CONTRACTS: What you need to know even if you are not a lawyer Letty Marcus Tanchum, Esq.

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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 what is a contract and when it 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 pa<ern 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 10% 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 pa<ern. 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 40% of the final grade.

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| **Evaluation/Grade Criteria:** |  |
| Class Participation and discussion of diversity | 5% |
| Written assignments (class II/V together) | 10% |
| In class Presentation Assignment | 10% |
| Contracts Exam I | 35% |
| Contract Exam II | 40% |

# Grading Criteria

Grades will be assigned according to the following criteria:

1. **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.

1. **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.

(https://wagner.nyu.edu/adjunct/files/gradingGuidelines.pdf

# 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.

Wagner School Academic Code: (https://wagner.nyu.edu/students/policies/academic-code.php)

# 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 lee space on the outline for a student to take notes.

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) This and all cases assigned for this course can be found at the Contracts Class website under Content, Subsection Cases.

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.

In the next two classes, teams of two students will be assigned to represent either the plaintiﬀ (individual bringing the lawsuit) or the defendant (individual defending the charges). I will explain this further in class I and make the assignments. This will be the class presentation referred to in the syllabus in the grading section, P.3.

Also read Presidential Executive Order 13950, https://[www.federalregister.gov/documents/](http://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-](http://www.whitehouse.gov/brie%EF%AC%81ng-room/presidenTal-acTons/2021/01/20/execuTve-)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.

Please use the Discussions section of Brightspace to consider and respond to the questions I have set forth below. Then react to at least one comment of at least one other student. I will be following the discussion during the week.

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 and attitudes or diﬀerent ones?
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?

# 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. Carbonic Smoke Ball Co.* and *Wheeler v. White,* the two cases you “briefed” for this class as assigned below. How to brief a case will have been discussed in Class I. We will study in this class 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. Carbonic 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, mistakes 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, Rem*edies, pp 193-221.*

Assignment*:* Read *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 that 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 online at a Time of your choosing, within a speciﬁed period, between Class III and Class IV. I will explain further in class

# 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; terms 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 Warrants, pp 59-66, Indemniﬁcation, pp 66–87, Conﬁdentiality, pp 87-96.

Assignment: Read *American Broadcasting Companies, Inc. v. Wolf, 52 N.Y. 2d.394 (1981)* 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.

On April 23, 2024, The Federal Trade Commission published its order prohibiting non-compete clauses in employment contracts. https://[www.ec.gov/legal-library/browse/rules/noncompete-](http://www.ec.gov/legal-library/browse/rules/noncompete-) rulemaking. Please read so we can discuss in class your reaction to the new rules.

# Class V: Employment Contracts continued

In this class we will study the following contract provisions: exclusivity; objectivity and business ethics clauses; ownership of materials; 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: Please read this short article about a Canadian man, Philip Tsotsos, who is suing “his friends” for his share of a lottery pool: [www.dailymail.co.uk/news/article-10775127/Pizza-](http://www.dailymail.co.uk/news/article-10775127/Pizza-)delivery-driver-sues-16-friends-won-1M-lottery-prize-didnt-anything.html

Do you think the elements are there to form a valid contract? In a few paragraphs, analyze the facts given and make your best arguments based on contract law why he should or shouldn't be awarded a portion of the winnings (For the purpose of this assignment, do not be concerned that Canadian law may diﬀer from American contact law).

In this class, you will divide into break-out sessions and be assigned to argue on behalf of Mr. Tsotsos or the lottery pool group. **You will hand in your written analysis, 1-3pages. This is a graded assignment.**

Also, think about what types of provisions reﬂecting the need for diversity could be added to employment or other types of contracts.

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.

# Class VI: Grant Agreements, Fundraiser Agreements; Commercial Co-venture Agreements

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 Other Readings, a subsection of Contents, at the class website on Brightspace).

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 online after this class, at a time of your choosing within the next three days. It is an “open book” exam.

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