Is Your Syllabus a Contract? A Comparison of the SoTL Literature and the Law

Kent D. Kauffman
Indiana University - Purdue University Fort Wayne, kauffmak@ipfw.edu

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Is Your Syllabus a Contract? A Comparison of the SoTL Literature and “The Law”

Kent Kauffman, J.D. Assistant Professor, Business Law
Indiana University Purdue University-Fort Wayne
Who Says a Syllabus is a Contract?

- **The Academic Literature**
  - “An Examination of the Integrity of the Syllabus,” *College Teaching* (2005)

- **Colleges**
  - [http://www.personal.psu.edu/scs15/idweb/syllabus.htm](http://www.personal.psu.edu/scs15/idweb/syllabus.htm)
  - [http://cte.illinois.edu/resources/topics/syllabus/purpose.html](http://cte.illinois.edu/resources/topics/syllabus/purpose.html)

- **Professors and Students?**
The Academic Literature’s View

- If students sign the last page of a syllabus, then it is a “binding agreement” (Matejka & Kurke, 1994, *College Teaching*).

- “The first purpose of a syllabus is to serve as a contract between the instructor and student” (Parkes & Harris, 2002, *College Teaching*).

- A syllabus is a contract (Habanek, 2005, *College Teaching*, citing the 2002 Parkes & Harris *College Teaching* article).

- Syllabi are a paper contract between faculty and students (Slattery & Carlson, 2005, *College Teaching*).

- Syllabi are complex legal contracts (Thompson, 2007, *Communication Education*).

- A course syllabus is a contract between instructor and student (Zucker, Baker-Schena & Pak, 2010, *The Teaching Professor*).

- Syllabi are contracts (Ludwig, Bentz & Fynnewever, 2011, *Journal of College Science Teaching*, citing the 2002 Parkes & Harris *College Teaching* article).
Do Professors and Students Think a Syllabus is a Contract?

In a 2009 survey of 27 nursing faculty and 199 students at an undergraduate nursing program, 74% of faculty and 49% of students believed a syllabus was a contract (Shoni & Schrader, *Journal of Nursing*)
A contract is an agreement…but, not every agreement is a contract

A contract is a legally enforceable agreement made by capable parties over something that is permitted to be done, and is made with consideration

A contract requires “consideration,” which is a bargained-for exchange

A contract allows one to sue for damages in the event of breach
The Unique Relationship Between College Students and Their Universities

- Students and their institutions are in a contractual relationship
  - Ross v. Creighton University (7th Cir. 1992)
  - Gordon v. Purdue University (Ind. App. Ct. 2007)
  - Jamieson v. Vatterott Educational Centers, Inc. (D. KS 2009)

- But, institutions and faculty are generally held to an “arbitrary and capricious” standard as it concerns their professional judgment
  - Susan M. New York Law School (NY 1990)
  - Gupta v. New Britain General Hospital (Conn. 1996)

- The arbitrary and capricious, or bad faith, standard provides immunity-like protection to professors
  - University of Michigan v. Ewing (U.S. S. Ct. 1985)
  - University of Missouri v. Horowitz (U.S. S. Ct. 1978)
A syllabus does not meet the legal requirements of a contract

- A syllabus lacks consideration
  - *Hoppe v. College of Notre Dame of Maryland* (D.Md. 2011)

- Courts are incapable of being the forum for syllabus-related disputes
  - Can a professor sue a student for breach of contract, because of the syllabus?

- Professors have a pre-existing duty, with respect to the students
Courts Have Already Ruled That a Syllabus is Not a Contract


What Courts Have Said About Syllabi

- “[T]here is no contract between a professor or instructor and a student created by the syllabus or university guidelines. A professor or instructor’s failure to abide by the syllabus or university guidelines will be actionable only under the same circumstances that any other academic evaluation decision is justiciable: that is when the conduct is alleged to be arbitrary or capricious or to constitute bad faith.” 
  
  Collins v. Grier (1983)

- “[A syllabus] “does not contractually obligate the college but instead, is a variable metric devised by the individual course instructor.” 
  
  Miller v. MacMurray College (2011)

- “The court finds no legal support for treating a course syllabus as a contract. The few courts that have considered the issue have concluded that a syllabus does not constitute a contract….Indeed, a valid contract requires several elements, including mutual agreement and valuable consideration….A course syllabus—which commonly outlines reading requirements, test dates and the like—does not have any such attributes.” 
  
  Gabriel v. Albany College of Pharmacy and Health Sciences – Vermont Campus (2012)
Are Students Intended Third-Party Beneficiaries of a Professor’s Contract?

- Students have been found to be “intended” third-party beneficiaries of contracts made by educational institutions
  - Seiwert v. Spencer-Owen Comm. School Corp. (D.Ind. 2007)

- But—courts are reticent to make students the intended beneficiaries of faculty employment contracts
  - Verni v. Cleveland Chiropractic College (Miss. 2007)

- Even if granted third-party status, students would be hard-pressed to bring a syllabus within the ambit of the faculty employment contract
Why It is Risky to Call a Syllabus a Contract

- The doctrine of “estoppel” could apply
  - Be careful what you wish for

- If a syllabus were a contract, it would be an “adhesion contract”

- If a syllabus were a contract, one should consider including an arbitration clause
  - College students have been bound by arbitration clauses
Why It is Good to Think Your Syllabus Is a Contract

- It encourages a heightened focus on policy consistency
- It might result in a less authoritarian, more collaborative document
- It causes one to think like a lawyer and plan for the “what ifs”
Imagine the possibility of your policies

Avoid the risk of over promising (and under delivering)

Consider using a definitions section

Minimize the minutiae through incorporation by reference

Include your own version of a “force majeure” clause