

5 REASONS FOR HIRING GOOD LAWYERS TO DRAFT COMMERCIAL CONTRACTS

Monika Dubey*

INTRODUCTION

Gone are the good old simple times, as we are often used to hearing from our elders that in India people rarely locked their homes since there was no fear of theft or stealing. Coming to the commercial circle, business deals were sealed over a simple handshake, a cup of tea/coffee, or some alcoholic drinks. One used to receive as promised while the other side honored its promise. However, times have changed and so has society. Nowadays, people are no more expected to honor their oral promises and especially when huge financial consideration is involved. Now you might say that is the reason we have lawyers and the courts, right? Well then let me inform you that the very first thing a lawyer asks when you go up to him/her in relation to a commercial dispute is “Do you have anything in writing?”

At this point, you may ask why you need anything in writing when the Indian Contract Act of 1872 mentions that contracts can be both oral and written. Good point but a risky one too. When you go to court to enforce a contract and the court asks you to provide evidence regarding such a contract then what evidence you can provide? Well, providing audio evidence transcribing the details of such a deal can be a bad idea because encompassing every single aspect involved in a commercial deal is quite impossible. Therefore, this is one of the reasons you need a good commercial lawyer to draft your commercial agreement. There are multiple other reasons too and we shall investigate them afterward.

WHAT IS A COMMERCIAL CONTRACT?

Before looking into the reasons, we need to understand what a contract is, especially a commercial contract. A commercial contract is a legally recognized agreement between two or more parties desirous of creating a commercial relationship. Therefore, a legally enforceable contract is imperative for the success of any commercial relationship as it obligates the involved parties to their representations, warranties, and liabilities as may be enshrined under such a contract. Also, such contracts are useable as a point of reference in the future, such as a

*LAW GRADUATE.

policy document for an organization or as evidence with respect to any future disputes or suits. Master Service Agreements, Agency Agreements, Joint Venture Agreements, Appointment Letters, Non-Disclosure Agreements, Software Licensing Agreements, etc. are just a few examples of commercial contracts used by businesspeople or commercial organizations.

SO WHY HAVE IT ALL IN WRITING?

Do you remember that we mentioned in the beginning that having a contract is legally important as it is easy to present as evidence before the court in the event of a dispute? Let us investigate other reasons for having a written contract.

People Change: This change is usually bi-dimensional –

- **Change of People:** People engaged in a commercial relationship may change with time. On average, the tenure of such engagement with the employer/hirer is around 3-5 years at maximum. Their successors neither acknowledge nor bother to appreciate the original understanding behind a contract or anything as such existed at all. They are unaware of the bargaining chips that existed and the reasons behind their organization being the party to an apparent unfair deal. They acknowledge and focus solely on what is apparent to them and are unmindful of previous understandings. Therefore, the party at the receiving end of such an arrangement feels cheated, thereby things leading to disputes.
- **Change in People:** Now although the same people may continue with the arrangement over an extended period, there are several factors that may result in the transformation of their mindset or nature. For example, internal pressure from their own 'organization' or new management. Again, external circumstances may impact the requirements and expectations of the other party, thereby disrupting the existing equilibrium between them.
- **Change in Time:** Societal changes affect and lead to changes in people's behaviors over time. Sometimes, people just stop being concerned about their reputation or commitments and turn short-sighted as immediate financial or material benefit becomes more attractive. If there is an opportunity of obtaining a good deal by ditching an old collaborator, few would care about the prospect of ditching a reliable, long-term, decent remunerative arrangement.

- **Legal Changes:** Things that were legal may become void or illegal today or in the future. Legislation, ordinance issuance, amendment, and repealing of old laws have become a common scenario, especially in this digital and dynamic era. Therefore, the commercial arrangement or economic understanding between the parties may not remain in abidance with the new laws.
- **Memory fading:** We humans have a complicated nervous system, and we must keep a lot of things and factors retained in our memory. Conditions that were mutually agreed between the actual parties may not be appreciated or remembered by their respective successors, assignees, etc. as successive generations are usually more practical, business-minded, and materialistic. Therefore, when the old parties pass into oblivion, the newcomers recalibrate their working style and business model and restructure multiple things.
- **Changing Relationships:** The commercial relationships existing between or among various stakeholders are usually impacted by time. Hence, the concept of eternal relationships is a myth, nowadays. Moreover, there exist multiple reasons, especially commercial and political ones, impacting the change in parties' stand on different issues.

WHY HIRE A GOOD LAWYER FOR DRAFTING A COMMERCIAL CONTRACT?

There is a plethora of reasons for hiring a good corporate lawyer for drafting a commercial contract. Here are a few of them:

Selecting the right type of contract: With numerous and varying forms of contracts existing for different scenarios, you may fail to use the proper one containing the most appropriate legal terms. A good corporate lawyer can listen to and understand your requirements, negotiate, draft one to suit them and ensure that the proposed contract encapsulates all your necessary commercial requirements. Now, If you download a template from the internet based on your limited commercial knowledge or corporate law, you may fail to include many important clauses that may come in handy in case of future disputes or legal troubles.

Identifying the loopholes and sealing them: An expert corporate lawyer ensures that the parties cannot just deny the performance of liabilities created through a contract or become liable to pay damages if any contractual provisions are breached. A commercial contract containing a loophole can consequently leave a party vulnerable to commercial or legal

liabilities. A legally executed contract encompassing the intentions of the contracting parties can help secure the interest of all the parties involved. For example, some parties restrict their liabilities with the help of legalese which may not be apparent to some layperson.

Favourability: An expert corporate lawyer can help negotiate, draft, and structure a contract so that the contract's terms and conditions are favorable to the client while also being accepted by the opposite party. Such a lawyer can ensure that the parties' rights are secured while the liabilities stay at a minimum.

Contractual Breaches: In some instances, one of the parties may refuse to abide by and honor the contractual liabilities leading the aggrieved party to initiate arbitration, or mediation or approach the proper judicial forum depending on the manner such contract was drafted. In all the scenarios, a contract drafted in a water-tight manner may come in handy to the aggrieved party in enforcing the contractual terms and conditions. Contrarily, the offending party may refuse to honor the contract and dodge the payment for damages, if they have an expert lawyer who negotiated terms in their favor. For e.g.: An indemnity clause is judicially enforceable even before the occurrence of the breach and the aggrieved party does not have a liability to mitigate in case of indemnity as with damages. If a party did not have legal representation at the time of the drafting, they should consider availing one in the event of a dispute.

Including the latest relevant laws: As already mentioned previously, laws change over time and hence what is considered legal today may not be legal anymore in the future. The commercial laws and industry regulations that you are presently aware of may no longer exist, especially as they are subject to frequent changes. A corporate lawyer's job is to ensure that all the contracts you enter into are up to date with the laws so that you or any contracting parties aren't disadvantaged or affected by wrong information. A corporate lawyer can also draft any contract in a manner to abide by future changes in rules and regulations, thereby shortening the need for frequent updating of the contracts.

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