

The Contracts Course Survey

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In the summer of 2009, I submitted a proposal to participate on a panel at the Southeastern Association of Law Schools (SEALS) annual meeting on contracts and pedagogy. Following the esteemed path of others before me,¹ I elected to talk about trends in teaching contracts, rather than offer any advice, which would clearly have been underwhelming given my limited experience in the academy. Three months prior to the conference I surveyed the then 196 ABA accredited law schools. The survey was designed to compile standard information regarding how law schools teach contracts. The survey focused on the environment of teaching contracts or the institutional setting, not the core classroom material covered.²

The survey was distributed to admissions directors, registrars and associate deans at these institutions through a web link. In total, 128 institutions responded to the online surveys (see Appendix A). Information on other schools was gathered by direct contact or by consulting the institution's

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1. See e.g., Peter Wendell & Robert Popovich, *The State of the Property Course: A Statistical Analysis*, 56 J. Legal Ed. 216, 216 (2006) (Peter wrote, "Wondering why anyone would care what [I] thought about the topic, [I] decided to avoid the topic the issue by conducting a survey of all [p]roperty professors to get a sense of what the [p]roperty course looks like nation wide, and what we, as [p]roperty professors, look like.") Certainly Professor Wendell's advice felt well suited for someone with my experience.
2. The survey asked nine questions (1) Which institution do you represent?; (2) How many cumulative credit hours of contracts are required of 1L's in your institution: 7, 6, 5, 4, 3?; (3) Are the cumulative hours of contracts taught in one semester or two?; (4) If your institution splits contracts into two semesters, what are the credit requirements in each semester: Fall 3/ Spring 3; Fall 3/ Spring 2; Fall 2/ Spring 3; Fall 4/ Spring 2; Fall 2/ Spring 4; Fall 4/ Spring 3; Fall 3/ Spring 4; N/A?; (5) In the event that your school splits contracts into more than one semester, does your institution retain the same instructor to teach successive semesters of that course to the same students (i.e., do your students retain the same instructor in Contracts I and Contracts II): Always Yes; If Possible Yes; We have no stated preference; N/A.; (6) Does your institution offer a course beyond the first year curriculum that has the word "contracts" in the course title? (7) Does your institution offer a course beyond the first year curriculum titled "drafting legal instruments" or something similar? (8) What is the average size of the first year contracts section in your institution?: Less than 25; 26-35; 36-45; 46-55; 56-65; 66-75; 76-85; More than 85. (9) Has your institution made an effort to create a "small" section of contracts for all first year students?; By small section, I mean smaller class sizes than other substantive first year subject courses.

website (see Appendix B). For convenience purposes, the data is presented according to tiers as defined by *U.S. News & World Report's* law school rankings for the year 2009,³ and readers interested in the raw data may contact me. In the tables below, "P.A. Schools" represents provisionally accredited schools.

The data collected reveals an interesting picture of the American contracts course. The average hourly credit total for the contracts course is 5.04 hours.⁴ Higher quartile institutions generally required fewer hours of contracts than lower quartile institutions.⁵ Most schools teach contracts across multiple semesters, though whether a school organizes its curriculum this way is usually determined by the number of credit hours required.⁶ For example, every school that offers contracts as a four-credit course teaches contracts in just one semester, and thirteen schools teach contracts in a one-semester, five credit hour component; the other twenty-six schools that require five units of contracts teach the course across two semesters.⁷ Likewise, the number of credit hours is often an important variable in determining how those semesters are split. The most common hourly formation was three credit hours in the fall semester and three credit hours in the spring semester. Several schools retain contracts instructors over multiple semesters.

The contracts course is also taught beyond the first year in a number of institutions. A good number of respondents indicated that they maintained courses in the upper division with the word "contracts" in the title. Other schools indicated that they taught a course similar in scope to one called "drafting legal instruments." Finally, the class size of the contracts course

3. Best Graduate Schools, 46-5 (U.S. News & World Report, 2009 ed.).
4. Compared to Wendell and Popovich's study of the property course, it appears that law schools still deem substantial hourly coverage in contracts as a significant part of the first year educational curriculum. *See* Wendell & Popovich, *supra* note 1, at 218. Anecdotal evidence might suggest the same. During the SEALS conference, one of the participants who taught at a school that required six credit hours said that the reason that contracts remains a six hour course in his institution is "the faculty's commitment to the belief that contracts forms the underlying basis of most legal interactions, either by analogy or in actuality." Unknown commentator, Panel on Contracts Pedagogy, SEALS conference (August 2009).
5. The average hourly requirement for first tier schools is 4.45. The average hourly requirement for second tier schools is 4.74. The average hour requirement for third tier schools is 5.46. The average hour requirement for fourth tier schools is 5.58. The average hour requirement for provisionally accredited schools is 5.9. Interestingly, number of required credit hours increases as the tiers move up.
6. For a similar observation, *see* Wendell & Popovich, *supra* note 1, at 217 ("the institutional variable that intuitively has the greatest potential impact on a professor's responses is the number of credit hours allocated to the basic property class").
7. The thirteen schools are: Brooklyn School of Law, Catholic University of America, Chicago-Kent School of Law, Fordham, Northeastern, Seton Hall University, Syracuse University, University of California—Berkeley, University of California—Davis, UCLA, University of Nevada, University of North Carolina, and University of Washington.

varied dramatically.⁸ Many schools indicated that they maintained a policy for creating a small section specifically for first year contracts courses.

Table 1. Cumulative Credit Hours

How many cumulative credit hours of contracts are required of 1L's at your institution?⁹

	3	4	5	6	7	Total
Overall	6	63	39	82	1	191
Tier 1	1	31	11	6	0	49
Tier 2	4	21	11	16	0	52
Tier 3	0	6	9	25	0	40
Tier 4	1	4	6	28	0	39
P.A. Schools	0	1	2	7	1	11

Table 2. Number of Semesters of Contracts

Are the cumulative hours of contracts taught in one semester or two?

	One Semester	Two Semesters	Total
Overall	81	111	192
Tier 1	38	11	49
Tier 2	31	21	52
Tier 3	6	34	40
Tier 4	5	35	40
P.A. Schools	1	10	11

8. Compare Wendell & Popovich, *supra* note 1, at 219 (“the size of the typical property class runs the gamut”).
9. In reviewing the data, it is unclear whether institutions that teach contracts in three credit hours require a second course that does not include the word contracts in the course title, i.e. sales and leases, sale of goods, etc. An inverse problem is schools that identify a second required course in contracts but which teach it strictly as an Article 2 sales course. For purposes of this survey, an Article 2 sales course that is required in the first year curriculum was deemed to be a first year contracts course, whereas a non-required sales and leases course would be deemed to be an upper level contracts course. Likewise, the Louisiana civilian curriculum schools presented a similar problem in computing courses that are not denominated as contracts, i.e., obligations. Thus, for purposes of this survey, if the institution required obligations as a part of its first year curriculum, then the obligations course was computed as a contracts course; if it was merely an elective, the course was counted as an upper-level contracts course.

Table 3. Hours by Semester of Contracts

If your institution splits contracts into two semesters, what are the credit requirements in each semester?¹⁰

	2/4	4/2	4/3	3/3	3/2	2/3	Total
Overall	0	2	1	79	16	11	109
First tier	0	0	0	6	1	4	11
Second Tier	0	1	0	15	3	2	21
Third Tier	0	1	0	24	5	3	33
Fourth Tier	0	0	0	27	6	1	34
P.A. Schools	0	0	1	7	1	1	10

Table 4. Retention of Instructors

In the event that your school splits contracts into more than one semester, does your institution retain the same instructor to teach that course to the same students?

	If Possible, Yes	No	Total
Overall	59	9	68
Tier 1	4	5	9
Tier 2	13	2	15
Tier 3	17	0	17
Tier 4	19	2	21
P.A. Schools	6	0	6

10. Because no school teaching contracts in four unit hours or fewer offered the course in more than one semester, the data is presented only for schools teaching contracts in five, six, and seven credit hours.

Table 5. Course Beyond First year with Contracts in Title

Does your institution offer a course beyond the first year curriculum that has the word “contracts” in the course title?

	Yes	No	Total
Overall	65	60	125
Tier 1	22	17	39
Tier 2	19	14	33
Tier 3	10	12	22
Tier 4	10	14	24
P.A. Schools	4	3	7

Table 6. Drafting Legal Instruments Course Beyond First Year

Does your institution offer a course beyond the first year curriculum titled “drafting legal instruments” or something similar?

	Yes	No	Total
Overall	91	34	125
Tier 1	29	10	39
Tier 2	24	10	34
Tier 3	18	4	22
Tier 4	13	10	23
P.A. Schools	7	0	7

Table 7. Section Size of Contracts Course

What is the average size of the first year contracts section in your institution:
Less than 25; 26-35; 36-45; 46-55; 56-65; 66-75; 76-85; More than 85.

	<25	26-35	36-45	46-55	56-65	66-75	76-85	>85	Total
Overall	2	5	8	13	19	24	31	19	121
Tier 1	1	2	5	2	5	4	6	13	38
Tier 2	0	2	2	3	4	8	12	2	33
Tier 3	1	1	0	4	3	4	7	2	22
Tier 4	0	0	1	3	3	7	5	2	21
P.A. Schools	0	0	0	1	4	1	1	0	7

Table 8. Small Section Size

Has your institution made an effort to create a "small" section of contracts for all first year students; i.e., smaller than other substantive first year courses?

	Yes	No	Total
Overall	37	83	120
Tier 1	17	17	34
Tier 2	11	24	35
Tier 3	6	16	22
Tier 4	3	19	22
P.A. Schools	0	7	7

Conclusion

This data presented is important for a number of reasons. The American Bar Association, through its accreditation process, has exerted new pressures on law schools to reform their curriculums in light of bar passage outcomes and the desire to improve skills based training. The specter of more stringent ABA standards relating to bar passage¹¹ along with the increased pressure on schools to fulfill academic support standards for all students (not just students who fall into at risk categories),¹² increases pressure on schools for more individualized attention. Similarly, the ABA's focus on skills-based learning places additional pressure on schools to provide skills components in courses as early as the first year.¹³ Law schools attempting to meet these demands within the traditional law school curriculum find themselves competing for hours against the curriculum. As Michael Fitts has suggested, "in spite of—or perhaps because of—the preeminence of our system of legal education, the last thirty years have seen sustained debates over questions surrounding where legal education should develop most and the nature and extent of the regulatory framework that helps oversee its development."¹⁴ In short, new ABA standards and pressures have caused an "hours" problem for schools attempting to comply, while also offering level-appropriate coverage for students.

One statistic that stands out in our survey is the increase in contracts contact hours at lower-ranked schools. Schools in the first quartile overwhelmingly taught contracts in one-semester, four unit courses (though there was variation). In the second quartile, the responses were nearly even (twenty-five schools required four or fewer hours, while twenty-eight schools required

11. The proposed change in bar pass standards are reflected in the new proposed interpretation of ABA Standard 301-6. The current standard requires that law schools have a 75 percent ultimate bar pass rate or that students pass at a rate no lower than 15 percent below the blended bar pass rates for graduates from ABA accredited law schools. The proposed interpretation changes those rates to an ultimate rate of 80 percent and a first time rate no lower than 10 percent of the pass rate from takers from ABA institutions. See Society of American Law Teachers Statement On Proposed Changes to Increase the Bar Passage Requirements in Interpretation 301-6, *available at* <http://www.saltlaw.org/userfiles/7-6-11SALTInterpretation301-6.pdf>.
12. See Matthew D. Staver & Anita L. Staver, *Lifting the Veil: An Expose' on the American Bar Association's Capricious Accreditation Process*, 49 *Wayne L. Rev.* 1, 85 (2003) (describing Barry Law's ABA accreditation process and the emphasis on academic support in inquiry of the program of legal education). Of course, academic support has changed over the years from an interventionist program to a program designed to enhance learning. See Ellen Y. Suni, *Academic Support at the Crossroads: From Minority Retention to Bar Prep and Beyond—Will Academic Support Change Legal Education or Itself be Fundamentally Changed?*, 73 *UMKC L. Rev.* 497, 501 (2004).
13. See American Bar Association, Section of Legal Education and Admissions to the Bar, *Report of the Outcome Measures Committee*, *available at* <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>.
14. Michael A. Fitts, *What Will Our Future Look Like and How Will We Respond?*, 96 *Iowa L. Rev.* 1539, 1539 (2011).

five or more hours). However, in the third and fourth quartiles and among provisionally accredited institutions, a vast majority of schools required six unit hours of contracts (third quartile: twenty-five out of forty schools; fourth quartile: thirty-six out of fifty; and provisionally accredited schools: eight out of eleven).

This could be explained in a number of ways. One reason could be that lower quartile schools perceive the need for more contact hours for students to be successful on the bar exam. That perception may be based on the assumption that students require more time to absorb the material presented (i.e. that students at lower tier schools do not understand material as quickly as students at higher tier schools); or it could be built around the assumption that significant class time is necessary to cover all the material in a particular course because instructors cannot rely on students at lower tier institutions to learn it outside of the classroom.¹⁵ Another explanation, perhaps intuitive, may be that higher ranked schools offer more resources in the form of other courses, clinics, and opportunities for learning that fill the hours-gap that lower tiered schools (or more poorly funded schools) cannot afford. This multi-versed approach could account for providing students with a more diverse perspective on contracts, outside of the normal contracts course. And, of course, the answer may be pieces of all of these responses and assumptions.

Whatever the reasons may be for schools electing to teach contracts in the manner that they do, it is clear that schools will have to make hard choices under varying institutional constraints.

15. For two studies of curriculum reform towards bar success describing this conflict, *see* Donald Zeigler, Joanne Ingham & David Chang, Curriculum Design and Bar Passage: New York Law School's Experience, 59 J. Legal Educ. 393, 399-400 (2010); and Derek Alphan, Tanya Washington & Vincent Eagan, Yes We Can, Pass the Bar: University of the District of Columbia; David A. Clarke, School of Law Bar Passage Initiatives and Bar Pass Rates—From the Titanic to the Queen Mary, 14 U.D.C.L. Rev. 9, 21 (2011) (describing the tension between curriculum change and other factors in bar success).

Appendix A
Law Schools That Responded to the Online Survey

Columbia University
University of California, Berkeley
University of Chicago
University of Pennsylvania
Northwestern University
University of Michigan
Duke University
Cornell University
University of California, Los Angeles
Vanderbilt University
University of Southern California
Washington University
University of Alabama Law School
University of California, Davis
University of Georgia
University of Wisconsin
University of Arizona
University of North Carolina
University of California, Hastings
Wake Forest University
University of Colorado
American University
Brigham Young University
University of Florida
Arizona State University
Florida State University
University of Connecticut
Cardozo School of Law
Case Western Reserve University
Temple University
University of Houston
Lewis & Clark College
University of San Diego
Villanova University

Brooklyn Law School
Baylor University
Dickinson School of Law
Georgia State University
University of Missouri—Columbia
Loyola Law School, Los Angeles
University of Kansas
Louisiana State University
University of Nevada, Las Vegas
Chicago-Kent College of Law
Rutgers University, Newark
University of Denver
Seattle University Law School
University of Miami
Santa Clara University
Loyola University, Chicago
University of South Carolina
De Paul University
Catholic University of America
Marquette University
St. Louis University
University of Louisville, Louis D. Brandeis School of Law
University of San Francisco
Gonzaga University
Hofstra University
State University of New York, Buffalo
Cleveland State University
Creighton University School of Law
Samford University
University of Akron Law School
University of Arkansas, Little Rock
University of Hawaii at Manoa
University of Memphis, Cecil C. Humphreys School of Law
University of Mississippi
University of North Dakota
University of the Pacific, McGeorge School of Law
University of South Dakota

University of St. Thomas School of Law
Wayne State University
West Virginia University
William Mitchell College of Law
Ave Maria School of Law
Barry University, Orlando
California Western School of Law
Campbell University School of Law
Capital University Law School
Florida Coastal School of Law
Florida International University
Golden Gate University
John Marshall Law School
Mississippi College School of Law
Northern Illinois University
Northern Kentucky University
Roger Williams University
Southern Illinois University
St. Thomas University School of Law
Texas Wesleyan University
Touro College, Jacob D. Fuchsberg Law Center
University of D.C., David A. Clarke School of Law
University of Tulsa
University of Dayton
University of Detroit Mercy
Washburn University
Whittier Law School
Charleston School of Law
Charlotte School of Law
Drexel University, Earle Mack School of Law
Elon University
Faulkner University
University of Puerto Rico
University of La Verne
Western State University

Appendix B
Schools With Information From Institution Website

Yale Law School
Harvard Law School
Stanford Law School
New York University
University of Virginia
University of Texas
Emory University
University of Minnesota
University of Notre Dame
Washington and Lee University
University of Illinois College of Law
Ohio State University
George Mason University
University of Maryland
Tulane University
Southern Methodist University
University of Utah, S.J. Quinney College of Law
University of Tennessee, Knoxville
University of Cincinnati
University of Kentucky
Pepperdine University
Seton Hall University
Indiana University School of Law, Indianapolis
University of New Mexico
University of Oklahoma
University of Richmond
University of Nebraska
University of Pittsburgh
Rutgers University, Camden
University of Oregon
Northeastern University
St. John's University
Syracuse University
Albany Law School

Chapman University School of Law
Hamline University
Howard University
University of Maine
University of Montana
New York Law School
Ohio Northern University
Pace University
Stetson University
Suffolk University
Texas Tech University
University of Missouri, Kansas City
University of Arkansas
University of Baltimore
University of Idaho
University of Vermont
Willamette University
University of Wyoming
Appalachian School of Law
CUNY School of Law
Duquesne University
New England School of Law
North Carolina Central University
Nova Southeastern University
Oklahoma City University
Regent University
South Texas College of Law
Southern University Law Center
Southwestern Law School
St. Mary's School of Law
Texas Southern University, Thurgood Marshall School of Law
Thomas M. Cooley School of Law
Thomas Jefferson School of Law
Valparaiso University
Western New England University
Widener University
John Marshall Law School, Atlanta

Florida A&M University
Liberty University
Phoenix School of Law