at this level shows signs of creativity, is thorough and well-reasoned, indicates strong understanding of appropriate methodological or analytical approaches, and meets professional standards.

- B+ Good:** Sound work for a graduate student; well-reasoned and thorough, methodologically sound. This is the graduate student grade that indicates the student has fully accomplished the basic objectives of the course.
- B Adequate:** Competent work for a graduate student even though some weaknesses are evident. Demonstrates competency in the key course objectives but shows some indication that understanding of some important issues is less than complete. Methodological or analytical approaches used are adequate but student has not been thorough or has shown other weaknesses or limitations.
- B- Borderline:** Weak work for graduate student; meet the minimal expectations for graduate students in the course. Understanding of salient issues is somewhat incomplete. Methodological or analytical work performed in the course is minimally adequate. Overall performance, if consistent in graduate courses, would not suffice to sustain graduate status in "good standing."
- C-/D+ Deficient:** Inadequate work for a graduate student; does not meet the minimal expectations for a graduate student in the course. Work is inadequately developed or flawed by numerous errors and misunderstanding of important issues. Methodological or analytical work performed is weak and fails to demonstrate knowledge or technical competence expected of graduate students.
- F Fail:** Work fails to meet even minimal expectations for course credit for a graduate student. Performance has been consistently weak in methodology and understanding, with serious limits in many areas. Weaknesses or limits are pervasive.

[Grading Guidelines](#)

Academic Integrity

Students are expected to uphold the highest standards of honesty, integrity and professionalism in all activities and assignments. It is expected that there shall be absolutely no deception regarding the student's presentation, participation or performance. All references are to be properly sourced.

Plagiarism involves borrowing or using information from other sources without proper and full credit. Students are expected to demonstrate how what they have learned reflects an understanding of the research and expertise of scholars and other appropriate experts. Accordingly, you are required to recognize others' published work or teachings, whether that of authors, lecturers, or one's peers, in all academic projects.

COURSE SYLLABUS

*PLEASE NOTE THAT THE SYLLABUS MAY BE MODIFIED BEFORE AND/OR DURING THE COURSE OF THE SEMESTER. I WILL ADVISE STUDENTS OF ANY CHANGES MADE AFTER THE CLASS BEGINS

Required texts: Chirelstein, Marvin A., Concepts and Case Analysis in the Law of Contracts, 7th Edition, Foundation Press, 2013;

Barnett, Rachel J., A Short & Happy Guide to Business Contracts, West Academic Publishing, 2nd Edition, 2021.

Class I: Elements of Contracts

In this class the student will learn the basic elements of offer and acceptance and intent to contract.

For each class, beginning with this Class I, I have written an outline of the material to be covered in that class and posted it on the Contracts Course website under Contents, subheading: Class Outlines. I have left space on the outline for a student to take notes. I recommend you print out the outline and use it in class for this purpose.

Readings: Chirelstein, Concepts and Case Analysis in the Law of Contracts, Chapter 1, Background Elements pp. 1-11; Chapter 2, Consideration and the Bargained-for-Exchange, pp. 12-35, Chapter 3, Contract Formation, pp 36-72.

Read Balfour v. Balfour, 2 K.B. 571 (1919);

Assignment: After you have read Balfour v. Balfour for this class, write out the facts of the case along with the decision of the court and be prepared to recite and discuss them. This assignment will not be handed in. We will review this assignment in this Class I.

Also read [Presidential Executive Order 13950](https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping), <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>, and [Presidential Executive Order 13985](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>. Both relate to government contracts and what is permissible in terms of promoting diversity.

In class, we will break into “break-out” groups to discuss the purpose and goals of each Order. Please consider:

- 1) Order 13950 is entitled “Executive Order on Combating Race and Sex Stereotyping”. Order 13985 is entitled “Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. How do these orders differ?
- 2) Do they have the same goals or different goals?
- 3) What does each require or forbid in government contracts?
- 4) Which statements in the Order given as background do you agree with or disagree with?
- 5) In a sentence or two, compose a contract paragraph that reflects the dictates of each Order.

Class II: Elements of Contracts : Consideration; promissory estoppel.

We will continue to study the basic terms of a contract and discuss how they apply to *Carlill v. Carbolic Smoke Ball Co.* and *Wheeler v. White*, the two cases you “briefed” for this class. How to brief a case will have been discussed in Class I. We will study consideration, including promissory estoppel.

Reading: Chirelstein, *Concepts and Case Analysis in the Law of Contracts*, Chapter 4, Unfairness and Unconscionability, pp 82-96 Chapter 6, Performance and Breach, pp 128-130 (bottom of page).

Assignment: Read and “brief” *Carlill v. Carbolic Smoke Ball Co.* [1893] Q.B. 256 (C.A.) and *Wheeler v. White*, No. A-10598, Supreme Court of Texas, 398 S. W. 2d 93, 1965. **Hand in your brief of *Carlill v. Carbolic Smoke Ball Co.* as a graded assignment.** The writing need not be more than one to three pages, double spaced. You need not hand in the brief for *Wheeler v. White*, though you may want to refer to it in class.

Class III: Elements of Contracts : breach, contracts of adhesion, statute of frauds, misrepresentation, mistake, impossibility, and remedies.

We will finish our study of the basic terms of contracts by discussing breach of contract, mistake and remedies.

Readings: Chirelstein, Concepts and Case Analysis in the Law of Contracts, Chapter 7, Mistake and Impossibility, pp 170-184 (last full paragraph), Chapter 8, Remedies, pp 193-221.

Assignment: Read and “brief” Hadley v. Baxendale, 156 Eng. Rep. 145 (Court of Exchequer 1854) and Wood v. Boynton, Supreme Court of Wisconsin, 64 Wis. 265; 25 N. W. 42; 1885. Complete any of the assigned readings in Chirelstein, Concepts and Case Analysis in the Law of Contracts, you have not read already and be prepared to ask any questions you may have before the first exam, which will be taken by you on-line at a time of your choosing between Class III and Class IV.

Classes IV: Employment Contracts

During the course of one’s professional life, it is likely one will be asked to sign, as either employer or employee, an employment contract. For the next two classes we are going to study the various terms of these agreements for themselves and because they contain many standard provisions that appear in other agreements.

We will discuss: services to be provided; term of contract; rights to cancel (for cause or without cause); renewal rights-automatic or notice required; and non-compete clauses.

Readings: Barnett, Rachel J., A Short & Happy Guide to Business Contracts, West Academic Publishing, 2nd Edition, 2021. Term and termination, pp 5-21, Payment terms, pp 24- top of 26, Insurance, pp 55-57, Representations and Warranties, pp 59-66, Indemnification, pp 66-87, Confidentiality, pp 87-96.

Read [Jessica Denison v. Donald Trump](https://int.nyt.com/data/documenttools/48-denson-ruling/161a23f5b6446097/full.pdf), United States District Court, Southern District of New York, 20 Civ. 4737-PGC, 2021, <https://int.nyt.com/data/documenttools/48-denson-ruling/161a23f5b6446097/full.pdf> and Coady v. Harpo Productions, Inc., No. 1-99-0481, Circuit court of Cook County, (Ill.) 1st District, September 30, 1999

For classes IV and V, read the posted contract samples: minor’s release, sample employment agreements, consultant agreement template, and grantee-grantor agreement template.

Class V: Employment Contracts continued

In this class we will study the following contract provisions: exclusivity; objectivity and business ethics clauses; ownership of materials including those created through

social media (blog and twitter accounts); copyright; arbitration; Force majeure; applicable state law; and merger clauses.

Readings: Barnett, Rachel J., A Short & Happy Guide to Business Contracts, West Academic Publishing, 2nd Edition 2021, Force Majeure, assignment, choice of law, pp 113-134, independent contractor clause, pp 144 - 146, Notices pp 146-149, entire agreement, pp 150-152, severability, pp 157-159, non-waiver, pp 160-161, NDA's and confidentiality, pp 193-205.

Assignment: A small not-for-profit is interested in hiring a Grants Manager. You will be assigned in Class IV to represent the not-for-profit or the soon to be Grants Manager. I would like you to negotiate two specific clauses, Force Majeure and Non-compete from the standpoint of the side you represent. **Your focus will be what these provisions should cover and protect in a Covid 19 world.** In this class you will be given time to negotiate these terms with a team assigned to represent the opposing side. Together you will present in class the results of your negotiations. **You will hand in what you originally prepared for this negotiation. This is a graded assignment.**

Class VI: Grant Agreements, Fundraiser Agreements; Commercial Co-ventureAgreements

In this class we will focus on both writing and reading grant agreements, i.e. agreements whereby a charitable organization makes a grant of funds to another entity. It is likely that many Wagner students will at some time in their careers work for a foundation or charity which gives out grants or work for an organization that asks for grants. Since tax exempt organizations are given that status by the IRS, they must be careful that their contracts abide by IRS and other regulations in order to retain that status. Thus it is worthwhile to understand the specific terms and requirements of these agreements.

Many charitable organizations hire fundraisers to help raise money in general or for a specific project. These consultants generally have the status of independent contractor (in contrast to employee) and that legal difference will be reflected in their contract. Also, under the charitable solicitation statutes of many states, a written contract is required between a charity and a professional fundraiser. Therefore, we will take a look at these agreements and learn the basic elements required by law.

Some charities work with commercial companies which help raise funds for them by giving a share of their profits to the charity. These arrangements are called

commercial co-ventures and in some states a written contract is required. We will take a look at these agreements also.

Readings: Hopkins, Bruce R., The Law of Fundraising, John Wiley & Sons, 2009, Sections 3.1, 3.2. 3.6-3.8; 3.11-3.13; 8.6.; grant, fundraiser, and commercial co-venture agreements (These pages are posted under Resources at the class website).

Assignment: Read and review the grant, fundraiser, and commercial co-venture agreements posted and be prepared to discuss them in class.

Bring to class any contract you have signed or have been asked to sign if there is a question about the agreement you would like to discuss in class. Please E-mail me before class about such contracts so I can allot sufficient time for this discussion.

The second exam may be taken by you on-line after this class, at a time of your choosing within the next three days. It is a “open book” exam.

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