

Contract Drafting: (The Essentials)

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- University of Texas at Austin, JD, MBA
- After a stint with a large law firm in San Antonio, a solo law practice dedicated solely to providing corporate and securities law advice to growing companies
- Clients & Transactions: companies seeking private equity capital; representation of “angel” investors; formation and ongoing representation of private funds and their registered or exempt investment advisers; representation of senior executives with respect to employment and incentive compensation packages; representation of private companies up to \$50 million in annual revenues in acquisitions; and all kinds of contract drafting and review.
- Teaching: MSSTC program at UT Austin; UT Law CLE, Texas Bar CLE and ABA programs
- Chair, Securities Law Committee, Business Law Section, State Bar of Texas 2005-2014

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Setting the Stage

- In the 18th and 19th centuries, legal philosophers began trying to systematically explain legal decisions
- From that effort came the concepts in the Restatement of the Law of Contracts, the elements of a binding contract
- BUT, Industrialization led to stresses on that framework
- One business contracting with many customers vs negotiated contracts
- The advent of the UCC in U.S. law for sales of goods and tangible personal property
- Some kinds of contracts are modified / the terms of which are dictated by statute or rule.

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The Law of Contracts Has Wide Application

Invoices and Purchase Orders
LLC Agreements among entities and their equity holders
Credit card agreements between banks and consumers
Joint Venture Agreements
Employment Agreements
Shareholder/Equity Holder Agreements

- Settlement Agreements among parties to litigation
- Leases
- Oral Agreements
- Transaction or Relationship being documented?

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Goals of Every Contract Drafter

- Capture your client's own goals and interests in the document(s)
- Ensure that the provisions of the document will be interpreted as you and your client intended
- Ensure that the agreement as drafted is enforceable, as much as possible, given that the actions of the parties after execution of agreements factor into enforceability.
- Don't let the complexity of contract terms themselves become a more significant risk factor than the value and the complexity of the subject of the contract

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The Client's Goals and Interests

- This is what prompted the client to draft a contract – focus on your client's fundamental goals
- The client is often very specific about what result he/she has in mind; ask your client to prepare an outline or have a telephone conversation to fully understand your client's goals.
- Sometimes, the client has a partially developed idea of his /her goal and needs your knowledge to help fill in the blanks.
- Often, the client may not have thought of all the issues and interests he/she has in the transaction and counts on you to apprise him/her of those.

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Title search: Fundamental Concepts in Contract Drafting

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2020 Contract Drafting Essentials: A Practical Guide to Fundamental Concepts, Approaches,
and Key Considerations session

"Fundamental Concepts in Contract Drafting"