

ASSIGNMENT TWO - CONTRACTS

You and your opponent are to negotiate and draft an employment contract. You can pick your opponent. One of you must act for the employer and the other, of course, for the employee.

The job is: paralegal for a five lawyer firm. You can invent a job description. The negotiation points are below.

If your opponent refuses to settle, then draft an offer, including all of the terms you want, when it was submitted, for how long it was open, and submit this. If your offer is reasonable from the perspective of both sides, you will do well.

You might work together on the language of the contract before negotiating, and then fill in the blanks as to who gets what later.

The assignment is worth 20 marks. 16 marks will be awarded for the structure and enforceability of the contract (or last offer) and how well it addresses all of the potential issues. 4 marks will be awarded for negotiation. If one side gets a great deal, and the other side capitulates, the marks may be uneven. If the contract is reasonably fair to both, you will both get a good mark. Don't try to destroy your opponent – the best employment contracts are those which last; i.e. those which are fair to both the employer and the employee and which generate goodwill for many years.

Use clear language to describe the rights and responsibilities of both parties, so that a court could later enforce the contract if there was a dispute. A vague or inconsistent contract is effectively useless. It's okay to use precedents, but avoid legalese. Plain language that covers the issues is easier to read and will result in a better mark.

Imagine giving the document to a complete stranger – does it clearly describe the WHO? WHAT? WHEN? WHERE? questions for each issue, without additional explanation? It can help if you include background statements in the contract to aid the court's interpretation – the WHY? certain things are to be done (typically, a contract will begin with various "Whereas" statements, setting out the background for the contract.)

You and your opponent are to each submit a copy of the contract and your explanation of your individual negotiation and drafting strategy for your side, all as one document, through Blackboard upload by April 9th. In your submission, please indicate the name of your opponent and submit your contract or your last offer, along with your explanation of your negotiation and drafting strategy.

Please do not use Apple Pages format. I can't open these documents.

Negotiation points	Employer	Employee
Base pay starting point \$50,000 Bargain increments of \$5,000	Wants smaller number	Wants larger number

Bonus/Commission Bonus could equal to percentage of billings from the paralegal, or some other method.	Wants smaller number	Wants larger number
Benefits Pension? Insurance? Health benefits?	Wants none	Wants all
Expenses Who pays for Law Society membership and education courses?	Wants employee to pay	Wants employer to pay
Total work hours / week starting point 35 hours Bargain increments of 2 hours	Wants larger number	Wants smaller number
Flexibility of work Bargain whether employee can choose hours Or whether 9 – 5, business days	Does not want flexible hours	Wants flexible hours
Entertainment budget / year Bargain increments of \$500	Wants smaller number	Wants larger number
Office location Private office? Home office? Remote work?	Wants option where to work	Wants some control
Vacation 2 weeks, 3 weeks, 4 weeks?	Wants smaller number	Wants larger number
Notice period if to be terminated 2 weeks, 3 weeks, 4 weeks?	Wants smaller number	Wants larger number
Non-solicitation clause	Wants both and strict	Wants neither
Confidentiality provisions	Wants 5 year non-competition	Wants no such clause
Which clients can the paralegal take if leave the firm	Wants to keep all clients	Wants to keep paralegal's clients

Be creative - you can add other points!

Consider the who? what? when? where? why? questions when drafting. 2