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# Contract Drafting Courses for Upper-Level Students: Teaching Tips

By Robin A. Boyle<sup>1</sup>

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Contract-drafting courses are gaining in popularity in law school, and they are a pleasure to teach. On July 20–21, 2005, Northwestern University School of Law provided the location and Judith A. Rosenbaum<sup>2</sup> provided on-site assistance in hosting the first national conference, in recent times, on the topic of contract drafting. The conference was aptly called “Teaching Contract Drafting.”

Approximately 100 participants attended, which was significantly more than the organizers expected. The conference's large attendance indicates the need and growing enthusiasm for guidance on how to develop and teach contract-drafting courses. The organizers of the conference, Susan Irion,<sup>3</sup> Richard Neumann,<sup>4</sup> and Tina Stark,<sup>5</sup>

designed the sessions to cover both the substance of the course and various approaches to teaching the substance.

As Professor Neumann pointed out at the opening session, law schools have traditionally focused on litigation in both the skills and doctrinal courses. He described the typical first-year contracts course that teaches students contract law by analyzing cases that turn on poorly drafted contract provisions.<sup>6</sup> He noted also that most professors who teach the traditional first-year course do not provide their students with sample contracts and instruction on how to draft them. Professor Neumann estimates that approximately half of law school graduates will eventually engage in a transactional practice and need the requisite skills of contract drafting. The need for contract-drafting courses has spurred some law schools to provide such courses. As a session at the conference indicated, some schools even offer contract drafting to first-year students.<sup>7</sup>

I teach contract drafting to upper-level students and, in this article, offer suggestions on course structure and teaching tips to those who wish to adopt such a course.<sup>8</sup> The following material was the subject matter of my presentation at the Teaching Contract Drafting conference and participants found it useful.

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<sup>1</sup> The author wishes to thank the following people for their editorial contributions: Professors Thomas Brown, Eric Goldman, Richard Neumann, and Tina Stark.

<sup>2</sup> Judith A. Rosenbaum is clinical professor and director of Communication and Legal Reasoning at Northwestern University School of Law in Chicago, Illinois.

<sup>3</sup> Susan Irion is national director of Professional Development for DLA Piper Rudnick Gray Cary US LLP where she is responsible for the firm's U.S. programs concerning attorney education and career development. Previously, she taught full time for five years as clinical assistant professor at Northwestern University School of Law. At Northwestern, Professor Irion taught entrepreneurship law and the Small Business Opportunity Center clinical program, as well as communication and legal reasoning.

<sup>4</sup> Richard K. Neumann Jr., is professor of law at Hofstra Law School. Professor Neumann is a leading authority on legal education and the teaching of legal writing. At Hofstra, he has taught civil procedure, counseling and negotiation, pretrial litigation, legal writing, federal courts, trial techniques, and clinical courses.

<sup>5</sup> Tina Stark has lectured on law and business issues at programs in the United States, Canada, England, and Italy. Currently, she is adjunct professor of law at Fordham University School of Law where she teaches a course in drafting commercial agreements, a clinic that teaches transactional skills, and a seminar on business. Professor Stark has been teaching at Fordham since 1993.

<sup>6</sup> See Scott J. Burnham, *Using Contracts to Teach Practical Skills: Drafting in the Contracts Class*, 44 St. Louis U. L. J. 1535, 1535 (2000) (“When I began teaching, I perceived a dissonance between the materials in contracts casebooks and my practice experience.”); Robert Lloyd, *Making Contracts Relevant: Thirteen Lessons for the First-Year Contracts Course*, 36 Ariz. St. L.J. 257 (2004).

<sup>7</sup> At the Teaching Contract Drafting conference, presenters Scott J. Burnham, Christina L. Kunz, and Helene S. Shapo described how they incorporated contract drafting into first-year courses at their respective schools—University of Montana School of Law, William Mitchell College of Law, and Northwestern University School of Law.

<sup>8</sup> My course, Upper Level Writing Seminar, includes drafting litigation documents toward the final weeks of the course.

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Law schools may offer a course as a stand-alone, such as the one I have been teaching, in which the students (and the professor) are not linked to a particular doctrinal basis. Alternatively, upper-level professors may focus their contract-drafting course around a specific topic, such as intellectual property<sup>9</sup> or have their students perform research regarding an actual corporation.<sup>10</sup> In either case, the number of credits the course is worth affects classroom instruction; the more time in the classroom, the more in-class drafting and negotiations can occur.

### A. Selecting a Book and Structuring the Course

A professor who is starting fresh with little practice experience in contracts drafting should become thoroughly familiar with the texts that are on the market.<sup>11</sup> The available texts often include teacher's manuals that provide model answers to student exercises and suggested lesson plans. If you have had no transaction experience in practice, my suggestion is to stick closely to the topics and exercises in the textbook that you choose.

Once a book is selected, you can construct a course by closely following the topics identified (such as a chapter on representations and warranties) and by assigning the textbook exercises. Both George Kuney<sup>12</sup> and Tina Stark<sup>13</sup> have written their books to provide the step-by-step approach for course instruction. A professor cannot go wrong by following either book.

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<sup>9</sup> At the Teaching Contract Drafting conference, Eric Goldman, assistant professor, Marquette University Law School, described how he incorporated intellectual-property licensing into his contract-drafting course.

<sup>10</sup> At the Teaching Contract Drafting conference, Thomas P. Brown, adjunct professor, Northwestern University School of Law, described how he conducted his course, Structuring Financial Transactions, as a “lab course” by incorporating student exercises in structuring drafting and negotiating credit agreements and other documents in a deal involving a single real-life company.

<sup>11</sup> See, e.g., Thomas R. Haggard, *Contract Law from a Drafting Perspective—An Introduction to Contract Drafting for Law Students* (2002); Thomas R. Haggard, *Legal Drafting: Process, Techniques, and Exercises* (2003); George Kuney, *The Elements of Contract Drafting with Questions and Clauses for Consideration* (2003); and Tina Stark, *Drafting Contracts* (forthcoming 2006).

<sup>12</sup> Kuney, *supra* note 11.

<sup>13</sup> Stark, *supra* note 11.

To supplement the written text, I suggest developing visual aids for classroom use. This will reach those students in the class who have visual learning-style strengths. For example, you can create PowerPoint slides to highlight key points made within assigned chapter readings. I created PowerPoint presentations for every topic of my assigned text by integrating concepts that the author used and incorporating tips from my practice experience. For professors who have not had transactional experience, I suggest incorporating good work habit tips that you learned along your career path, such as “develop an eye for detail.” I like to incorporate real-life stories that happened in my practice background, and from a learning-styles perspective<sup>14</sup> some students find the lesson more valuable when it is connected to real life.<sup>15</sup>

Professors can also supplement the drafting exercises by creating their own or by encouraging students to invent their own. A few weeks into the course, when my students feel comfortable with its concepts, I assign projects that require students to invent their own deal. For example, I allow them to brainstorm about the kind of business they are buying and selling. Then, I ask them to anticipate the major provisions of the deal and the contentious negotiating points. After this, I set them free to simulate the negotiations and to draft the contracts. Students also buy and sell imaginary houses in my class.

Additional textbooks for a transactional drafting course could include books that focus on clear writing.<sup>16</sup> My approach is to begin the course with the message that contract language needs to be crystal clear; otherwise, litigation can ensue. I start

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<sup>14</sup> Learning styles is the way in which individuals “begin[ ] to concentrate on, process, [internalize,] and [remember] new and difficult [academic] information” or skills. Rita Dunn & Kenneth Dunn, *Teaching Secondary Students Through Their Individual Learning Styles 2* (1993).

<sup>15</sup> See Rita Dunn & Kenneth Dunn, *The Complete Guide to the Learning Styles Inservice System 42* (1999) (describing general goals for giving directions to global processors by beginning with real-life anecdotes) [hereinafter Inservice].

<sup>16</sup> See, e.g., Richard Wydick, *Plain English for Lawyers* (5th ed. 2005).

my course with exercises on writing without excess clutter of words. Even professors without transactional practice in their career backgrounds should feel comfortable introducing the concepts of clear writing.

Professor Stark approaches her course differently. She begins with a mock negotiation of a purchase of a used car. It begins with a student acting in the role of the buyer asking questions about the color, make, mileage, and condition of the car. After the seller answers the questions, the class discusses why representations and warranties are the appropriate contract concept to use to memorialize this information. The class also discusses the risk allocation purpose of representations and warranties. The car hypothetical is then used as a tool for understanding covenants and conditions precedent. Professor Stark begins with the contract building blocks because she believes it is important for students to understand what they are drafting before they focus on how to draft it.

The number of course credits affects the structuring of group assignments and in-class drafting assignments. I prefer three hours of class each week because this provides students with sufficient supervised drafting experience and feedback from me. I find that a three-credit course is ideal for allowing students to hone the skill for the week and work on group projects within class time. Some professors prefer to have the three-hour blocks at one time; others prefer to meet twice each week. Alternatively, a two-hour-credit course can be useful as well to cover the course basics, but not the enrichment aspects of the course.

A stand-alone elective contract-drafting course can be taught in small sections of upper-level students. Registration for the course can be capped at 16 or 20 students for an intensive writing class. Courses that are linked to a particular topic (such as intellectual property) can also be conducted as elective upper-level courses with a cap on enrollment.

## B. Incorporating Negotiations

In transactional practice, lawyers negotiate the wording of the contracts, which is unlike litigation practice. In my opinion, a course on contract drafting should include negotiation simulations not only for students to develop better negotiating skills but also for them to see the bigger picture of how contracts come into existence. There are helpful books on the market on negotiating contracts<sup>17</sup> and professors can choose either to assign a book or incorporate some general negotiating principles into lecture or class activities.

I start my first class by providing a fun negotiation exercise to do during class time, with a drafting exercise for homework. In this class, I give students prepared written facts and ask them to negotiate a movie contract by representing either the producers or the stars. It is a fun exercise and students begin to see the tug and pull of a wish list from either side of the negotiating table. From the start of the exercise, all students have some inkling how to proceed (they speak with their team members, compose a list of what they really want and what they are willing to forego, and arrive at their bottom line salary demands) because they have been negotiating throughout their lives (movies or dinner out on Friday night?). As the course progresses, I give more guidance on how to negotiate.

In my course, I assign groups and have students play the role of lawyer or client as the students become more familiar with the core concepts of contract drafting. This gives students a sense of practice. Individual students are later switched to different groups; in this way students are exposed to various roles and personalities around the classroom.

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<sup>17</sup> See, e.g., Roger Fisher & William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (2d ed. 1991). For a useful article on the topic of incorporating client interviews and extracting facts, see Charles C. Lewis, *The Contract Drafting Process: Integrating Contract Drafting in a Simulated Law Practice*, 11 *Clinical L. Rev.* 241, 244 (2005).

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“To ensure that all students participate in group assignments, I suggest that the professor establish a contribution system by requiring drafts from all students or by assigning drafting roles.”

Within the group context, I ask students to examine their individual strengths. I provide students with a learning-style assessment tool, called the “Building Excellence Survey”<sup>18</sup> (BE). Students take the online assessment at home on their computer and immediately thereafter print out a detailed description of their learning-style strengths. I follow up by talking with the students individually, and as a group, about their learning styles. For example, I ask my students whether they feel more comfortable listening before responding (reflective learners) or whether they feel a need to blurt out answers (impulsive learners). I ask who feels comfortable taking notes (tactile) and who feels comfortable formulating ideas while speaking (verbal kinesthetic). I encourage students to pay attention to their learning styles and how they interact with others within a group negotiation or drafting project.

The company that administers BE can provide the professor with a class profile of the students’ learning styles. I find these class profiles useful because they allow me to have an overall sense of the learning-style strengths of my class, and I can tailor assignments accordingly. In my recent contracts-drafting course, I had a high number of kinesthetic students,<sup>19</sup> which led me to provide plenty of role-playing and negotiation exercises. The students found these learn-by-doing exercises to be enjoyable and educational.

Despite the vast learning that can occur within a group process, some students prefer to learn alone or in pairs.<sup>20</sup> Thus, I also incorporate individual drafting assignments in my course, which can be

done at home or in class. I tend to prefer that when I assign group work, it be done during class time because it is convenient for the students to meet.

### C. Grading Contract-Drafting Assignments

At the panel discussion on teaching contract drafting to upper-level students, my two co-presenters and I described our different approaches to the number and length of graded assignments. Professor Brown has students work on one deal throughout the course, with several small projects that are ultimately integrated into a single lengthy contract of approximately 50–60 pages. In contrast, Professor Goldman and I vary our assignment topics and assign shorter assignments, but I provide eight graded assignments, whereas Professor Goldman grades fewer.

At the Teaching Contract Drafting conference, professors expressed different preferences for group or individual writing assignments. To ensure that all students participate in group assignments, I suggest that the professor establish a contribution system by requiring drafts from all students or by assigning drafting roles. Alternatively, I suggest that professors provide supervision over group projects, such as requiring that work be performed in class.

In addition to requiring eight graded assignments, I require weekly nongraded assignments. Students enjoy exercising their new drafting skills on a weekly basis and they particularly appreciate getting my feedback in a way that does not impact their final course grades. The nongraded assignments can be started during class time, completed at home on a computer, and submitted to me in hard copy.

### D. Comparison to First-Year Legal Writing Courses

Having taught legal research and writing to first-year students for 12 years, I find that the upper-level contract-drafting course is, in contrast, a lot less stressful to handle. By the time students take an upper-level course, their writing skills and understanding of concepts have significantly improved since their first year of law school. Upper-level students have had the benefit of externships, summer associate positions, and

<sup>18</sup> The Building Excellence Survey (BE) can be accessed at <[www.pcilearn.com](http://www.pcilearn.com)>. BE is based upon the Dunn and Dunn Learning Style Model. See also Susan Rundle et al., *An Educator’s Guide to the Learning Individual* (2004).

<sup>19</sup> By using the Building Excellence Survey to assess my students learning styles, the results for my fall 2004 contracts-drafting seminar showed that for the element of “internal kinesthetic,” 30.80 percent of my class were “moderate” and 61.50 percent were “strong.” The scale included these choices: less preferred, less (slight), no preference, more (slight), moderate/more, and strong/more.

<sup>20</sup> See Dunn & Dunn, *Inservice*, *supra* note 15, at 14.

courses based upon the Uniform Commercial Code. They seem less anxious because they are more confident in their skills than they were in their first year. They ask for fewer individual conferences and send me questions via e-mail far less frequently than my first-year students.

Furthermore, one can organize assignments around the topics presented in the contract-drafting textbook and not assign protracted research. I ask my students every year if they want to include research in my upper-level drafting course and they tell me “no.” My school offers an upper-level research course, advanced legal research, and my inclination is to respect that my students signed up to learn drafting skills and that if they wanted to learn more research skills, beyond what they learned first year, they would take the other course. Thus, students need to meet in individual conference less frequently because they are not performing extensive research. I do encourage my students to use the Internet to find samples of contracts, but I do not grade research.

While attending the contract-drafting conference, I spoke with a number of legal writing directors and professors who were considering offering an upper-level course. My suggestion is to give it a try because in all likelihood, it will be a different experience than teaching first-year students legal writing. As with any new course offering, allow for ample preparation time when teaching the course for the first time.

### **E. Fostering Students’ Self-Confidence and Enthusiasm for Learning**

Consider as course goals fostering students’ self-confidence and enthusiasm for learning. Contract drafting will be a new skill even for upper-level students. Chances are they have never carefully examined a full contract either in undergraduate classes or in their required doctrinal contracts class. I am surprised at how law students often get to their mid-20s never having negotiated a lease or read a contract. This course can help them develop self-confidence in understanding the components of a contract (recital, definition, representations,

and warranties, for example) and in writing an improved version or one starting from scratch.

Not all students want to be litigators; therefore, a contract-drafting course will expose students to a different area of practice than litigation. Also, students who intend to be litigators nonetheless enjoy learning a different skill. And, as I tell my students, you never know where you will end up in life! Those who believe they are set for a litigation practice may eventually end up in a transactional practice. Even if they do not, some day they may have to read a contract when they purchase a house, buy a car, and live in a world of documents.

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### **Another Perspective**

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