

DePaul University School of Cinematic Arts

**DC 365 – CONTRACTS & NEGOTIATIONS
DC 464 – ENTERTAINMENT LAW FOR PRODUCERS**

Fall 2018

When: Thursdays, 5:45 – 9:00 PM

Where: 14 East Jackson, Room 209

Instructor: Professor Keely Lewis Wise, Esquire
keelywise@yahoo.com

Office Hrs.: Thursdays, 2:00 PM – 5:00 PM
14 East Jackson, 200B
(312) 362-1306
Conferences may also be scheduled by appointment.

SUMMARY OF COURSE

This course introduces students to the principals and strategies of entertainment law, with a focus on the following key areas: chain of title, production legal, clearance, music licensing, and delivery requirements.

Your film project is a business. This class covers legal issues related to the business of producing content for film. It is designed for filmmakers who want to make money by making and selling movies.

“Entertainment law” is not a body of law, per se. It is a lawyer-crafted grab bag that draws together law from across a range of legal disciplines, including intellectual property, contract, employment and corporate law. As such, this is a “BIG PICTURE” course. In the next ten weeks, we will walk through the life cycle of a film, from initial business concerns, through development and pre-production issues, to on-set and post production issues. By the end of this course, you will have a working knowledge of the legal issues that that you will face as independent filmmakers, including:

- Securing rights to underlying material for your film;
- Obtaining financing;
- Navigating insurance issues;
- Utilizing tax credits;
- Negotiating industry contracts;
- Identifying, securing and protecting intellectual property rights;
- Identifying and addressing labor and employment issues in the filmmaking process;

- ➔ Selling and/or distributing your film; and
- ➔ Safeguarding against lawsuits, cost overruns and the failure to protect your rights.

Students will be required to read a variety of case law, legal documents, law related articles and text excerpts, in and out of class. Students will be expected to participate in lively discussion and debate. Guest lecturers should be anticipated throughout the quarter.

OBJECTIVES

- Learn and apply the basic language of entertainment law;
- Learn to issue spot and address legal issues in the filmmaking process through lectures on a variety of topics related to entertainment law;
- Develop an understanding of the pertinent contracts, and a working vocabulary for relevant contractual terms, used in the filmmaking process through study of industry contracts;
- Develop the confidence to discuss legal issues, including, intellectual property, contractual, employment and business issues, that arise in the filmmaking process through lively classroom debate;
- Learn and apply methods to better protect your work as a filmmaker;
- Learn to view filmmaking not just as a creative process but also as a business; and
- Develop a more complete understanding of your job as a film producer.

OUTCOMES

- Case Memos interpreting law and identifying legal issues;
- Working vocabulary of entertainment law terminology; and
- Ability to identify, discuss and negotiate legal issues and contracts in the filmmaking industry.

REQUIRED READING

No books are required for this course. However, there will be substantial reading assignments, which may include and may not be limited to:

- ➔ Lawsuit Complaints
- ➔ Court Opinions
- ➔ Assigned excerpts from The Pocket Lawyer for Filmmakers, A Legal Toolkit for Independent Production, 2nd Ed. (2013), Thomas A. Crowell, Esq.
- ➔ Assigned articles from Variety, Hollywood Reporter, Deadline, New York Times, FindLaw, EntLawDigest and other online legal, industry and news sources

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. By this, I mean you may brief the materials, use a highlighter, make margin notes, or take notes. Do what works best for you, so long as you 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 or party?!?!?"

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, and out of this class as a whole.

COURSE MANAGEMENT

This course is housed and managed on D2L, where both the online and in-class sections are linked together. There, students will find announcements, reading assignments and materials, writing assignments and examples, discussion forums, and additional class materials. Students should review assignments on D2L weekly, read all assigned materials prior to class, and come to class prepared to constructively discuss their comments and ideas each week.

ASSIGNMENTS AND PARTICIPATION

Students will be expected to have completed all assigned reading prior to each class. Reading materials will be analyzed through students' participation and answers to questions during class. Classroom participation is mandatory and should be consistent and meaningful. Students will be called upon to offer comments related to the reading and writing assignments. Credit for classroom participation will be based both on quantity and quality. Course grades may be raised or lowered by one grade (*e.g.*, from C to C+, or from A- to B+) on the basis of the student's class participation.

In Week 1, we will discuss how to read and interpret case law. Each week, Students will be required to read court documents and submit a Case Memo that identifies the parties, the legal dispute, the outcome, and lesson derived by the student from the reading. Students will be expected to discuss their Case Memos in class each week.

All Case Memos must be typed, conform to the example provided on D2L, and be timely submitted via D2L in .pdf format.

Case Memos are due 24 hours prior to class. This is to ensure that the professor has time to review the memos prior to class and the ability to include the memos in

classroom discussion. To be considered timely submitted, you must upload your assignment to that week's Submissions folder on the D2L site by the due date and time. Late submissions will result in reduced credit.

ATTENDANCE

Students are expected to attend each class and to remain for the duration. Missing more than one (1) class without a legitimate excuse will result in a reduction of your final grade. Arriving 15 minutes late or leaving 15 minutes early constitutes an absence. If you have a legitimate reason for missing class, you must contact the instructor in advance of class for it to be considered an excused absence. We begin class right on time. A pattern of tardiness will result in a grade reduction.

QUIZZES

Three (3) quizzes will be administered throughout the quarter and will be based on preceding assigned reading and in-class discussions. The quizzes may not be announced ahead of time and students should come to each class prepared for a quiz.

FINAL EXAM

One week prior to the final exam date I will provide you with several legal scenarios being faced by Frankie Filmmaker. You will write a response paper as Frankie's entertainment lawyer, meaning you will (1) identify the legal issues raised, (2) discuss the various approaches to these legal issues, and (3) provide your legal recommendation to Frankie based on what you have learned and discussed in this class. This work must be your own. Outside collaboration with other students is not permitted. The paper must be double spaced and turned in via D2L on or before the final exam start time in .pdf format. Attendance in class for the final exam is not required. **Late papers will not be accepted.**

GRADING

There are a total of **100 points** for this class, broken down as follows:

Attendance	20%	2 points/class (20 points total)
Quizzes (3)	15%	5 points/quiz (15 points total)
Case Memos (8)	40%	5 points/Case Memo (40 points)
Response Paper	5%	5 points
Final Exam Paper	20%	20 points

These values are minimums for each grade:

A = 94 – 100

A- = 90-93

B+ = 88-89

B = 84-87

B- = 80-83

C+ = 78-79

C = 74-77

C- = 70-73

D+ = 69

D = 65-68

F = 0-64

SCHEDULE

DEVELOPMENT

WEEK 1 – September 6, 2018

Introduction to Copyright & The Business of Filmmaking

Understanding IP Rights – Avoiding Idea Theft / NDAs - Setting Up Your Business – Financing Your Project – Utilizing Tax Credits

- Syllabus Review / Overview of Course
- Introductions
- Lecture
- In Class Reading:
 - o US Copyright Office “Copyright Basics” brochure
 - o *Sheldon v. Metro-Goldwyn Pictures Corp.*
 - o *Musto v. Meyer*
- Primer on how to read case law and draft a Case Memo
- Introduction of Question Folder

Reading for Week 2:

[1] *Weller v. Flynn*

[2] *Pirates of the Caribbean Materials*

- Complaint
- Deadline Article
- Hollywood Reporter Article
- [3] Donna West / Tyler Perry Articles
- [4] *Three's Company* Article
- [5] *Axanar* Article

Assignment for Week 2: Case Memo for *Weller vs. Flynn* (examples available in Week 1 folder on D2L)

WEEK 2 – September 13, 2018

Creation of the Script

Copyright Infringement – Fair Use / Parody – Fan Fiction – Co-Writing – Work for Hire – Working with WGA Writers

- Question Folder Responses
- Discussion of Assigned Reading & Case Memos
- Lecture
- In Class reading and exercise:
 - *Benay vs. Warner Bros. Entertainment Inc.*

Reading for Week 3:

- [1] Sherlock Holmes Materials
 - Lawsuit Summary
 - *Mr. Holmes* Articles (2)
- [2] Tupac Shakur Life Story Rights Materials
 - Complaint
 - Deadline Article
 - Vibe Article

Assignment for Week 3: Case Memo for *Mr. Holmes* dispute.

WEEK 3 – September 20, 2018

Acquiring Rights

Adaptation - Life Rights - Option Agreements vs. Shopping Agreements

- Question Folder Responses
- Discussion of Assigned Reading & Case Memos
- Lecture
- In Class Reading & Exercise:
 - *Wolf of Wall Street* Article

Reading for Week 4:

- [1] Sample Option Agreement
- [2] Sample Shopping Agreement
- [3] *Gravity* Articles

Assignment for Week 4: Case Memo on *Gravity* dispute.

PRE-PRODUCTION

WEEK 4 – September 27, 2018

Understanding & Negotiating Industry Contracts

Production Services Agreements - Cast and Crew Services Agreements – Talent Contracts / Working with SAG Actors - Letters of Intent – Depiction Releases

- Question Folder Responses
- **GUEST SPEAKER:** Jacquelyn Jamjoom, Producer, Protea Films – Hiring Issues
- Discussion of Assigned Reading & Case Memos
- Lecture

Reading for Week 5:

[1] *Glatt v. Fox Searchlight Pictures*

Assignment for Week 5: Case Memo for *Glatt v. Fox Searchlight*.

WEEK 5 – October 4, 2018

Filmmaker as Employer

Independent Contractors vs. Employees – Child Actors – Sexual Harassment – State & Federal Employment Issues – Working with Unions / SAG Minimums

- Question Folder Responses
- **GUEST SPEAKER:** Heather Becker, Employment Law Partner at Laner Muchin – Employment Issues and Sexual Harassment on Film Sets
- Discussion of Assigned Reading & Case Memos
- Lecture

Reading for Week 6:

[1] Right of Publicity Act, 765 ILCS 1075

[2] Borat Litigation Materials

- *Cendo vs. Twentieth Century Fox*
- *John Doe vs. One America Productions*
- *Martin vs. Mazer*
- *Borat* Articles

[3] *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989)

Assignment for Week 6: Case Memo for *Rogers v. Grimaldi*.

PRODUCTION

WEEK 6 – October 11, 2018

Beware Others' Right of Privacy, Right of Publicity and Moral Rights

Filming in Public – Extras - Celebrity References / Lookalikes – Public Disclosure of Private Facts - Releases

- Question Folder Responses
- Discussion of Assigned Reading & Case Memos
- Lecture
- In Class Reading & Exercise
 - o *The 33 Materials*

Reading for Week 7:

- [1] *The Naked Cowboy v. CBS*
- [2] The Naked Cowboy Article
- [3] *Louis Vuitton Mallatier S.A. v. Warner Bros.*
- [4] *S. Victor Whitmill v. Warner Bros.*
- [5] Budweiser Product Placement Dispute – Deadline Article
- [6] Branding Deals – NY Times Article

Assignment for Week 7: Case Memo for *Louis Vuitton Mallatier v. Warner Bros.*

WEEK 7 – OCTOBER 18, 2018

Avoiding Trademark & Copyright Claims

Background Use of IP - Found Footage - Product Placement - Releases

- Question Folder Responses
- **GUEST SPEAKER:** Kate Rosholt, Senior VP of Global Marketing at United Entertainment Group - Media Integration
- Discussion of Assigned Reading & Case Memos
- Lecture

Reading for Week 8:

- [1] Chicago Permit Rules and Regulations

Assignment for Week 8: Action plan for shooting on the Chicago Riverwalk.

WEEK 8 – October 25, 2018

It's All About Location

Permits - Location Releases - Insurance - Guerilla Filmmaking

- Question Folder Responses
- **GUEST SPEAKER** – Ryan Jacobson, Entertainment Law Partner at SmithAmundsen
- Discussion of Assigned Reading & Case Memos
- Lecture

Reading for Week 9:

TBA by Guest Speaker

Assignment for Week 9: TBA by Guest Speaker

POST-PRODUCTION

WEEK 9 – November 1, 2018

Music Rights – Compositions – Stock Footage – Credits – Post Production Staff

- Question Folder Responses
- **GUEST SPEAKER:** Jeff Becker, Entertainment Law Partner at Swanson, Martin & Bell - Music Rights
- Lecture

Reading for Week 10:

- [1] *Buchwald v. Paramount Pictures Corp.*
- [2] *Buchwald v. Paramount* - WAPO Article
- [3] *Batfilms Productions v. Warner Bros.*
- [4] *Tamarind Lithography Workshop v. Sanders*
- [5] *Stephen King v. Innovation Books*

Assignment for Week 10: Case Memo (select from any of the cases assigned for Week 10)

WEEK 10 – November 8, 2018

Protecting Your Work and Collecting on Your Investment

Copyright Registration – Distribution - Profits – Practical Litigation Concerns

FINAL TAKE HOME EXAM DUE VIA D2L BY THURSDAY, NOVEMBER 15TH AT 5:45 PM. NO EXTENSIONS.

ATTITUDE

A professional and academic attitude is expected throughout this course. Measurable examples of non-academic or unprofessional attitude include, but are not limited to: talking to others while the professor is speaking, mocking another's work or opinion, cell phones ringing, emailing, texting or using the internet for purposes other than those approved for class. If any issues arise, a student may be asked to leave the classroom. The professor will work with the Dean of Students to navigate such student issues.

DePaul University is a community that thrives on open discourse that challenges students, both intellectually and personally. During class discussions, you are expected to be respectful of everyone's work and opinions. Personal attacks and disruptive actions will not be tolerated. In general, we want to create a positive and respectful environment for collaborative learning.

LAPTOPS AND CELL PHONES

Laptops are not permitted during class unless necessary to access materials for classroom discussion. During these times, I trust that, on your honor as a DePaul University student, you will not stray into and form of social media or email during class. Cell phones must be silenced and stowed at all times, except during breaks.

ACADEMIC INTEGRITY AND PLAGIARISM

This course will be subject to DePaul University's academic integrity policy. More information can be found at <http://academicintegrity.depaul.edu/>. If you have any questions be sure to consult with the professor. Plagiarism will earn you an immediate F in this course.

ACADEMIC POLICIES

All students are required to manage their class schedules each term in accordance with the deadlines for enrolling and withdrawing as indicated in the University Academic Calendar. Information on enrollment, withdrawal, grading and incompletes can be found at: <http://cdm.depaul.edu/enrollment>.

STUDENTS WITH DISABILITIES

Students who feel they may need an accommodation based on the impact of a disability should contact the instructor privately to discuss their specific needs. All discussions will remain confidential. To ensure that you receive the most appropriate accommodation based on your needs, contact the instructor as early as possible in the quarter (preferably within the first week of class), and make sure that you have contacted the Center for Students with Disabilities (CSD) at csd@depaul.edu.

Lewis Center 1420
25 East Jackson Blvd.
Phone number: (312) 362-8002
TTY: (773) 325-7296

ALTERATIONS

The professor reserves the right to alter the syllabus at any time. Students will be apprised of any and all changes with clear instructions should they occur.

ONLINE COURSE EVALUATIONS

Evaluations are a way for students to provide valuable feedback regarding their instructor and the course. Detailed feedback will enable the instructor to continuously tailor teaching methods and course content to meet the learning goals

of the course and the academic needs of the students. They are a key component to providing the highest quality of teaching. The evaluations are anonymous; the instructor and administration do not track who entered what responses. A program is used to check if the student completed the evaluations, but the evaluation is completely separate from the student's identity. Since 100% participation is our goal, students are sent periodic reminders over three weeks. Students do not receive reminders once they complete the evaluation. Students complete the evaluation online in CampusConnect during the Week 9 session.

OFFICE HOURS

My office hours will be held on Thursdays from 2:00 – 5:00 PM at 14 E. Jackson St., in Room 200B. Drop by or schedule a meeting. I am happy to talk with you about the course content or anything related to the movie and TV business, screenwriting, legal issues, career considerations, or anything else that is on your mind.

FEEDBACK

If you have feedback for me – suggestions, ideas, recommendations, 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.