

THE BUILDING BLOCKS OF CONTRACT

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A contract serves as the cornerstone for all legal relationships involving two or more parties. A contract is a written agreement that deals with the terms and conditions under which two or more people, businesses, or other legal entities will have a connection in the future. It is recommended to have the agreement registered after it has been created, approved, and signed by all parties. Please be aware that registering a contract is a crucial action that both parties must accomplish. The process of drafting a contract involves gradually adding particular Clauses, terms, and conditions that are expressed following the demands and preferences of the party or parties to the contract. Drafting a Contract requires taking into account several factors, such as the contract's subject, the commodities to be produced, the amount of consideration, the indemnification, the method of resolving disputes, etc. A draft must be scrutinized after it is finished. I believe that before signing a contract and agreeing to its terms with the other parties, each individual should ideally have it evaluated. A contract review is a detailed examination of the terms, conditions, and clauses contained in the contract. Post-contract reviewing is the practice that we experience most frequently, this form of review is sometimes referred to as a pre-contract review. It is an effort to comprehend each clause and the rationale behind its drafting. Everyone has the option of conducting a thorough analysis of the contract themselves or hiring professionals like lawyers or advocates to do it for them. We must remember that contract review can address a variety of concerns and problems early on, preventing losses or harassment in the long term.

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INTRODUCTION

Simply described, a contract is an agreement between two parties that is expressed in writing and that has specific obligations (promises) that must be fulfilled by both parties. When this written agreement is made enforceable by law, it is referred to as a contract. A Contract is an agreement creating and defining an obligation between two or more persons by which rights are acquired by one or more to acts or forbearance on the part of others. When an agreement is

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"enforceable by law," it indicates that it only applies to the parties to it and that breaking any of its terms could result in legal action, including the termination of the entire agreement.

The Contract Act defines a contract as "An agreement which is enforceable by Law".¹ "The law of contract is that branch of law which determines the circumstances in which a promise shall be legally binding on the person making it. An agreement is a settlement reached between two parties that includes commitments or promises that both parties must keep. Such an Agreement becomes a contract once the law makes it binding."² As a result, a contract is made up of promises made by both parties that must be fulfilled. When both parties are required to fulfill obligations for the other, promises become reciprocal. Every Agreement and promise is enforceable by law. An official agreement is a contract. It might be written or even verbal. Contracts may be wholly verbal or spoken, or they may be written using formal or colloquial language. The promise between two or more parties is what enables the courts to render a decision.

ESSENTIALS OF VALID CONTRACT

The six essential components of a valid contract are offer, acceptance, consideration, Intention to create a legal relationship, certainty, and capacity. It would be an invalid contract if the key components were missing.

Offer and Acceptance: In most cases, the written agreement only becomes final and complete when the other party accepts the other party's offer. The proposal or agreement must be precise and comprehensive in every way. To make sure there is no breach of the contract act, all parties should be in communication.³ The expression "consensus ad idem" means that both the offer and the acceptance must be in agreement with each other.⁴

Intention to Create a Legal Relationship: Both parties must have a clear intention that can establish a legal relationship and result in an agreement for it to be binding. Social or domestic

¹ Indian Contract Act 1872, s 2(h)

² Indian Contract Act 1872, s2(e)

³ Aditya Singh, 'Essentials of a valid contract' (*Times of India*, 14 March 2022)

<<https://timesofindia.indiatimes.com/readersblog/lawyer-space/essentials-of-a-valid-contract-41818/>> accessed 25 September 2022

⁴ Mansi Batra, 'Consensus Ad Idem' (*BNB Legal*) <<https://bnblegal.com/consensus-ad-idem/>> accessed 25 September 2022

agreements are not contracts because the parties do not want to establish a formal legal relationship.⁵

Free consent: Agreements are contracts if they are made by free consent”⁶ It means that a contract must be entered into out of the parties’ own volition and without being forced, or deceived into it.⁷

Possibility of Agreement Performance: If two people in this situation decide to agree wherein Person A agrees to bring Person B's deceased relative back to life, this will not be considered a legal contract because it is impossible to bring the deceased person back to life. The agreement is therefore invalid.⁸

Legal regulations: This agreement is void if there is any ambiguity and both parties are unable to determine the best course of action. The contract's terms and conditions should be specified as one of the requirements for a legitimate consideration. Any contract that is ambiguous in any way is potentially null and void. The agreement's terms must be able to carry out precise instructions.⁹

Consideration: Consideration refers to the moral value placed on keeping the pledge. There should be some value to what has been agreed upon in addition to just Capital. One of the requirements for a legitimate consideration is that it should not only be sufficient but also have some weight.¹⁰

IMPORTANCE OF A CONTRACT DRAFTING

Contracts are crucial and frequently play a key part in a company's success. It is crucial to draft effective contracts and take every precaution to avoid the various pitfalls that occasionally accompany ineffective contracts. When it comes to contract drafting, there are many factors to take into account, such as making sure contracts serve everyone's best interests and figuring out how to prevent future contractual litigation. Writing down and defining the terms of the commitments made and received by the parties to an agreement is the goal of creating a contract. It also addresses what would happen if one side did not uphold its end of the bargain.

⁵ Aditya Singh (n3)

⁶ Indian contract Act 1872, s 10

⁷ Aditya Singh (n3)

⁸ *Ibid*

⁹ *Ibid*

¹⁰ *Ibid*

Simply put, writing a contract gives the parties involved certainty to terms agreed upon by the parties since we come into contact with contracts in practically every aspect of our lives, they have omnipotent power. We frequently enter into contracts by accepting the terms and conditions when downloading an application, ordering a cab, or even purchasing a dress. Therefore, having an understanding of contract drafting is useful for both, those in the legal profession and those without a legal education.

THE BASIC PROCESS OF DRAFTING A CONTRACT

First and foremost, the individual drafting or reviewing the contract needs to understand why it is being created. It is important to comprehend the contract's topic and object as well as the roles that the parties performed in achieving those objectives. The rights and obligations that the parties to the contract have toward one another must be specified in the contract. Each party is there to serve a specific duty, and this role and purpose must be easy and recognized during the contract's drafting as well as revision.¹¹ Second, it's crucial to consider the contract's viability, including whether the terms and conditions stipulated in it can be carried out, whether the parties can carry out their rights and obligations under the agreement, who stands to gain and lose the most during the term of the agreement, and so on. To decide whether a contract is feasible, several queries must be addressed.¹² Thirdly, one must be able to anticipate potential issues, problems, disagreements, and disputes that may arise from the contract in the future. Both the person writing the contract and the person reviewing it must be able to identify any phrases and provisions that could potentially lead to future conflicts and/or losses between the parties. Additionally, it is important to comprehend which contract phrases contain loopholes and the various ways that the parties could subsequently use such loopholes to their advantage. Often Boilerplate clauses are cleverly used to create and cover such loopholes.¹³

THE BUILDING BLOCKS OF CONTRACT DRAFTING

When a client approaches them with a request to form a contract, many lawyers, particularly those who do not practice drafting regularly, become concerned. The abilities required to transform a client's handshake agreement into a well-drafted, enforceable contract are

¹¹ 'Basics to Contract Drafting and Contract Review' in Corporate Law' (*Corporate Rasta Consulting*, 10 July 2021) (<<https://corporateraastaconsulting.com/2021/07/10/basics-to-contract-drafting-and-contract-review/>> accessed 25 September 2022)

¹² *Ibid*

¹³ *Ibid*

frequently disregarded in legal education. The oversight can make practitioners feel out of place. Any lawyer, however, can successfully design a basic contract by using a few fundamental building pieces and suitable writing skills. A well-drafted contract makes use of several legal frameworks to establish duties and obligations between parties, these key duties and obligations have been designated as the contract's "substantive" or "business" terms.¹⁴ The legal mechanisms that produce these duties and obligations become the contract's foundation. These are the fundamental notions of any contract, the building blocks that, when properly built, express the parties' economic transactions. Once you understand why contract concepts are utilized the way they are, you may learn how to put them together to form a contract and state a contract provision clearly and unambiguously.

Each contract concept serves a distinct business function and has distinct legal implications. As a result, when recording the business transaction, drafters select from among these conceptions. The translating skill is the analytical skill of selecting which contract concept best portrays the business deal; it needs the drafter to look at each specific agreement of the business transaction and convert it into contract concepts. Only then may a contract drafter record the business transaction in a contract clause. The analytical ability used to translate a business transaction into contract principles is fundamentally different from the analytical skill required by litigators. Here are the seven contract concepts that, when combined into the pieces of a contract, form a contract:

Representations: Representations are written as declarations of truth as of a specific date, usually the Effective date of the contract. A representation is a statement of a past or present fact, made as of a moment in time to induce a party to act. A representation might state, for example, that "the property is not subject to any liens." The party receiving the representation must be able to depend on the information in a reasonable manner. At the time the representation is made, the recipient party must be unaware that the information is untrue. Representations may encompass a wide range of topics related to the contract's subject matter. "A party can make representations concerning present and past facts, it generally cannot do so concerning future facts"¹⁵ This clause lays forth the facts and circumstances of a specific

¹⁴ Lori D. Johnson, 'Effective Contract Drafting: Identifying the Building Blocks of Contract' (*Scholars*, October 2013) <<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1905&context=facpub>> accessed 25 September 2022

¹⁵ 'Revisiting Representation and Warranty Clauses' (*Obhan and Associates*, 17 June 2020) <https://www.obhanandassociates.com/blog/revisiting-representation-and-warranty-clauses/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration> accessed 25 September 2022

agreement and serves as the foundation of a statement of fact to the parties concerning the agreement that both parties must make the agreement work. A party to a contract may claim for misrepresentation when the other party's representation is determined to be untrue, which may result in the contract being set aside, entitling the receiving party to seek damages. The representation Clause is "a presentation of factual statements, either by words or by conduct, made to persuade someone to act by entering into a contract." Representations and warranties give contract parties the ability to verify transaction-related facts.

Warranties: A warranty is written in the same manner as a representation. As a result, drafters often require parties to "represent and warrant" the necessary information. The distinction between these two building elements is that a warranty is a declaration of truth, regardless of the party receiving the warranty's knowledge. Thus, a breach of warranty claim is typically easier to prove than a claim for misrepresentation, as the recipient party's knowledge of the warranty's truth or falsity need not be proven. A warranty is a promise that if the statement in the representation is false, the maker of the statement will indemnify the other party for any damages suffered because of the false statement. A warranty clause is a statement of truth included in a contract. If the statement is proved to be false, the opposing party may seek damages; however, unlike misrepresentation, the opposite party may not terminate the contract. Warranties in a contract might be either express or implied. Express warranties are normally mentioned in the contract, and buyers insist on having express warranties, but implied warranties are governed by the Uniform Commercial Code, and the sale of a certain good indicates the presence of suitability for a specific purpose. "A statement or representation made contemporaneously with or as a part of the contract of sale referring to the character, quality, or title of goods, and by which he promises or undertakes to ensure that certain facts are, or shall be, as he represents them."

Covenants: Covenants are the most significant clauses in any contract. Covenants are how parties bind themselves and others to fulfill particular acts. Covenants are essentially promised to act (or not act) in a certain way in the future. The party who receives a promise of performance acquires a "right" to that specific performance. A covenant is a promise to do or not to do something. It creates a duty to perform. In a nutshell, covenants are the principal mechanism by which the lawyer sets the duties that the contract's parties seek to enforce. As a result, it is critical to carefully and properly construct these clauses. While drafters may be tempted to use words like "must" or "will" to express duties, the word "shall" is the most

effective method to create an obligation.¹⁶ Despite the widespread trend to reduce the use of "legalese" in legal writing, "shall" remains the most effective language option in the context of contract drafting to represent the concept that a party "must" conduct a given performance.¹⁷ In case of Non-Compliance with these covenants, the party with the right may file an action for violation of the covenant based on the opposing party's failure to perform as required.

Rights: A right is the flipside of a covenant. A right entitles a party to the other party's performance.¹⁸ A contract right arises from another party's duty to execute, or from a covenant. The individual who is owed the performance has a right to that performance. As a result, if there is a responsibility, there is a corresponding privilege. In more colloquial terms, the inverse of every responsibility is a right. Because of this link, the business objective of a right is the same as the business purpose of duty: to disperse risk by defining liability standards. An obligation is commonly articulated as a covenant for economic and legal purposes, it can also be expressed as a right.

Conditions: The parties' business agreement will include conditional requirements. The client will specifically request that he be bound to perform an obligation only if a specific set of circumstances arises.¹⁹ A customer, for example, may not want to be bound to close on a real estate transaction until an inspection has been done and an approved condition to an obligation is a state of facts that must exist before a party is obligated to perform.²⁰ The obligation to perform is not triggered if that set of facts does not exist. Uncertainty is a defining feature of a condition. A state of facts cannot be certain to occur for it to represent a condition. As a result, the passage of time cannot be considered a condition because it will occur. Any sort of agreement might include conditions. They are not restricted to mergers and acquisitions. A condition is a set of events that must exist before a party is required to perform an obligation arising from a covenant. A condition was usually classified as either a condition precedent or a condition subsequent. A condition precedent was defined as a state of facts that had to exist before there was a duty to perform, whereas a condition subsequent was described as a state of circumstances that removed a pre-existing obligation.

¹⁶ Kenneth A. Adams, *A Manual of Style for Contract Drafting* (3rd edn)

¹⁷ *Ibid*

¹⁸ Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (Wolters Kulwer)

¹⁹ Lori D. Johnson, 'Effective Contract Drafting: Identifying the Building Blocks of Contract' (*Scholars*, 2013) <<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1905&context=facpub>> accessed 11 November 2022

²⁰ Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (Wolters Kulwer)

Discretionary power: The holder of discretionary authority has the option or permission to act. The holder may, but is not compelled, to exercise that authority. Once this occurs, the other party is bound by the decision of the holder. A person with discretionary authority is sometimes referred to as having a privilege. Discretionary authority gives a party a choice or permission to act, Sometimes the exercise of discretionary authority is subject to the satisfaction of a condition.²¹The parties have bargained and agreed that one or both of them should have a choice under certain circumstances. It is not the same as the option available to a party when a condition to a subject matter performance obligation is not met. That option arises as a common law result of the unsatisfied requirement, not as a result of a contractual arrangement.

Declarations: A declaration is a factual or policy statement that the parties agree will regulate their conduct during the term of the agreement. However, neither party has acknowledged the information to compel the other party to act. A party cannot claim damages based on a declaration. It is not related to any rights or remedies. A declaration is a fact as to which both parties agree, generally a definition or a policy for the management of the contract. Sometimes a declaration is subject to the satisfaction of a condition.²² Some declarations have legal force on their own but no substantive contractual force unless they are placed into another provision; other declarations have substantive force on their own. For Instance: All Definitions are declarations. But these declarations have no legal significance on their own.

CONCLUSION

An attorney can create effective contract documents to successfully represent a client in recognizing and using the fundamental components of a contract. Documents by using these simple guidelines, combined with suitable legal study, organization, and careful analysis of the client's requirements and worries. These minor details, in my opinion, are crucial for the creation of a strong contract. The reader will have a clear understanding of the objectives of the contract and the nature of the connection between the parties if the aforementioned terms and conditions are included. The clauses listed above should be included in the contract so that any disputes between the parties may be resolved effectively. All of these efforts will lead to a contract, which will prevent a great deal of unnecessary time, work, and expense. These are rather minor details, but they are crucial in my opinion for the creation of a strong contract. The inclusion of the aforementioned terms and conditions will provide the reader with a

²¹ *Ibid*

²² Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* (Wolters Kulwer)

thorough understanding of what the contract seeks to accomplish as well as the nature of the connection between the parties. If the clauses listed above are incorporated in the contract, any disputes between the parties to the agreement can be resolved effectively as well. All of these efforts will lead to a contract, which will avoid wasting a lot of time, energy, and money that may have been required otherwise.

SUGGESTIONS

- In addition to the appropriate use of contract building blocks, drafting style issues impact the effectiveness of a contract.
- Specifically, avoiding the use of passive voice can enhance clarity and precision in a contract.
- An active sentence structure of covenants helps identify the party obligated to perform.
- Similarly, representations and warranties should identify the source of the information on which they are based.
- The usage of Layman's Language can also help to improve the clarity of a contract.
- The avoidance of sloppy phrases, the use of short sentences, and the appropriate usage of tabulation of complex or lengthy provisions are other key elements to consider.
- The contract should be drafted with provisions that are clear and conspicuous to non-lawyers.
- Clear and concise words help eliminate ambiguity and improve the effectiveness of each building block included in the contract.