

# COMMERCIAL CONTRACT FUNDAMENTALS

## How to Review and Draft Commercial Contracts

### Course Description

Commercial contract review, drafting, and negotiation comprise a billion-dollar business. Countless legal and non-legal professionals are engaged by organizations of all sizes to draft and negotiate sales, procurement, and partnership agreements both internally and externally. In addition, hundreds of millions of dollars are spent every year in connection with reviewing commercial contracts as part of acquisitions, investments, IPOs, and other strategic transactions, a process known as due diligence.

One of the main priorities of every General Counsel is to scale up their legal services to meet increasing business demands while keeping the legal spend in check. Legal leaders need to tap into a bigger talent pool and embrace new technological innovations to achieve this objective, and a prerequisite to that is high-quality, scalable, and on-demand training.

We created Commercial Contract Fundamentals to address this business imperative.

**Questions regarding the course? Email us at [executive@law.berkeley.edu](mailto:executive@law.berkeley.edu)**

### Pedagogy

The course is designed to be completed in approximately ten weeks, but the class site will be available to you for one full year (12 months) from the program start date. The course is hosted on UC Berkeley's *Canvas* learning platform. The course is divided into nine modules, each of which deals with a distinct topic related to commercial contracts:

**Module 1** provides an overview of the structure and terms of commercial contracts.

**Modules 2 through 6** cover the following commercial contract fundamentals:

- Term & Termination

- Assignment, Change in Control & Right of First Refusal/Offer/Negotiation
- Limitation of Liability, Warranty Disclaimer & Indemnification
- Intellectual Property Clauses
- Restrictive Covenants; NDA

**Module 7** is a tutorial on disclosure schedules and contract due diligence.

**Module 8** includes a module on AI and commercial contracts, providing you with the skills to handle an AI-enabled future.

**Module 9** focuses on legal ethics (this module is only required for legal professionals who will receive MCLE credit for this course).

Also included in this course are interviews with industry experts who share their views on hot topics and the day-to-day life of a general counsel, a commercial contract attorney, and an intellectual property attorney.

Each module begins with a series of 15-20 minute structured videos delivered by the course creator and instructor, Wei Chen, using slides with visual presentations and sample contract clauses. Following the videos, students are asked to complete a self-graded quiz with approximately 15 questions. Most modules also include contract review or drafting exercises that allow you to apply what you're learning to real-life challenges.

This course is "asynchronous," meaning that students can work at their own pace. We suggest participants set aside approximately 2-3 hours per week to complete the assigned material. While a syllabus is provided to guide the learning journey, students will have the flexibility to choose where to start based on their knowledge and experience.

Although some modules build on concepts from prior modules, each session is largely independent of the others. After finishing the final module, participants must complete the post-program survey in order to receive the course certificate.

## **Certificate Eligibility**

Participants who complete the entire course (including the post-program survey) will receive a certificate from Berkeley Law Executive Education. In order to earn the certificate, students must (i) watch all the video lectures, (ii) work through any accompanying exercises/worksheets, (iii) earn a combined total average of 75% or

higher on the graded quizzes, and (iv) read the supplementary materials (except for those marked “optional”).

## **MCLE Credit**

This class is approved for up to 9 hours of MCLE credit (includes 1.0 credit hour of legal ethics credit) by the State Bar of California. As with certificate eligibility, MCLE credit will only be provided to legal professionals who complete the entire program. Attorneys who provide their state bar number during registration will be sent an MCLE certificate and evaluation once they qualify for their Commercial Contract Fundamentals certificate. If you are licensed in another state, you are responsible for checking with your own state bar regarding MCLE requirements and claiming credit from California. For questions regarding MCLE credit, contact [executive@law.berkeley.edu](mailto:executive@law.berkeley.edu).

## **Accommodations**

If you need any disability-related accommodations for this class, please contact us as soon as possible at [executive@law.berkeley.edu](mailto:executive@law.berkeley.edu). The earlier you inform us, the more we can do to help.

## **Academic Integrity**

Although this course is conducted online, it is subject to the normal academic rules of Berkeley Law, including its [honor code](#).

We expect all of our students to adhere to this code scrupulously. If you have any question whether your conduct may violate the code, please contact us at [executive@law.berkeley.edu](mailto:executive@law.berkeley.edu).

# Modules

## **Module 1: Introduction & General Information (week 1)**

### **Topics**

- Message from the Instructor: Lecture
- Using Canvas: Reading
- Using CUAD Reference Materials: Reading
- Terms in a Contract: Lecture & Quiz
- Dispute Resolution: Lecture & Quiz

### **Suggested time**

36 minutes of video; 1.5-2 hours of reading, worksheet and quizzes.

## **Module 2: Term & Termination (week 2)**

### **Topics**

- Term: Lecture & Quiz
- Termination (General): Lecture
- Termination for Convenience: Lecture
- Termination: Quiz
- Term & Termination: Worksheet
- Expert Interview: Auto-renewal

### **Suggested time**

41 minutes of video; 2-3 hours of worksheets and quizzes.

## **Module 3: Assignment, Sublicense & Subcontract (week 2) Change in Control; ROFR/FORO/FOFN (week 3)**

### **Topics**

#### *Week 2*

- Assignment: Lecture
- Sublicense & Subcontract: Lecture
- Assignment, Subcontract & Sublicense: Quiz

#### *Week 3*

- Change in Control: Lecture
- Assignment by Operation of Law: Lecture
- CIC & Assignment by Operation of Law: Quiz
- ROFR/ROFO/ROFN: Lecture & Quiz
- Assignment, CIC & ROFR/ROFO/ROFN: Worksheet
- Supplemental Reading & Reference Materials

### **Suggested time**

1 hour and 12 minutes of video; 1-2 hours of worksheets and quizzes; 0.5-1 hours of reading.

## **Module 4: Warranty, Indemnification & Limitation of Liability (week 4) and Limitation of Liability Carveouts (week 5)**

### **Topics**

#### *Week 4*

- Remedies for Contract Breach: Lecture
- Warranty & Indemnification: Lecture
- Remedies, Warranty & Indemnification: Quiz
- Limitation of Liability: Lecture

#### *Week 5*

- Limitation of Liability Carveouts (fee, indemnification & IP infringement): Lecture

- Limitation of Liability Carveouts (confidentiality, data security, and other): Lecture
- Limitation of Liability Carveouts: Quiz
- Expert Interview: Security & Data Protection as the Most Heavily Negotiated Clauses
- Limitation of Liability, Warranty & Indemnification: Worksheet
- Supplemental Reading Materials

### **Suggested time**

1.5 hours of video; 1.5-3 hours of worksheets and quizzes; 2 hours of reading.

## **Module 5: Intellectual Property Clauses (weeks 6-7)**

### **Topics**

#### *Week 5*

- License; Licensor & Licensee: Lecture
- Controlling Who Are Licensor & Licensee: Lecture
- Licensor & Licensee: Quiz
- Licenses (Perpetual, Irrevocable, Exclusive, Unlimited): Lecture & Quiz
- IP Ownership & Source Code Escrow: Lecture & Quiz
- Expert Interview: What do IP & Product Attorneys Do?

#### *Week 6*

- Open Source 101: Lecture & Quiz
- Supplemental Reading Materials

### **Suggested time**

1.5 hours of video; 1-2 hours of worksheets and quizzes; 0.5 hours of reading.

## **Module 6: Restrictive Covenants; NDA (weeks 7-8)**

### **Topics**

#### *Week 7*

- Restrictive Covenants General; Exclusivity: Lecture

- Non-Compete & No-Solicit of Customers: Lecture
- Restrictive Covenants (Non-Compete, Exclusivity & No-Solicit of Customers): Quiz

#### *Week 8*

- Most Favored Nation; Covenant Not to Sue: Lecture & Quiz
- No-Solicit of Employees & Non-Disparagement: Lecture & Quiz
- Non-Disclosure Agreement
- Restrictive Covenants: Worksheet
- Supplemental Reading Materials

#### **Suggested time**

1 hour and 10 minutes of video; 1-2 hours of worksheets and quizzes; 1 hour of reading.

### **Module 7: Due Diligence 101 (week 9)**

#### **Topics**

- Expert Interview: M&A & Investment Due Diligence Overview
- Disclosure Schedules: Lecture & Quiz
- Disclosure Schedules: Worksheet
- Supplemental Reading Materials

#### **Suggested time**

55 minutes of video; 3 hours of quizz, worksheet and reading.

### **Module 8: AI & Commercial Contracts (week 10)**

#### **Topics**

- AI & Commercial Contracts: Lecture
- Measuring AI Accuracy: Lecture
- AI & Commercial Contracts: Quiz
- Supplemental Reading Materials

**Suggested time**

40 minutes of video; 1-2 hours of quiz and readings.

**Module 9: Ethics & Commercial Contracts (week 10)****Topics**

- Expert Interview: Ethics in Commercial Contract Negotiation

**Suggested time**

1 hour of video