

Drafting Contracts

Basic Principles



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Understanding Contract Drafting



∞ Objectives

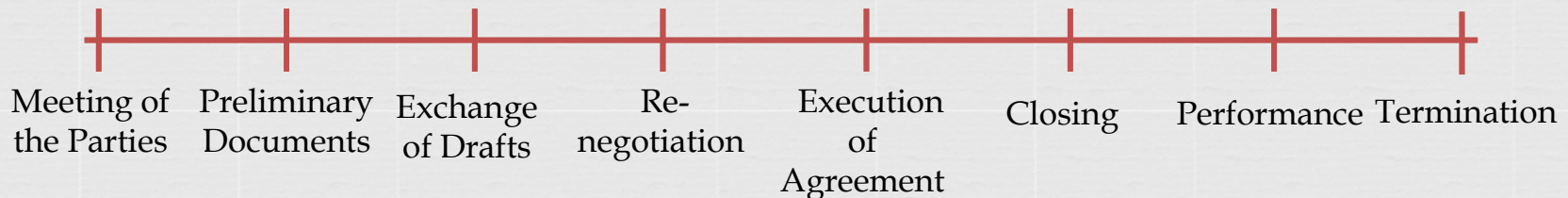
- ∞ Make a record
- ∞ Create a mechanism to foster agreement
- ∞ Ensure performance
- ∞ Foster relationship
- ∞ Enforcement & dispute resolution

∞ Essential elements

- ∞ Conditions
- ∞ Covenants
- ∞ Warranties
- ∞ Declarations
- ∞ Effects & remedies

∞ Risk Management Tool

∞ Stages of contract drafting



Understanding the Drafting Process



- ∞ Taking instructions from the client
- ∞ Obtaining additional information from client
 - ∞ Place holders
- ∞ Drafting from the client's perspective
 - ∞ Understand the business
 - ∞ Foresight
- ∞ Ethical issues in drafting

Preparing & Planning to Draft a Contract



- ∞ Doing legal research
 - ∞ Identify governing rules
 - ∞ Identify prohibitions
- ∞ Picking and adapting the template/precedent
- ∞ Preparation of an outline
- ∞ Layout of the contract
- ∞ Multiple drafts & client reviews
- ∞ Final Draft
- ∞ Formatting the contract

Essentials of a Well Drafted Contract



- ∞ Clear and Unambiguous
- ∞ Coherence and Coordination
- ∞ Presentation and Consistency

Effective Language in Contract drafting



To Do

- ∞ Use plain English & simpler words
- ∞ Base Verbs
- ∞ Short & simple sentences
- ∞ Active voice
- ∞ Definitions
- ∞ Precise & unambiguous language
- ∞ Time references
- ∞ Clarity

Avoid

- ∞ Legalese & jargon
- ∞ Archaic Phrases
- ∞ Surplus words
- ∞ Compound prepositions
- ∞ Repetition
- ∞ Sexist language
- ∞ Technical jargon
- ∞ Pronouns

Types of Contract Language



- ∞ Language of performance- active voice
- ∞ Language of declaration- “is”
- ∞ Language of policy- legal effect
- ∞ Language of obligation- “shall”
- ∞ Language of prohibition- “shall not”
- ∞ Language of discretion- “may”
- ∞ Language of belief- “will”

Designing the Terms



∞ Title of the Agreement

E.g. Lease Agreement



∞ Introductory paragraph
or Preamble

∞ Date of Agreement

∞ Place of Agreement

∞ Definition of Agreement

∞ Description of Parties



∞ Background or Recitals

∞ History of the Parties

∞ The Business Deal (Purpose of Agreement)

∞ Contract Formation

Designing the terms (contd.)



∞ Statement of Consideration



∞ Interpretation Clause



∞ Definitions Clause



∞ Consideration/ Payment
Clause

∞ Payment

∞ Grant of rights, e.g., licence



∞ Term

∞ Renewal

Designing the terms (contd.)



- ∞ Performance Provisions
 - ∞ Rights & obligations of Parties
 - ∞ Conditions to be met
 - ∞ Declarations
- ↓
- ∞ Representation & Warranties
- ↓
- ∞ Termination
 - ∞ Neutral termination
 - ∞ Friendly termination
 - ∞ Un-friendly termination
 - ∞ Events of default
 - ∞ Notice of termination
 - ∞ Termination notice

Designing the terms (contd.)



- ∞ Remedies
- ∞ Acceleration
- ∞ Indemnification
- ∞ Liquidated Damages & Penalty clauses
- ∞ Injunctive relief



- ∞ Exemption Clauses
- ∞ Force Majeure
- ∞ Hardship



∞ Boilerplates

- | | |
|---------------------------|------------------------------|
| ∞ Assignment | ∞ Amendments/ Modifications |
| ∞ Successors & Assignees | ∞ Merger or Entire Agreement |
| ∞ Waiver | ∞ Counterparts |
| ∞ Limitation of Liability | ∞ Costs & Expenses |
| ∞ Notice | ∞ Relationship of Parties |
| ∞ Severability | |

Designing the terms (contd.)



- ∞ Dispute Resolution

- ∞ Governing Law

- ∞ Arbitration



- ∞ Signature Block

- ∞ Signature of witnesses

- ∞ Notary



- ∞ Schedules & Exhibits



- ∞ Stamping & Franking



- ∞ Registration/ Apostille/ Consularization

Reviewing a Contract



- ∞ Scope of review
 - ∞ Factual inconsistencies
 - ∞ Legal issues
 - ∞ Ambiguous language
 - ∞ Structure of the contract
 - ∞ Structure of the business deal
- ∞ Mark up
- ∞ Deadlines

THANK YOU!