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

Letty Tanchum, Esq.

Office hours: 4pm Tuesdays, by appointment

ltanchum@nyu.edu; 914 723 1340

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 in order 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 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), commercial co-venture agreements, and grants to foreign charities that involve contracts with foreign entities. 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 what basic elements are 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, pay or play clauses, 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 Midterm Exam**

This examination will take place after Class III, the conclusion of the contract theory portion of the course. The examination will test your ability to identify legal implications in provided fact patterns and apply legal analysis to a given situation. The examination is a thinking, analysis and application exercise. The contracts examination is valued at 30% of the final grade.

**In Class Participation, Presentation and Discussion**

Each student is expected to have read and prepared each assignment in advance of every class. Students will be called upon to present their written assignments and provide analysis. If a student is unprepared when called upon the student will receive no class performance credit for that class. In class participation will be valued at 20% of the final grade.
Written Assignments

There are two written assignments, one listed under Class II and one under Class IV, each due the subsequent class. Each is valued at 10% or a total of 20% of the final grade.

Contracts Final:

This exam will test your understanding and ability to analyze and apply the contract elements and terms studied in the second half of the course. The exam will be worth 30% of the final grade.

Evaluation/Grade Criteria:

Class Participation, Presentation and Discussion                                20%

Written assignments listed in syllabus under Classes II
and IV (10%) each                                                                              20%

Contracts Midterm Exam                                                                    30%

Contract Final Exam                                    30%

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 a graduate student; meets the minimal expectations for a graduate student 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/-/+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 SYLLABUS MAY BE MODIFIED DURING THE COURSE OF THE SEMESTER. I WILL ADVISE STUDENTS OF ANY CHANGES


Class I: Legal Elements of Contracts

In this class the student will learn the basic elements of offer and acceptance, and consideration.

Readings:


Assignment: With regard to *Balfour v. Balfour*, and *Carlill v. Carbonic Smoke Ball*, for Class II, write down the Facts, Issues, Reasoning and Holding of the two cases. I will discuss in class how to approach this assignment.

Class II: Enforceability of contracts

We will review the basic terms that constitute a contract and discuss how they applied to the two assigned cases.

Enforceability of a contract is based on several components including the sufficiency of the requisite elements and the particular state law. (Contracts are generally enforced under state law.) We will discuss clauses that might make a contract unenforceable including racially and ethnically discriminatory language.


Assignments: Students are to bring to the third class one “contract” that they have had to sign or review. Analyze the terms of the agreement according to what we have studied and the reading assignments. Set forth in writing the essential terms of the agreement and why you think it is an enforceable contract or not. I will help you find
examples of these types of contracts if you no longer have the actual one you signed. In class III we will discuss some of these contracts. The writing need not be more than two-three pages, double spaced. This is a graded assignment.

Class III: Additional contract provisions including: mistake, parol evidence, breach, anticipatory repudiation, statute of frauds, remedies

This class will be a further discussion of the legal theory of contracts, going beyond the basic “offer and acceptance” discussion. We will consider the theories of parol evidence, breach, anticipatory repudiation, statute of frauds and remedies.

In the second half of the class we will have a discussion based on the assignment for this class and also discuss how to have unsatisfactory contracts terminated.


Assignment: I will hand out in class to each student a sample employment agreement. Consider a few of the contract terms you would want to change or perhaps keep the same and be prepared to discuss in class. Also make note if there are any unique or unusual provisions in the contracts and be prepared to comment on them. This is not a written assignment.

Class 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.

In this class we will discuss: services to be provided; term of contract; rights to cancel (for cause, or without cause); renewal rights-automatic or notice required; rights of first negotiation; rights to match; and non-compete clauses.

Readings: 6

Coady v. Harpo Productions, Inc., No. 1-99-0481, Circuit court of Cook County, (Ill.) 1st District, September 30, 199

Chirelstein, Concepts and Case Analysis in the Law of Contracts, Chapter 4, Unfairness and Unconscionability, pp 82-92.

Assignment: You have been hired to work as a Grants Manager for a small not-for-profit. Congratulations! They have asked that you write a two page agreement reflecting the terms of your employment. It is to be a one year contract and you will be earning $75,000 per year. Your responsibility will be to evaluate grant applications. Draft the requested two page agreement incorporating the terms that are important to you based on what we have studied so far and be prepared to discuss next week. This is a graded assignment.

Class V: Employment contracts continued

In this class, the students will present to the class their written contract drafting assignment. We will also study the following contract provisions: exclusivity; objectivity and business ethics clauses; ownership of materials with an emphasis on social media (blog and twitter accounts); copyright; arbitration; morals clause; pay or play; force majeure; applicable state law; and merger clause.

Readings: Specific grant, fundraiser and commercial co-venture contracts to be posted

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 (this text will be posted)

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

Class VI: Grant Agreements, Fundraiser Agreements; Commercial Co-venture Agreements; Grants of Charitable Organizations Abroad

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. We will discuss situations in which charitable organizations enter into contracts with foreign governments in order to build schools, hospitals or do other charitable work.

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.

Copyright 2015 Letty Tanchum