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

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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://wp.auburn.edu/biggio/preparing-to-teach-at-auburn/creating-a-syllabus/
- http://cte.illinois.edu/resources/topics/syllabus/purpose.html

Professors and Students?
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 & Fyneweaver, 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 Primer in Contract Law

- 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

“[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”
Contract Drafting Tips for Syllabi Creation

- 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