

**Entertainment Law**  
Texas Tech University School of Law  
Fall 2012

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**SYLLABUS**

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**1. LEARNING OUTCOMES:** I intend for this class to provide meaningful training for the practice of law in the context of the entertainment industry, including both transactional and litigation practice. By the end of the course, you should have a command of the principal legal doctrines that shape entertainment, a knowledge of basic industry vocabulary, an understanding of the litigation and dealmaking environments in entertainment, and a rudimentary understanding of entertainment contract drafting and negotiation. Note that the relevance of what we will learn will go well beyond the entertainment realm. The knowledge and skills you acquire here will be applicable to legal practice in nearly any substantive area.

The following is a non-exclusive list of specific learning outcomes for this course:

1. Have a basic level of entertainment-lawyer literacy such that you can “talk the talk” with entertainment dealmakers and such that you can read a deal memo and understand its substance.
2. Be able to competently negotiate a small deal on behalf of a client in the entertainment-industry context.
3. Be able to put together a first draft of a written agreement for a deal such that it would be highly useful to a seasoned practitioner.
4. Be able to mark-up a written agreement draft that was provided by the cross-table party in order to advance the interests of your own client.
5. Be able to advise an entertainment-industry client of the level of risk associated with common development, production, and post-production exigencies, particularly those of the type presented in class.
6. Be able to provide legal analysis in the context of an entertainment-industry dispute such that you can confidently and appropriately advise your client of how next to proceed.

**2. SUBJECT MATTER AND COURSE DESIGN:** Unlike torts, antitrust, family law, or many other law-school subjects, “entertainment law” is not a body of law, per se.

It is a professor- or lawyer-crafted grab bag that draws together law from across a range of disciplines. What gives the subject coherence is not the law itself, but a particular range of parties and problems. The term “entertainment law” generally refers to the substance and practice of law in the context of television, film, music, live theatre, and radio. (By way of comparison, when people say “media law” or “mass media law,” they are usually referring to the law relevant to print, broadcast, and increasingly, digitally distributed content over the internet, with an emphasis on newsgathering and journalism. Note that I will be teaching Mass Media Law next semester.)

The organization of a course in this vein requires careful thinking. Because of its artificiality and lack of inherent coherence, Entertainment Law cannot be organized in the same kind of simple scheme that a common-law subject can be. We cannot, for instance, begin with *prima facie* elements, work through defenses, and then finish up with remedies. Also, it does not work well to merely organize the course around a series of recurrent problems faced by entertainment law practitioners, because one first needs to have some foundational background knowledge about the industry (film, television, music, etc.), a solid footing in several areas of generally applicable law (constitutional law, torts, communications regulation, intellectual property, civil procedure, and more), and a set of basic practice skills (drafting and negotiation) in order to have the toolkit needed for tackling the various problem types.

In order to make the most efficient use of class time and to best allow each class to build upon what has come before, I have designed the course with a two-track, multi-tiered structure. In one track, we will learn substance. In the other track, we will learn skills. These tracks will proceed not serially, but simultaneously. As we advance through the skills track, we will make use of substance we have learned along the way. Also, as we advance through the substance track, we will see opportunities for employing our gathering set of skills.

The substance track will consist of three tiers, presented in *seriatim*. In Tier 1, we will tackle industry basics, learning not about law, but about the context for the law. In Tier 2, we will go about learning the blackletter law that is generally applicable in the entertainment law context, including contract, tort, labor law, constitutional law, and intellectual property doctrines. Our learning of this law will be informed by our understanding of entertainment industry basics learned in Tier 1. In Tier 3, we will apply the industry knowledge and general knowledge we have learned in the first two tiers to a selection of specific contexts in which legal issues and deal negotiations arise. In this way, we will learn our way around specific dealpoints and recurrent litigation fact patterns. To summarize, the substance track goes business-topic-by-business-topic (Tier 1), then legal-topic-by-legal-topic (Tier 2), then problem-by-problem (Tier 3).

In the skills track, we will proceed through a series of units on contract drafting (Part 1) and on negotiation (Part 2). The units in the skills track are ordered and timed such that they build on each other and upon knowledge acquired in the substance track. In-class exercises and homework assignments will be mainstays in the skills track.

As this structure probably suggests, this course will not lend itself well to a study plan of passively attending lecture and then waiting until the end of the semester to buckle down and learn the material. **You must keep up!** Do all the reading when it is assigned, make the most of the exercises and homework, and participate actively in class throughout the semester.

In addition to the multi-tracked organizational structure of the course, note as well that there will be various modes through which you will receive course content. Research shows that such a multiform mode of teaching aids learning. Thus, in class, I will be making use of a mixture of blackboard writing, slideshows, lectures, handouts, etc. The reading materials will also vary considerably, including judicial opinions, contracts, explanatory text, and more.

You will find the general course outline at the end of this syllabus. A evolving chart of assignments will be found on the course website.

**3. CLASS WEBSITE:** The central repository for class materials and information is the class website. It is not password protected. Go to [ericejohnson.com](http://ericejohnson.com) and find the link on the upper left. The direct URL is: [http://www.ericejohnson.com/courses/ent\\_12/](http://www.ericejohnson.com/courses/ent_12/)

**4. MATERIALS:**

There is one required text for this course that is sold as a printed book:

Dealmaking in the Film & Television Industry (3rd Edition). Mark Litwak. Published by Silman-James Press, 2009.  
ISBN: 1-879505-99-5

In addition, you will need to use materials edited by me and made available online. First is a set of materials called *Entertainment Law Compendium*, which will be downloadable in discrete sections published as pdf documents. In addition, there is a collection of source documents – such as contracts – gathered together as *Entertainment Law Compendium Appendix*. Both the main compendium and the appendix will be accessible from a link on the course webpage.

Other materials will be required or recommended reading, viewing, or listening. These will either be linked to on the class website or will be placed on reserve in the library.

**Study aids:** Beyond the required materials, you are encouraged to use any other materials you find helpful or interesting, including, for instance, treatises and commercial outlines. I mention this explicitly because some professors discourage outside sources. I do not. As far as I am concerned, the more you learn about entertainment law, the better. I personally have found that commercial outlines can be a great way of gaining a basic understanding of the blackletter law in a subject. One word of caution, however: You may find that such study aids will not function well as exam preparation. In my view, the best way to make use of study aids, if you are going to, is to use them *before* we cover the coordinate subject matter in class. That way, the study aid can help you learn the course content, which is your ultimate goal. Using a study aid at the end of the semester – especially in a class organized and structured as this one – is, I think, likely to be a waste of time. Of course, it's up to you to decide for yourself. Unfortunately, I do not know of any commercial outlines for entertainment law, as such. There is a “nutshell” on Entertainment Law, published by West, which one student said was helpful. If you do use study aids, I would appreciate your letting me know your experience with them – whether good or bad.

**5. ASSIGNED READING:** In each class I will announce the reading assignment for the next class meeting. I take care to craft reading assignments so that they are not unduly burdensome. In return, I ask that you do the reading conscientiously. How should you tackle the reading? You could, of course, brief the cases, use a highlighter,

make margin notes, or do any of a number of other things. And, of course, you should do what works for you. But the most important thing is to read the material with interest. “With interest” means you should be having thoughts going through your head such as, “Mmmm, interesting!” “Ah ha! That makes sense!” or “What is wrong with this judge?!?!?”

One way to approach the reading, suggested by Professor Scott Brewer, is to be aware of “the literary drama of the law,” that is, “be alert to the narratives of the hopes, aims, fears, aspirations and frustrations of the litigants ...” Behind every case there is a real story. The more you allow yourself to be absorbed into that story, the more you will get out of the case.

Also, you should attempt to put yourself in the position of the judge. Force yourself to confront the challenge of trying to interpret the law in a way that is fair, unbiased, beneficial for society, and true to statute and precedent. Using this kind of viewpoint, you are bound to get something extra out of every case you read.

**6. ADDITIONAL OPTIONAL READING:** In addition to the assigned reading for class, you might find it interesting to do some optional extra reading from blogs and online news sources. Doing so will allow you to engage with the material in a way that is highly relevant and topical, leveraging your imagination to solidify what you have learned and prime you for what comes next. I may post some links to such sources on the class webpage.

## **7. GRADING:**

**7-1.** Your grade will primarily be based on your exam performance. The exam is discussed below. Each exam will be “blind graded,” so that I will not know the identity of the student as I am grading her or his exam. You may not waive anonymity. Self-identification on the exam or otherwise culpably destroying anonymity will presumptively result in a deduction from your exam grade and a referral for disciplinary action under the Honor Code.

**7-2.** Class participation will also count in calculating your final grade. Within the parameters of the law school’s policy, I will factor classroom performance and attendance will factor into final grades. Law school policy allows adding or subtracting one letter-grade increment to or from the otherwise-calculated final grades. By my use of this method, I anticipate that some students’ exam grades will be increased upward, some will remain unchanged, and others’ will end up being adjusted downward.

Reasons for a positive effect of class participation on the overall course grade may include habitual preparedness and engagement, volunteering in discussions, advance volunteering for questions, diligent work on exercises, and otherwise making a substantial contribution to the class and the learning enterprise. Reasons for a negative effect of class participation on the overall course grade will include exhibiting poor performance or visible disengagement in the classroom, excessive absence, tardiness, and being unprepared for class.

Please keep in mind that, despite the fact that class participation is graded, you should not worry unduly about the quality of your responses. As long as you do the reading and give it honest effort when speaking in class, you will not be marked down. Law school, like all other educational environments, is a place to learn, and that necessarily implies that it is a place to fumble and make mistakes. I do not ask questions and conduct discussion as a way of judging you, I do it as a way of challenging you and

helping everyone to learn. So put aside your fears and engage in the conversation. More is said about expectations for class participation and classroom conduct in Section 9, below.

## **8. COMMUNICATIONS AND OFFICE HOURS:**

**8-1.** You may e-mail me at [eric.e.johnson@ttu.edu](mailto:eric.e.johnson@ttu.edu). Please note that I do not answer or discuss substantive questions through e-mail. Moreover, perhaps unlike many students, I do not read e-mail on an hour-by-hour or even day-by-day basis. I may not respond at all to certain e-mailed questions, including those asking for information that is clearly answered in this syllabus. If you miss class, please ask other students for information you may have missed, such as reading assignments. Any e-mail communications you do have with me should be prepared in a professional manner, including the use of a meaningful subject line.

**8-2.** If you have any questions about the exam, please ask them in open class. In the aims of fairness, I do not discuss the exam on an *ex parte* basis.

**8-3.** My office is 318 East. In general, I should be available and able to talk in the immediate hour after class, so that would be an especially good time to drop by. I will also post official office hours on my website. And feel free to grab me in the halls as well. I also am very happy to make appointments. To make an appointment please send me an e-mail with some suggested times. My office number is 806-742-3990 x226.

**8-4.** At least once during the semester, I hope you will come by my office to introduce yourself, even if you have no questions and nothing to discuss. That's not a requirement, just a request. But it would be nice to be able to chat informally with everyone at least once.

## **9. IN THE CLASSROOM:**

### **9-1. Classroom Conduct Rules:**

- (a) Do nothing that might disrupt class or distract your fellow students.
- (b) Do not eat in class. Do not chew gum audibly or with your mouth open.
- (c) Refrain from any use of a digital device that could reasonably disrupt class or distract fellow students. All digital devices must be operated without audio volume. Screens must not display any distracting content, including, but not limited to, distracting images, moving images (video), animation or flashing graphics, or any kind of indecent content.
- (d) You may use digital devices (including, without limitation, computers, phones, and tablets) in class; however, from the time of class's scheduled beginning until class ends: (1) You may not engage in any digitally enabled network communications with anyone else in class, including, but not limited to e-mail and text messaging. (2) You may not engage in any web publication or any live-updating/realtime digitally enabled network communications with anyone at all, including, but not limited to, live chat, IM, Facebook (including, but not limited to, Facebook groups), Twitter, and Google Plus. The prohibitions of this subparagraph (d) are not limited by context and apply without regard to whether the activity in question can be characterized as disruptive or distracting. Any violation of the policy in this subparagraph (d) will presumptively result

in a lowered course grade and may be referred for disciplinary action. The prohibitions of this subparagraph (d) do not apply if and when you are absent from class and not on campus, nor do they apply to communications with University information-technology staff for technical support purposes.

**9-2.** Your participation in classroom discussion should be meaningful and appropriate. Raise your hand to have a say in discussion when you have a comment that will contribute to the experience of the class as a whole, or when you have a question, the clarification of which will benefit the entire class. Your classroom participation should be appropriate – not too little, not too much. Occasionally, there are students who raise their hand too often and take up too much of the class’s time. And in nearly every class, there are people who sit passively and rarely, if ever, contribute to classroom discussion. Try not to fall into either extreme.

**9-3.** I am grateful for students to volunteer in advance for class discussion. If you volunteer in advance, I’ll assume that you are game for particularly challenging questions. If you would like to volunteer in advance for a particular class, e-mail me before class begins at this special e-mail address: [entertainmentvolunteer@eejlaw.com](mailto:entertainmentvolunteer@eejlaw.com), and use this subject line “Entertainment Law Volunteer for [MM]-[DD]”. I can’t guarantee that I will call on you in such an event, but I will appreciate your offer nonetheless. If you would like to volunteer in advance for the entire semester, please send me an e-mail to [eric.e.johnson@ttu.edu](mailto:eric.e.johnson@ttu.edu) with the subject line “Entertainment Law Volunteer for Semester”. If you do that, you can then opt-out on a day-by-day basis if needed, by e-mailing [entertainmentvolunteer@eejlaw.com](mailto:entertainmentvolunteer@eejlaw.com) with the subject line “Entertainment Law Opt-out”.

**9-4.** Even if you don’t volunteer in advance, I’ll expect you to be ready to participate meaningfully if called on. If you cannot participate in this way for a particular class, for whatever reason (and there’s no need to tell me why), please tell me before class, in person, so that I can avoid calling on you. Reasonable requests of this sort are entirely understandable and will not adversely affect your grade.

**9-5.** Be aware that I plan to make an audio recording of each class meeting. These recordings are for my use, and, unfortunately, I will not be making them available during the semester for absent students. No one is permitted to make an audio or video recording of class without my express, written permission.

## **10. ABSENCES AND TARDINESS:**

**10-1.** Attendance in class is an essential component of the educational experience, and the accreditation standards of the American Bar Association mandate that schools “require regular and punctual class attendance” and enforce attendance policies.

**10-2.** Attendance will be taken by means of a sign-in sheet. It will be your responsibility to make sure you have signed in. You may not sign the sheet on behalf of another person, even if that person is in attendance. You may not permit another person to sign the sheet on your behalf. Such forgery is in violation of the law school’s Honor Code and will be dealt with accordingly.

**10-3.** In accordance with the policy reflected in the Student Handbook, Part II.I., I intend to exclude from the course and final exam any student accumulating nine absences or more, whether for illness, interviews, activities, etc. Coming to class late may

be counted as an absence for this purpose, as may leaving early. This syllabus constitutes your warning that you are subject to exclusion on this basis. Keep track of your own absences. Do not expect to receive an independent warning from me if you draw close to your allowed absences.

**10-4.** If extended illness or a personal situation requires missing more than three classes, I encourage you to talk to me so that we can try to work through the situation.

**10-5.** If you are concerned about your attendance record, please talk to me. Of course, none of the foregoing supersedes the law school's or university's policies.

## **11. ACCOMODATIONS:**

**11-1. Disability:** Any student who, because of a disability, may require special arrangements in order to meet course requirements should contact the Associate Dean for Academic Affairs Jarod Gonzales as soon as possible to make any necessary arrangements. Students should present appropriate verification from Student Disability Services during the Associate Dean's office hours. Please note that classroom accommodations cannot be provided until verification from Student Disability Services has been submitted. For additional information, you may contact the Student Disability Services office in 335 West Hall or 806-742-2405.

**11-2. Observance of a Religious Holy Day:** Texas House Bill 256 requires institutions of higher education to excuse a student from attending classes or other required activities, including examinations, for the observance of a religious holy day. The student shall also be excused for necessary time to travel. An institution may not penalize the student for the absence and must allow for the student to take an exam or complete an assignment from which the student is excused. No prior notification of the instructor is required.

## **12. EXAMINATION:**

**12-1.** I will not discuss the exam on an *ex parte* basis. (See Section 8-2.)

### **12-2. Exam format:**

(a) This class will have a three-hour final exam consisting of a multiple-choice portion, worth approximately one-third of the exam grade, and a portion requiring written answers, worth approximately two-thirds of the exam grade. Be assured that I will not use any questions on the written portion that have been used on any other prior exam.

(b) The exam will be administered closed book except that you will be allowed to bring with you, into the exam, and to reference during the exam, a "reference sheet," consisting of a single 8.5-inch-by-11-inch sheet of paper, upon which you may write or print any information you wish. If you have concerns about receiving a disability accommodation with regard to the reference sheet, please see Section 11-1, above.

(c) I may provide a more specific description of the examination at a later time.

**12-3.** My old exams, including those both for courses labeled "Entertainment Law" and "Media & Entertainment Law," should be quite useful to you in studying for and thinking about the exam. You will find them in my Exam Archive, which is publicly

accessible online. You will find a link on [ericejohnson.com](http://www.ericejohnson.com) (or use the direct URL: [http://www.ericejohnson.com/exam\\_archive.html](http://www.ericejohnson.com/exam_archive.html)). Later in the semester I will have more to say about how I recommend preparing.

**13. COURSE OUTLINE:** The planned organization of the course is below. The structure is subject to minor adjustment, including the possible omitting of some topics, if time constraints demand. Note that neither “units” nor “modules” correspond to class days. Some days we will cover multiple units or modules. Some units and modules will take multiple days each. For a day-to-day chart of assignments, see the evolving Chart of Assignments, available from the course webpage.

**Skills Track:**

Part 1: Contract Drafting

Unit 1: Conjunctives and Disjunctives

Unit 2: Consistency, Examples, and Inclusions

Unit 3: Words of Obligation

Unit 4: Defined Terms and Time

Unit 5: Document Formats

Unit 6: Review

Part 2: Negotiation

Unit 7: Introduction

Unit 8: Game Theory Basics

Unit 9: Techniques

Unit 10: Building Blocks of Complex Deals

**Substance Track:**

Tier 1: Entertainment Industry Basics

Module 1: Hollywood, Film, and Television

Module 2: Deal Basics

Module 3: Broadway and Legitimate Theatre

Module 4: Nashville and the Music Business

Tier 2: Generally Applicable Law in Entertainment Contexts

Module 5: First Amendment Freedom of Expression

Module 6: Obscenity Regulation

Module 7: Tort Liability for Audience Actions

Module 8: Contract Interpretation

Module 9: Contracts with Minors

Module 10: Contractual Remedies

Module 11: Substantive Regulation of Contractual Terms

Module 12: Contracts to Limit Court Access and Public Discourse

Module 13: Contract Torts

Module 14: Regulation of Agents, Managers, and Attorneys

Module 15: Labor Law

Module 16: Intellectual Property, in General

Module 17: Copyright Basics

Module 18: Copyright and Music

Module 19: Copyright Reversions and Terminations

Module 20: Trademark

Module 21: Right of Publicity

Module 22: Privacy Torts

Module 23: Defamation

Module 24: Procedural Law and Elements of Litigation Strategy

Module 25: Tort and Contract Theories for Inchoate Properties

Tier 3: Specific Contexts

Module 26: Record Contracts

Module 27: Reality Programming

Module 28: Film & Television Production

Module 29: Film & Television Writers

Module 30: Film & Television Directors and Actors

Module 31: Film & Television Distribution

Module 32: Collaborations

Module 33: Profit Participations

Module 34: Prank Shows

**14. FEEDBACK:** If you have feedback for me – suggestions, ideas, commendations, or criticisms, please do not hesitate to tell me in person or by e-mail. If sending something to me anonymously would make you feel more comfortable, then I invite you to do just that.

Good luck. I hope you enjoy the course.

– EEJ

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