

# 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 18<sup>th</sup> and 19<sup>th</sup> 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

Also available as part of the eCourse

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First appeared as part of the conference materials for the  
2020 Contract Drafting Essentials: A Practical Guide to Fundamental Concepts, Approaches,  
and Key Considerations session

"Fundamental Concepts in Contract Drafting"