

**LEGAL FOUNDATIONS OF BUSINESS**  
**BUSINESS SIMULATION**

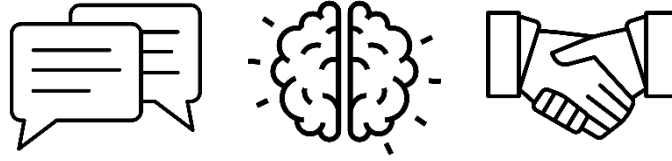
In the following pages, you will find assignments that we will complete primarily in class. You will be in a group with **one or two** other students who sit near you in the class. **Teams are capped at three.** This will be your team for the semester and this will facilitate completing the work during class time as we apply the concepts from the course to real-life scenarios. Thus attending class is critical for the success of your team. However, there will be times you may need to work outside class to complete them.

My recommendation is that you upload this document as a Google doc that all team members can access and work on. You will have two opportunities before the end of the semester to let me know if all team members contributed to the business simulation. It is possible that over the course of our time together that one member may not be in class for one reason or another. However, as long as each team member contributes to at least 90% of the project, I would consider that full participation. If someone is not contributing at a level your team agrees on, please let me know so we can help facilitate a decision. The points associated with this project assume each of you contributes meaningfully to the completion.

**Due Dates:**

Business Simulation projects will be due on Sundays. It is your responsibility to turn them via Brightspace on time. If you add the class after a due date, it is your responsibility to work with the professor to create a new due date for you and complete it in a timely manner

- **Team Rules** submitted via Brightspace by Sunday, September 3 at 11:59 p.m.
- **Personal Ethics Statement** via Brightspace by Sunday, September 10 at 11:59 p.m.
  - **This is an individual assignment – all others will be completed as a team.**
- **Submit the assignments on Pages 1-19** by Sunday, October 8, via Brightspace by 11:59 p.m.
- **Submit the contracts drafted via the assignment on Page 20 and contract review on pages 21-28** by Sunday, October 29, via Brightspace by 11:59 p.m.
- **The final portfolio will be submitted via Brightspace by Wednesday, December 6, at 11:59 p.m.** One member per team should submit the portfolio. The combined portfolio is worth up to 150 points of the possible 1,000 that can be earned in this class. It is the point equivalent of three quizzes.



You will have two opportunities to give feedback on your teammates. Once by Sunday, October 8th, and the other time by Wednesday, December 6. My expectation is that each teammate will contribute equally to the simulation. However, if that is not happening, you may reach out to me at any point – either through the surveys which are found under the quiz section in Brightspace or in class, and I will help you navigate the situation. We will start with the team rules you will formulate on the following pages.

## Team Rules

**Due Date: Sunday, September 3 at 11:59 p.m. via Brightspace**

The first step to a successful team is establishing the rules that will guide your interactions. Knowing your StrengthFinders Strengths (You can find yours at the Purdue Gallup portal: <https://www.purdue.edu/vpsl/leadership/myStrengths/returner-portal-instructions.html>) can help you identify the strengths that each person brings to your team as well as potential blindspots and action steps that will help you be a successful team.

Who are your team members? And what are each of your Strengths? Remember, no Strength is better than another.

<b>Name</b>	<b>Contact Info (email, phone number, etc.)</b>	<b>Relevant skills, knowledge, or resources (Include you Gallup Strengths) (content knowledge about the business, presentation skills, artistic skills, important connections to other people)</b>

What team rules will your team adopt related to completing the assignments?

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Timeliness of submissions?

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Splitting the workload?

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Do you have other team rules?

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### **Methods for resolving an impasse:**

**Step 1:** The group members will isolate areas of disagreement, and the group will come to a consensus. If no consensus is reached, proceed to Step 2.

**Step 2:** The leader will decide the relevance or importance of the dispute and may postpone the conflict if its relevance or importance is deemed questionable or minimal.

**Step 3:** The leader will decide the amount of time for discussion or arbitration before calling a vote.

**Step 4:** The leader will call a vote. If the vote is a stalemate, the leader makes a final decision.

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### **Penalties for Failure to Meet the Terms of this Contract**

Each time a term is breached by a member, another member of the group needs to point out the failure at the time it occurs. The group will then vote on whether they agree with that member's view. If a majority agrees that a term has been breached, a record of the failure is to be recorded citing the individual, the reason and the class. Remember that this is your group so it's up to your group to hold members to the terms. If the group does not, then the group will have to live with the problem.

When an individual member has breached contract terms three times, the group needs to contact the professor, providing the recorded of failures.

Should there be a fourth breach, the group has to inform the professor of the breach. The group then has the right to fire the group member subject to the professor's approval. The Professor will then determine how the individual will perform ongoing work that has been assigned to the group.

**Team Touchpoints:** We understand that we will each have two opportunities during the semester to alert our professor to how the team is functioning via surveys in BrightSpace. We can also email our professor for assistance at any time.

### **Indicate full team agreement on these decisions:**

All team members must indicate their agreement by signing below.

Signature 1 \_\_\_\_\_

Signature 2 \_\_\_\_\_

Signature 3 \_\_\_\_\_

## What's your company?

Team \_\_\_\_\_  
\_\_\_\_\_

In this first part of the portfolio, your team will create a business that you will then use for all the other assignments. Be thoughtful about what you choose for your product or service because all future assignments will be related to this initial decision. Answer the following questions and assignments related to your company.

What state will your company operate in?

\_\_\_\_\_

What product and industry will your company operate in?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is the name of your company? Do a name check via your state's Secretary of State website (for example: <https://www.in.gov/core/mobile/business-search.html>)

\_\_\_\_\_  
\_\_\_\_\_

Is it available? You can find out by searching the Secretary of State's website for the state you are forming your company in.

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What is the stated purpose of your business? This is what courts will use to decide whether the board and management are authorized to take action.

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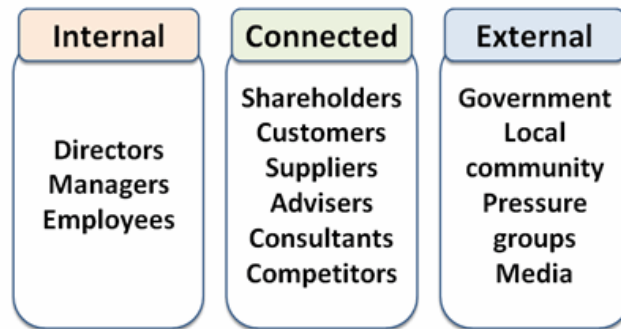
What role is each team member taking in the company? Some suggestions: President, CFO, Chief Marketing Officer, VP of Human Resources, etc.

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## Develop Your Corporate Credo or Ethics Statement

You only have to look at the Wall Street Journal or New York Times on any given day to see that companies are embroiled in a scandal on any given day. Having guiding ethical principles can be a key set of guardrails for employees and management. In this part of the assignment you will analyze the stakeholders who are impacted by your company and how you will commit to treating them and making decisions. You can reference the Johnson & Johnson credo (<https://www.jnj.com/credo/>) as an example or most companies' social responsibility webpages.

### Business Stakeholder Analysis



1. DEFINE THE PROBLEM FROM THE DECISION MAKER'S POINT OF VIEW.
2. IDENTIFY WHO COULD BE INJURED BY THE CONTEMPLATED ACTION.
3. DEFINE THE PROBLEM FROM THE OPPOSING POINT OF VIEW.
4. WOULD YOU (AS THE DECISION MAKER) BE WILLING TO TELL YOUR FAMILY, YOUR SUPERVISOR, YOUR CEO, AND THE BOARD OF DIRECTORS ABOUT THE PLANNED ACTION?
5. WOULD YOU BE WILLING TO GO BEFORE A COMMUNITY MEETING, A CONGRESSIONAL HEARING, OR A PUBLIC FORUM TO DESCRIBE THE ACTION?
6. WITH FULL CONSIDERATION OF THE FACTS AND ALTERNATIVES, REACH A DECISION ABOUT WHETHER THE CONTEMPLATED ACTION SHOULD BE TAKEN.

As you consider what will be the guiding principles for your company, consider the following questions:

Who are your stakeholders?

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How do you prioritize them?

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What product or service is your company creating?

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Who could be harmed?

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What safeguards should/could be put in place to minimize harm?

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What can you do to keep shareholder value in perspective?

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What values are important to you as the leaders of the company?

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Will those values become part of the guiding principles of your company? How?

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How will you turn those values into action statements or commitments as a company?

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## Personal Ethics Statement

Because I believe pre-thinking your ethics is important, this week I want you to reflect on your personal ethical values. What are non-negotiables to you? What standard do you hold yourself to? How do those values bleed over into your interactions with colleagues, clients, and managers? Your personal ethics statement should be approximately 250 words.

**Writing Expectations:** Effective written communications are considered some of the most important skills business professionals can develop. It is absolutely essential that all students in this course are able to communicate their thoughts and opinions in a written format. It is expected that all written assignments in this course will be developed in a professional manner. Students in this class are expected to follow standard writing conventions used in business, including:

- Block Paragraphs
- Complete sentences
- No run on sentences or sentence fragments
- Well structured, coherent sentences
- Correct use of punctuation
- Correct spelling
- Correct grammar
- Proper memo formatting

**Length:** 250 words minimum or between one and two double-spaced pages not including any references.

**Style:** There are no specific style requirements for this paper. You are free to use APA, MLA, or any other style of your choice. However, I do expect any quotes to be cited. Plagiarism will result in an automatic zero on the paper. You also may not use ChatGPT or AI to write this assignment. Because it is reflective in nature, using one of those tools will not help you identify the values that matter most to you nor explain why those matter to you. This is a very personal reflective assignment.

If you have any questions about what is considered plagiarism you may ask me or reference this article:

[https://owl.purdue.edu/owl/research\\_and\\_citation/using\\_research/avoiding\\_plagiarism/is\\_it\\_plagiarism.html](https://owl.purdue.edu/owl/research_and_citation/using_research/avoiding_plagiarism/is_it_plagiarism.html).

**Format:** Upload your completed assignment to Brightspace as either a .doc or pdf file, to ensure that papers can be easily read. Your name must be on your statement.

**Due:** Your .doc or .pdf file is due to Brightspace **Sunday, September 10th by 11:59 pm ET**. Your paper copy of the paper will be due at the start of class.

Here is a link to help you think about your personal ethics:

- <https://josephsononbusinessethics.com/2010/12/12-ethical-principles-for-business-executives/>

I look forward to reading your ethical statements.



## Real Estate

One of the first questions a business team needs to answer is: Where will we be located? Now that we've completed chapters 48 and 50, which should your company do: buy property or lease?

What are some factors that would impact which is the right decision for your company?

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Which option have you chosen?

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Why did you choose that one?

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Are there any drawbacks or concerns you have about that decision? Why?

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What factors would change your decision? Why?

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Also complete the lease assignment on the following pages. This lease assignment has practical applications for you as a college student who has or will sign a lease in the near term. The lease checklist is something you should take with you and use as a tool to review future leases. It's a great tool for evaluating residential leases. You may sign in the future.

# EXAMPLE LEASE AGREEMENT<sup>1</sup>

## APARTMENT LEASE

By this agreement, made and entered into on *June 1, 2022*, between Barry Tricky, referred to as "landlord," and Susan Smith and Debby Jones, referred to as "tenant," landlord demises and lets to tenant, apartment no. 29 of the building *The First Year Adventure*, situated at *500 South State Street., West Lafayette, Indiana*, to be used and occupied by tenant as a residence and for no other use or purpose whatever, for a term of *one year* beginning on *June 1, 2022*, and ending on *June 1, 2022*, at a rental of \$625 per month, payable monthly, in advance, during the entire term of this lease, to landlord at *500 South State Street., West Lafayette, Indiana*, or to any other person or agent and at any other time or place that landlord may designate.

### THE TENANT FURTHER AGREES:

#### 1. SECURITY DEPOSIT

On the execution of this lease, tenant deposits with landlord \$500, receipt of which is acknowledged by landlord, as security for the faithful performance by tenant of the terms of this lease agreement, to be returned to tenant, without interest, on the full and faithful performance by tenant of the provisions of this lease agreement.

#### 2. NUMBER OF OCCUPANTS

Tenant agrees that the leased apartment shall be occupied by no more than *two* persons, consisting of *two* adults and *no* children under the age of 18 years without the prior, express, and written consent of landlord.

#### 3. ASSIGNMENT AND SUBLEASING

Without the prior, express, and written consent of landlord, tenant shall not assign this lease, or sublease the premises or any part of the premises. Consent by landlord to one assignment or subleasing shall not be deemed to be consent to any subsequent assignment or subleasing.

#### 4. SHOWING APARTMENT FOR RENTAL

Tenant grants permission to landlord to show the apartment to new rental applicants at reasonable hours of the day, within *25 days* of the expiration of the term of this lease.

#### 5. ENTRY FOR INSPECTION, REPAIRS,-AND ALTERATIONS§

Landlord shall have the right to enter the leased premises for inspection at all reasonable hours and whenever necessary to make repairs and alterations of the apartment or the apartment building, or to clean the apartment.

#### 6. UTILITIES

Electricity, gas, telephone service, and other utilities are not furnished as a part of this lease unless otherwise indicated in this lease agreement. These expenses are the responsibility of and shall be obtained at the expense of tenant. Charges for *water and garbage service* furnished to the apartment are included as a part of this lease and shall be borne by landlord.

#### 7. REPAIRS, REDECORATION, OR ALTERATIONS

Landlord shall be responsible for repairs to the interior and exterior of the building, provided; however, -repairs required through damage caused by tenant shall be charged to tenant as additional rent. It is agreed that tenant will not make or permit to be made any alterations, additions, improvements, or changes in the leased apartment without in each case first obtaining the written consent of landlord. Consent to a particular alteration, addition, improvement,

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<sup>1</sup> This lease activity was originally produced by the University of Arizona's **Narron School of Family and Consumer Science** Take Charge Today program. The version Cara Putman originally found was from 2010. <https://takechargetoday.arizona.edu/>

or change shall not be deemed consent to or a waiver of restrictions against alterations, additions, improvements, or changes for the future. All alterations, changes, and improvements built, constructed, or placed in the leased apartment by tenant, with the exception of fixtures removable without damage to the apartment and movable personal property, shall, unless otherwise provided by written agreement between landlord and tenant, be the property of landlord and remain in the leased apartment at the expiration or earlier termination of this lease.

#### 8. PARKING SPACE

Tenant is granted a license to use parking space No. 2 in the apartment building for the purpose of parking one motor vehicle during the term of this lease.

#### 9. REDELIVERY OF PREMISES

At the end of the term of this lease, tenant shall quit and deliver up the premises to landlord in as good condition as they are now, ordinary wear, decay, and damage by the elements excepted.

#### 10. DEFAULT

If tenant defaults in the payment of rent or any part of the rent at the times specified above, or if tenant defaults in the performance of or compliance with any other term or condition of this lease agreement or of the regulations attached to and made a part of this lease agreement, which regulations shall be subject to occasional amendment or addition by landlord, the lease, at the option of landlord, shall terminate and be forfeited, and landlord may reenter the premises and retake possession and recover damages, including costs and attorney fees. Tenant shall be given written notice of any default or breach. Termination and forfeiture of the lease shall not result if within 10 days of receipt of such notice, tenant has corrected the default or breach or has taken action reasonably likely to effect correction within a reasonable time.

#### 11. ATTORNEY FEES

In the event that any action is filed in relation to this lease agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

In witness, each party to this lease agreement has caused it to be executed at *B, T. Rentals* on the date indicated below.

Date: June 1, 2022

Keys Issued: \_\_\_\_\_

Landlord: \_\_\_\_\_

Automobile license, make and model kept on premises:

Tenant(s): \_\_\_\_\_

Blue Honda Accord KS0,365

# LEASE CHECKLIST WORKSHEET

Directions: Compare the *Example Lease Agreement* to the checklist below. If the term is included in the example lease, put a checkmark in the box. If the term is not included, write 'no.' Then answer the question on a separate sheet of paper and attach it to this checklist to hand it in.

<b>General Terms</b>			
Name of all tenants		Length of lease	
What happens when lease expires		Who is allowed to live in the rental	
<b>Rent</b>			
Total rent amount		Rent charged to each tenant	
Grace period before late charges assessed & amount charged		Who is responsible for paying utilities	
<b>Moving Out</b>			
Amount of time the tenant must give to landlord before moving out		Amount of time landlord must give tenant if they want tenant to leave	
Rules for cleaning apartment		Is subleasing allowed	
<b>Rules and Regulations</b>			
Noise restrictions		Pets allowed	
Decorating procedures		How to hang items on the wall	
Landlord's right of entry		Rules for using the rental	
<b>Maintenance</b>			
Who is responsible for yard work and clearing sidewalks		Who handles maintenance and repair problems	
<b>Furnishings</b>			
If laundry facilities are included and the price		Are recreational facilities included	
Household items provided		Parking rules	
<b>Extra Fees</b>			
Security deposit specifications		Who is liable for accidents in unit	
Is renter's insurance required		Are there utility connection fees	
<b>Legal Fees / Disasters</b>			
What happens if the unit becomes uninhabitable due to a disaster		Who pays legal fees for a dispute between the tenant and the landlord	

1. Identify five terms missing in the lease agreement and describe why they need to be included. (5 points)

## Insurance

Now that you've selected your company and location, another factor you'll need to investigate is what type of insurance your business will need to help mitigate the risk. Define the following types of insurance:

Business Liability Insurance:

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Fire Insurance:

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Homeowners Insurance:

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Renter's Insurance:

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Automobile insurance:

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Life Insurance:

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Term insurance (life):

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Whole Insurance (life):

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Identify at least three that your company will need:

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Why did you select those? What risk will the insurance mitigate?

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Do you have any concerns that should still be addressed?

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## Agency

Agency law is the umbrella for the area of law that also includes employment law. Now that you have a location and some basic insurance, you will also need people to help you do the work. The question is how you want to structure that relationship. Let's start with two options:

1. Independent Contractor
2. Employee

Define Independent Contractor:

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Define Employee:

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Which makes the most sense for your company? Why does it provide the best protection?

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Is it possible to use both ICs and Employees?

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Is there a benefit to that arrangement?

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What are three areas/or issues you should be aware of when creating the class of agent that you chose?

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## SAMPLE JOB APPLICATION

*PLEASE NOTE: It is important that you complete all parts of the application. If your application is incomplete or does not clearly show the experience and/or training required, your application may not be accepted. If you have no information to enter in a section, please write N/A.*

Name and Address							
Name (First, MI, Last)				Social Security Number			
Mailing Address							
City, State, and Zip Code							
Telephone				Alternate Phone			
If under 18, please list age				Email			
Job Type							
Days/hours available to work							
<input type="checkbox"/> No preference	<input type="checkbox"/> Mon.	<input type="checkbox"/> Tues.	<input type="checkbox"/> Wed.	<input type="checkbox"/> Thurs.	<input type="checkbox"/> Fri.	<input type="checkbox"/> Sat.	<input type="checkbox"/> Sun.
I am seeking a:		<input type="checkbox"/> Full-time job		<input type="checkbox"/> Part-time job		<input type="checkbox"/> Full or Part-time	
How many hours can you work weekly?			Can you work nights?			Date available to begin:	
Have you ever been employed by this organization the past?			<input type="checkbox"/> Yes			<input type="checkbox"/> No	
I certify that I am a U.S. citizen, permanent resident, or a foreign national with authorization to work in the United States.			<input type="checkbox"/> Yes			<input type="checkbox"/> No	
Have you ever been convicted of, or entered a plea of guilty, no contest, or had a withheld judgment to a felony?			<input type="checkbox"/> Yes			<input type="checkbox"/> No	
If yes, please explain:							
Work Experience							

Please list **ALL** work experience beginning with your most recent job held, attach additional sheets if necessary.

Company	Name of last supervisor:	Hrs/week:
Address	Start Date:	Starting Salary:
	End Date:	Final Salary:
City, State, and Zip Code		
Phone number:	Your last job title:	
Reason for leaving (be specific):		
List the jobs you held, duties performed, skills used or learned, advancements or promotions while you worked at this company.		

Company: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Supervisor: \_\_\_\_\_  
 Job Title: \_\_\_\_\_ Starting Salary \$ \_\_\_\_\_ Ending Salary \$ \_\_\_\_\_  
 Responsibilities: \_\_\_\_\_  
 From: \_\_\_\_\_ To: \_\_\_\_\_ Reason for Leaving: \_\_\_\_\_  
 May we contact your previous supervisor for a reference?  Yes  No

Company: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ Supervisor: \_\_\_\_\_  
 Job Title: \_\_\_\_\_ Starting Salary \$ \_\_\_\_\_ Ending Salary \$ \_\_\_\_\_  
 Responsibilities: \_\_\_\_\_  
 From: \_\_\_\_\_ To: \_\_\_\_\_ Reason for Leaving: \_\_\_\_\_  
 May we contact your previous supervisor for a reference?  Yes  No

Education				
School	Location (mailing address)	Years Completed	Major	Degree or Diploma
High School				



<b>College or Business/Trade School</b>				
<b>Military</b>				
Have you ever been in the Armed Forces?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Date entered	
Are you now a member of the National Guard?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Discharge date	
Specialty				

## Job Applications

As we explored in Chapters 38 and 39, employment law includes a host of laws. In class we examined a job application for questions that could run afoul of the EEOC laws.

Now that you've reviewed the application, think about how it applies to your specific business. List the questions on the job application on the prior pages that could cause legal issues for your company and explain the legal reason why that could occur. Which law is at issue? You can use the <http://eeoc.gov> and <http://dol.gov> websites to help with research.

Question 1:

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Implicated Law:

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Issue:

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Why does this matter:

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Question 2:

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Implicated Law:

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Issue:

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Why does this matter:

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Question 3:

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Implicated Law:

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Issue:

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Why does this matter:

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## Contracts

For this portion your team will draft two contracts:

1. **Non-compete Agreement:** We discussed non-competes and the three elements that a court will examine to determine whether a non-compete is enforceable. Create a two-to-three-page contract that addresses those three pillars in a way that the contract will be enforceable in court. This is a key technique to protect your trade secrets and company from someone leaving and going to a competitor. You can see a sample here: <https://www.betterteam.com/non-compete-agreement-template>; however, do not copy and paste this contract.

While attorneys use forms to create contracts, we also have to use our critical thinking skills to strategically apply the facts of each situation to the contract we are drafting. Chat GPT and other AI tools are actually getting lawyers in trouble because those tools are creating cases that don't actually exist. When lawyers rely on them, they are sanctioned and punished in other ways. That is why using your critical thinking and research skills will always be important.

Thus, for this assignment, you may use a form as a sample and starting place but make sure you tailor it to your company and how you need to protect your company when employees leave. Thus the contract will need to focus on a specific employee and think strategically about that employee's role and how the company will be harmed if the employee leaves. The restrictions will need to be tailored to that exact employee.

2. **Contract for sale of goods or services.** Your team will negotiate with another team for the purchase or sale of goods or services between your companies. We will review a basic contract in class. This contract should be at least two-to-three-pages as well. Don't forget to think about what should happen if the contract falls apart.

Here is a link to a sample: <https://thecontractsguy.net/2013/02/05/sample-contract-for-the-sale-of-goods/>. Again, simply copying this will be plagiarism rather than successful completion of the assignment. Make sure, you are tailoring the contract to your company and what you are selling.

If you are copying from a form be sure to highlight that language. Then use a footnote to provide a citation to the form you used.<sup>2</sup>

The contracts should be a minimum of two pages. You will submit the contracts via Brightspace by Sunday, October 29 at 11:59 p.m.

**Do not forget to include your team number on the contracts.**

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<sup>2</sup> Like this 😊 We used this form as the foundation for our contract. In particular we copied and highlighted paragraphs 1,2 and 4 because there wasn't a better way to state the ideas: <https://thecontractsguy.net/2013/02/05/sample-contract-for-the-sale-of-goods/>

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CONTRACT BETWEEN  
THE LARGE BINOCULAR TELESCOPE CORPORATION  
and COMPANYXYZ  
for the  
LBT TELESCOPE STRUCTURE

THIS CONTRACT is made this 14th day of August, 1998, by and between the LARGE BINOCULAR TELESCOPE CORPORATION (LBTC), and COMPANY XYZ: (the Supplier) RECITALS:

WHEREAS, LBTC, an Arizona nonprofit corporation, is a collaboration between: The University of Arizona, Tucson, Arizona; the Italian astronomical community, which is represented by the Arcetri Astrophysical Observatory, Florence, Italy; the Research Corporation of Tucson, Arizona; The Ohio State University of Columbus, Ohio; and the LBT Beteiligungsgesellschaft, a consortium of German Astronomy Research Institutions. The broad purpose of LBTC is to carry out scientific research and education in astronomy by constructing and then operating the Large Binocular Telescope (LBT) as a facility at the Mt. Graham International Observatory, near Safford, Arizona (the "Project").

WHEREAS, the Large Binocular Telescope Project Office (LBTPO), as the authorized agent of the LBTC, is responsible for the design, procurement, and construction of the altitude/azimuth binocular telescope with two 8.4-meter mirrors,

WHEREAS, the Supplier, Company XYZ is a distributor of mechanical devices in TBD LOCATION.

CONTRACT:

NOW, THEREFORE, the LBTC and the Supplier agree as follows:

**Article 1 - SCOPE OF WORK**

The Supplier shall perform the work (the "Work") described in the Statement of Work included under Attachment A, in compliance with all technical specifications and drawings referenced therein and in accordance with Supplier's proposal, which is attached hereto as Attachment B.

**Article 2 - PAYMENT AND ACCEPTANCE**

**2.1 Payment Amount.** Payment for the Work shall be in the total fixed amount set forth in Attachment B attached hereto.

**2.2 Application for Payment.** Progress payments shall be made upon completion of

each milestone as provided in the schedule included in Attachment B, within thirty (30) days of receipt by LBTC of:

(a) A completed application for payment signed by a responsible officer within Supplier's organization, warranting that the portion of the Work for which payment is sought has been completed according to the specifications and has been tested and verified, and that all drawings and reports submitted are true and correct, and containing the following certification:

(b) "I hereby certify that the attached invoice is correct and just, that payment therefor has not been received, and that the invoice is submitted with the knowledge that the amount paid hereunder may be used as the basis of a claim by the LBTC."<sup>11</sup>

(c) An invoice, submitted in duplicate, describing the milestone for which payment is sought.

(d) Any required Test Report or other drawings or reports as described in the Statement of Work, prepared with respect to the portion of the Work for which payment is sought.

(e) A certification from LBTC's designated Technical Representative that it has reviewed the portion of the Work for which payment is sought, together with the results of any tests performed, and that the work appears to have been satisfactorily completed.

**2.3 Acceptance and Final Payment.** Final Acceptance of the Work shall be indicated by the LBTC only in writing specifically stating that it constitutes "Final Acceptance" of the Work.

Final Payment of any final amounts due hereunder, shall be made only after Final Acceptance as provided herein.

In the event that the Work is, prior to final payment, determined by LBTC to be faulty in any way, and the Supplier does not promptly correct the defect pursuant to the Warranty, LBTC shall be entitled to retain the Final Payment and apply it against any damages and expenses sustained by LBTC as a result of the defect.

### **Article 3 - SUPERSEDING EFFECT**

This contract, together with all attachments, supersedes all written or oral agreements, and constitutes the entire agreement between the parties hereto.

### **Article 4-INTERPRETATION**

In the event of any conflict or inconsistency between the terms of this Contract and the terms of an attachment hereto or any document referred to herein or in the terms of any attachment

thereto, the terms of this Contract shall prevail and govern the interpretation thereof.

#### **Article 5 - AMENDMENT**

This Contract and the attachments hereto shall not be deemed or construed to be modified, amended or waived, in whole or in part, except by written agreement duly executed by the parties to this Contract.

#### **Article 6 - ASSIGNMENT OF CLAIMS**

Any right to payment hereunder may be assigned, provided that such assignment shall not be binding upon the LBTC until receipt of a copy of the assignment agreement is acknowledged and approved by the LBTC in writing.

#### **Article 7 - CONTRACT ADMINISTRATION**

The LBT Project Director, or designee, are the only individuals authorized to make the changes in or redirect the Work required by this Contract. Where LBTC's approval is required under the terms of this Contract, it shall, unless otherwise specified, be construed to mean the approval of the LBT Project Director or designee. In the event the Supplier effects any change at the direction of any other person, the change will be considered as having been made without authority, and no adjustment shall be made in the Contract estimated cost or delivery schedule as a result thereof.

#### **Article 8 - TECHNICAL OVERSIGHT**

LBTC will, in writing, designate a Technical Representative(s) for each contract at the time of contract award. The Technical Representative will provide a direct interface between the LBTC and Supplier. All communications between the Technical Representative and the Supplier will be copied to the LBTC. The Technical Representative will oversee the engineering management of the contract to ensure that the Components are manufactured accurately and perform satisfactorily.

#### **Article 9 - RESPONSIBILITY FOR SUPPLIES**

**9.1** Title to supplies furnished under this Contract shall pass to the LBTC upon final acceptance by LBTCPO regardless of when or where the LBTCPO takes physical possession, unless the Contract specifically provides for earlier passage of title.

**9.2** Unless the Contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Supplier until, and shall pass to LBTC upon:

- Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

- Acceptance by the LBTPO or delivery of the supplies to LBTC at the destinations specified in the Statement of Work, whichever is later, if transportation is f.o.b. destination.

**9.3** The risk of loss of or damage to nonconforming supplies remains with the Supplier until correction or acceptance.

**9.4** The Supplier shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of LBTC acting within the scope of their employment.

#### **Article 10 - GOVERNING LAW AND VENUE**

This Contract shall be governed by and construed in accordance with the laws of the State of Arizona. The venue for any legal action shall be in Pima County, Arizona.

#### **Article 11 - INTELLECTUAL PROPERTY**

In the event that either party shall create or invent, or cause to be created or invented, in connection with the Work, any process, material or device protected under any patent or copyright law ("Intellectual Property"), the parties agree that the other party shall have the right to use, at no expense to such other party, such Intellectual Property.

#### **Article 12 - COMPLIANCE WITH INTERNATIONAL, FEDERAL, STATE, AND LOCAL LAWS**

The Supplier shall comply with all International, Federal, State, Municipal and local laws, rules and regulations that may be applicable to this Contract and, at the request of the LBTC, the Supplier will furnish certificates to the effect that it has complied with said laws and regulations.

In the United States, the Supplier represents that it has complied and will continue to comply during the performance of this Contract with the provisions of the "Fair Labor Standards Act" 1938, as amended, and the "Occupational Safety and Health Act" 1, with the "Americans with Disabilities Act of 1990" and with the regulations and standards issued pursuant thereto.

The Supplier, in all matters relating to this contract, shall be acting as an independent contractor. Neither the Supplier nor any of the persons furnishing materials or performing work or services which are required by this Contract shall be considered employees of the LBTC.

The Supplier, at its own expense, shall comply with such laws, and assume all obligations imposed by any one or more of such laws with respect to this Contract.



### **Article 13 - DISPUTES**

Any dispute between the parties or their assigns arising out of this Contract shall be subject to binding arbitration. Any dispute arising under or relating to this Contract which is not settled by agreement of the parties shall be referred for adjudication by either party to a court of competent jurisdiction.

### **Article 14 (For U.S. Companies only) - NON-DISCRIMINATION**

The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity and Non-Discrimination.

### **Article 15 - FORCE MAJEURE**

Performance of a party shall be excused hereunder, and such party shall not be considered to be in breach hereof, in the event that such party's performance is rendered impossible or impracticable due to causes beyond the control of such party (or those acting on such party's behalf, such as, in the case of Supplier, its subcontractors or, in the case of LBTC, other suppliers of Project components) and not caused by the negligence or intentional act of such party, including such things as fires, floods, strikes, or embargos.

### **Article 16 - OFFICIAL NOTICES**

Unless otherwise provided in this Contract, any communication provided or permitted hereunder shall be in writing and addressed to the party for which it is intended. The Supplier shall forward official notices to the LBTC as follows:

If to the Corporation:

LBT Project Office/USA Steward Observatory  
The University of Arizona Tucson, AZ 85721-0065  
USA

Phone: 520 626-5231

Telefax: 520 621-9843

E-Mail:

[rgreen@as.arizona.edu](mailto:rgreen@as.arizona.edu) (LBT Director, Tucson Project Office)

[salinari@arcetri.astro.it](mailto:salinari@arcetri.astro.it) (LBT Deputy Director, Arcetri Observatory)

[jslagle@as.arizona.edu](mailto:jslagle@as.arizona.edu) (LBT Project Manager, Tucson Project Office)

[gkoeppen@as.arizona.edu](mailto:gkoeppen@as.arizona.edu) (Administrative Assistant, Tucson Project Office)

Notices to Supplier shall be directed to the address set forth in Attachment B.

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In Witness whereof the parties hereto have executed this Contract with the effective date as shown on page one (1) of this document.

FOR COMPANY XYZ

BY .....

TYPED .....

TITLE .....

DATE\_ -----

FOR THE LARGE BINOCULAR TELESCOPE CORPORATION

BY \_\_\_\_\_

TYPED **Dr. Richard Green**

TITLE **Director, Large Binocular Telescope Project**

DATE .....

## Contract Review

### MGMT 254

When presented with a contract, remember that this is a starting point. You can negotiate the terms of nearly every agreement. You want to make the deal happen, but so does the other person. Ask for what you want. The worst that can happen is they say “no.”

**Identify the Parties:** \_\_\_\_\_

**Double-check the business terms: What are the special terms in this contract:** \_\_\_\_\_

Double check the business terms of the contract (price, amount, duration, square footage, etc.) to determine whether it accurately reflects the agreement of the parties.

**Are there automatic renewals?** \_\_\_\_\_

Do you have to give notice if you do not want to renew? Are there penalties if notice is not timely given? Is renewal on the same terms as the original agreement? Are there price increases? Consider adding options to renew on favorable terms.

**Who bears the risk?** \_\_\_\_\_

Determine how risk is to be allocated. Risk is typically borne by the party in the best position to prevent loss. Check insurance requirements. Will you be able to obtain the required insurance within your budget?

**Are there hold harmless and indemnification provisions?** \_\_\_\_\_

When you agree to hold someone harmless you are agreeing to not hold him responsible for liability that may arise out of the transaction. When you indemnify someone, you are agreeing to protect him from liability or loss that may arise out of the transaction.

**Are there incorporated documents?** \_\_\_\_\_

**What happens in the event of default?** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Are there remedies provisions?** \_\_\_\_\_

Determine the worst that can happen to you if you default. Explore ways to limit your liability. Also determine what types of remedies you need in the event the other side defaults.

**What are the causes for termination?** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Are there any warranties and representations?** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**What are the rights and responsibilities?** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**How will disputes be resolved?** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# BREACH OF CONTRACT REMEDIES

## Types of Breach

Now that you've studied contracts and written a couple, it's time to think about breach. When you create a contract, no one wants to think about what could go wrong. You wouldn't enter the contract if you thought it would fail...but that happens. This worksheet is designed to walk you through the types of breach. What are the remedies that are available to the seller and the buyer when something goes wrong? Which ones should you incorporate into the contract for your company?

### Seller

Seller's Lien:

Example:

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Stopping Shipment:

Example:

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Resale by Seller:

Example:

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Cancellation by Seller:

Example:

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Seller's Market Price Formula:

Example: CB 497

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Seller's Lost Profits:

Example: CB 498

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### Buyer

Rejection of Improper Tender:

Example:

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Revocation of Acceptance:

Example:

Buyer's Market Price Recovery:

Example:

Buyer's Cover:

Example:

## Damages

### Example of CB 353

Consequential:

Incidental:

Liquidated:

Punitive:

Specific Performance:

**Now that you've explored the types of breaches and damages, which type should you include in your company's contracts? Why?**

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## Products Liability

Now that we've covered Torts and Products Liability in Chapters 8 and 24, it's time to consider how the products your manufacturing could have risk and liability. The key to products liability is understanding the different ways that companies become liable for the products they sell.

There are two primary ways: 1) Warranties, which essentially form a contract with the buyer, and 2) Tort liability. We will study contracts for a section of the class (leading to exam 3), but for now all you need to understand is that for a contract to be valid, the parties have to exchange benefits: the buyer gives up money (usually) to obtain a good or service. In exchange the seller gives up a good or service to receive the benefit of payment. The promises they exchange during that transaction can lead to a legally binding contract: aka in this situation a warranty.

Define and give an example of each of these terms:

Warranty:

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Express Warranty:

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Breach of express warranty:

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Implied Warranty:

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Warranty of Title:

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Warranty against Encumbrances:

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Warranty of Fitness for Particular Purpose:

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Warranty fit for a normal use/merchantability:

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Warranty against Infringement:

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Which of these warranties apply to your products or services? Why and how?

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**Administrative Agencies**

Any business should be aware of the various administrative government agencies that could have oversight of the company's actions and products. For this part of the portfolio assignment, identify one federal and one state agency that could have oversight of **your** company. Answer the following questions for each:

**Federal Agency**

Agency selected: \_\_\_\_\_

Where is the agency headquartered? \_\_\_\_\_

What is the agency's mission? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When was it formed? \_\_\_\_\_

How does the agency function? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Who is the director of the agency? \_\_\_\_\_

Is there an office in Indiana? \_\_\_\_\_

**State Agency**

Agency selected: \_\_\_\_\_

Where is the agency headquartered? \_\_\_\_\_

What is the agency's mission? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When was it formed? \_\_\_\_\_

How does the agency function? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Who is the director of the agency? \_\_\_\_\_

## Intellectual Property

There are four main types of intellectual property. I will not cover the semiconductor chip and computer laws that are at the end of the chapter. Those are not on the test. Let's explore whether your company will create intellectual property. To start, define and give an example of each of the following:

Trademark:

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Servicemark:

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Trade Dress:

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Copyright:

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Patent:

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Utility Patent Example & duration:

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Design Patent Example & duration:

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Plant Patent Example & duration:

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Do you anticipate your company creating any of these?

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Which is most likely to be created?

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How can you protect that intellectual property?

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What questions do you have?

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## Bankruptcy

There are three types of bankruptcy. Define them here. Then determine which would apply if something terrible happened and your company had to close because of a downturn in the economy or a failure in your product. Or if you provide a service, what if a client sued you and you couldn't recover.

Chapter 7 (Liquidation):

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Chapter 11 (Reorganization):

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Chapter 13 (Consumer debt adjustment plans):

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Which type of bankruptcy protection would your firm use and why?

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Oliver Tumble declared voluntary Chapter 7 bankruptcy. The trustee included the following property in his bankruptcy estate:

- Mustang Convertible
- Computer for his consulting business that he operated from home
- Car payment from a client in the amount of \$5,000, that was received 91 days after he filed bankruptcy.

After collecting all of Oliver's assets, the bankruptcy trustee was trying to decide how to distribute the assets. Oliver had the following creditors:

- Mortgage company: Owed \$487,000 and sold the house for \$497K
- Expenses of the bankruptcy- \$10,000
- Federal Income Taxes -- \$21,000
- Utility bills -- \$2,000
- Office supply store open account -- \$3,000

The trustee had \$18,500 in cash, including the \$10,000 extra from the house sale. How should the trustee distribute the money? What if the amount were \$21,500?

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