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Putting Together Contracts: Drafting and Interpreting, What Participants Need to Know

احتياجات المهنيين في صياغة العقود وتفسيرها

Ali Salem Almarri
Department of Private Law, College of Law, King Faisal University, Al Ahsa, Saudi Arabia

علي سالم المري
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ABSTRACT

Saudi Arabia is welcoming an increasing number of law graduates with newly obtained degrees from America and Europe to become legal professionals in their own country. Studying abroad has heightened their second language skills and cultivated an essential understanding of American and European law. Once home, they must begin to reconcile Saudi law with international law when drafting contracts and other legal transactions. This article will highlight particular sections of contracts during the drafting process, including strategies and techniques when constructing critical clauses. In addition, the article will discuss facilitating and collaborating with other lawyers, including foreign players. Finally, every contract is different in relation to the contracting parties, their needs and interests, which will be reflected in the content of the clauses. The purpose of this article is to assist Saudi lawyers in expanding their understanding of contract law and the essential elements that produce a competent legal contract that can be embraced by all parties. Certain clauses are presented with further discussion to emphasize the critical advantages for parties in including them in a contract and to present scenarios for proposing these advantages during the drafting stage.

الملخص

تستقبل المملكة العربية السعودية خريجي القانون العائدين إلى الوطن بدرجاتهم التي حصلوا عليها حديثًا من الخارج، ليصبحوا محترفين في القانون في بلادهم. ولقد دعّمت الدراسة في الخارج مهاراتهم اللغوية الإنجليزية، وزادتهم فهمًا أساسيًا لجوهر القانون الأمريكي والأوروبي، وبمجرد عودتهم إلى الوطن تبدأ تطبيقاتهم في التوفيق بين القانون الوطني السعودي والقوانين الأخرى، سواء عند صياغة العقود أو ترتيب المعاملات القانونية الأخرى. وستسلط هذه المقالة الضوء على جوانب معينة من العقود أثناء مرحلة الصياغة، فالعقود تختلف وفقًا للأطراف المعنية، ووفقًا لاحتياجاتهم ومصالحهم، الأمر الذي ينعكس في محتوى البنود. كما تتطرق المقالة إلى استراتيجيات صياغة العقود بين القوانين المقارنة. ويتمثل الغرض من هذه المقالة في مساعدة القانونيين وتوسيع فهمهم لصياغة العقود، والعناصر الأساسية التي ينتج عنها عقدٌ قانونيٌ يعكس رغبات الأطراف المعنية، وقد تم عرض بعض البنود بتوسع؛ للتأكيد على المزايا الحاسمة للطرفين لغرض إدراجها في العقد، كما تم عرض السيناريوهات المحتملة لاقتراح هذه المزايا عند صياغة العقود..

1. Introduction

Contracts bring together each person or party's plans and expectations, and together they write up the specific terms and conditions to promote mutually desired results. For the agreement to be valid and legally enforceable there must be consensus by the participants as to the validity of the offer by one party and the acceptance of the offer by the other, as well as consent for adequate consideration or a valuable benefit. Indeed, contract law forms the basis of business dealings. Both parties of a contract require a promise to perform according to written specifications, a type of payment in return, a timeline when outcomes must be met, and terms and conditions for performance.

Contracts, like people and businesses, vary according to the parties' needs and feelings, as well as the potential risks involved. When drafting a mutually satisfying contract, interests and values must be finessed with each side to determine the essential topics while seeking flexibility. The significance of a well-written contract can ensure a successful business relationship, whether the parties are universities collaborating to pursue a research project, companies looking to develop new products, medical institutes wanting to establish innovative practices, or small businesses seeking expertise, contracts are the foundational tool for achieving progress and satisfactory results.

Since a contract is a legal document, each clause or statement addresses a specific aspect related to the overall subject matter of the agreement. A clause or section, schedule, phrase, or paragraph of a legal contract relates to a necessary point. Components of this document are typically enumerated labeled sections, enabling readers easy access to specific sections. Clauses also clarify the duties, privileges, and rights of each party under the contract terms, depending on the requirements of the parties and the complexity of the contract. Clauses are tailored to concur with the parties' preferences, but they all must comply with existing contract regulations and the pertinent laws.

Putting together a contract is complex, especially with limited legal experience or even different languages. Additionally, such collaboration is a demanding task, especially considering the number of clauses and their functions necessary for the document. Parties themselves must get up to speed with the various legal terms and clauses that are essential in a competent contract even when lawyers are retained; legal staff may inadvertently omit some clauses, make mistakes, misinterpret the participants' needs, or they may be influenced by their company's management.

Questions such as the following may assist parties in examining essential components in a contract: Does each clause suit the needs of the parties? Is each clause workable and easy to understand? Are there too many conditions, or are the conditions too complex and difficult to follow? Do the clauses contain various time periods that may be difficult to track? Does the contract include all the necessary clauses?

1.1. Preliminary Action by the Parties:

One way to better ensure the correctness and effectiveness of the agreement is for the parties—each person or party to a deal—to convene and first construct a memorandum of understanding (MOU) or a letter of intent as a preliminary phase before a binding contract is created (Garrett, 2007). This meeting can be for all parties, using a wall screen for easy viewing and writing, with comments included from each party at the table.

1.2. Memorandum of Understanding:

At this first stage, the parties define the broad, overarching terms of the subsequent agreement, so that the key elements are nailed down (van der Puil, 2014). To develop understanding and build relationships, it may be useful to discuss the values of both parties and how they identify themselves within their organizations,

Corresponding Author: Ali Salem Almarri asaalmarri@kfu.edu.sa ,00966538486195 المؤلف المراسل: علي سالم المري

businesses, research, etc. What are their hopes? What do they fear? What are their goals for this contractual agreement? At this point, the parties can step back and discuss what has been worked out thus far. Do the parties want to proceed to the next step of creating an official binding contract that places them into an obligatory relationship? (Rossini, 1998) In other words, are they ready?

Additional questions to encourage oral discussions might include: What outcomes are we looking for in an agreement? What is essential for each party: research breakthroughs, financial tradeoffs, development of new intellectual property materials? What will each party accept? What kinds of liabilities may be inherent in this particular arrangement?

With the MOU, no timelines are established for completion of the deal or payment amounts (Sparrow, 2003). It is also important to pre-plan for possible conflicts, as well as ways to resolve them, whether in court or by less complicated dispute resolution methods. Changing circumstances should be anticipated during the time period of the contract (Fontaine and Ly, 2006). Finally, parties will transfer comments and responses to the MOU, which can be circulated among them for any additional ideas or changes, followed by the signatures of each party.

2. Unpacking the Contract

Every contract consists of a coherent framework housing the clauses and contractual concepts constructed of appropriate terminology. All contracts follow a basic format; while the style of each may differ from one law firm to another—including the length and obvious challenges of the transaction in hand—every contract has at least a few common segments: the outline of the contract sets out the formal language at the beginning, a section for definitions, and a business component displaying parties' rights and responsibilities; the termination section deals with the conclusion of the parties' relationship; the general provisions portion includes the policies that govern the contract; and finally, the parties' signatures are at the end.

It is the operational language and wording that defines the contractual concepts and delineates the contractual rights and obligations, as well as covenants or contractual promises. The easiest way to visualize the concepts of a contract is to associate them with nouns and explicit verbs or actions in each sentence:

A *declaration* is a statement by a party that provides information they know to be factual. Generally, declarations are made in writing and usually under oath. A declaration allows contracted parties to state the facts related to the contract. Declarations set the policy for contractual relationships, although such statements do not create any obligation or liability and are signaled by present tense verbs: *The purchase price is $100,000.* As explained, a declaration does not obligate a party to pay the price, but a *covenant* obligates a party to do so or refrain from doing an action.

A *covenant* is a contractual promise and is signaled by the use of verbs such as *shall, will,* and sometimes *must*: *The buyer shall pay the purchase price*. The word *shall* is not ambiguous and signals an obligation, whereas *will* can indicate futurity; however, *must* can also signal a condition rather than a covenant.

Furthermore, *discretionary statements* give parties the option to take, or refrain from taking, an action, but it does not obligate the party. The verbs used for discretionary statements include *may* and *could. The landlord shall pay for replacing the doors, but the tenant may choose the type of doors.*

In summary, every provision of a contract falls into one of the previously mentioned categories under contract concepts, e.g., declaration, covenant, and discretionary statements, depending upon the objective of the clauses. Here is a brief list summarizing the use of these terms for writing the language of contracts:

- A definition or a statement of policy is a declaration.
- An obligation or a promise to do something is a covenant.
- A fact to be relied upon is a representation and a warranty is a promise (see section 4.2).
- An option to do something is discretionary authority.
- A triggering event is a condition (see section 4.1).

3. Body of the Contract: Outline of the Sections

3.1. The Prelude:

The prelude is the introduction or the first part of the contract. Most contracts follow the same basic format: date, names, and addresses of the parties; objective of the contract; details of the products or the scope of work, depending on the type of relationship between the parties; price for the products or fees for the services provided; and specified duration of the contract.

3.2. Contract Objective:

In an employment contract, employers establish the language, appropriately detailed, regarding the duties the employee agrees to undertake or the nature of the work, in return for specific remuneration from the employer, as well as the duration of the services. For a sales agreement, descriptions are critical as to the specific products to be purchased or sold*: The party or seller wishes to sell 1000 (one thousand) (Dell) laptop computers with leather cases for a certain price per unit*. If the contract is for a service, the parties write up the various services to be included, the equipment costs, hourly rates of pay, number of workers needed, etc.

A contract cannot be considered legal unless costs, payment frequency, and the types of services to be provided are explained. The other party must agree to pay the amount in the transaction. Such monetary details need to be satisfactorily clarified so that neither party has any doubts or questions about these arrangements.

Similarly, an employment contract must provide the monthly/yearly salary of the new employee. A rental agreement specifies the rent per day/month/year. A loan agreement stipulates the percentage of interest per month on the loan amount, as well as the duration of the contract.

3.3. Scope of Work:

The scope of work (SOW) is the clause describing the specific work or services to be performed. The SOW should contain any milestones, progress reports, and end products or results that are expected to be provided by the performing party for the receiving party. It should also contain a timeline for all output to be delivered (Shahani, 2019).

Example of a SOW clause:

> *The work to be performed by Party B (AgriCulture Research Center) under this contract shall be described in detail. The provider will exercise best efforts to complete the services in a professional and diligent manner, on schedule and at the stated prices.*

3.4. Offer and Acceptance:

Contracts must include certain essential clauses rendering them legally enforceable. Two of these are the offer and the acceptance. When the two parties consent to work together for a named purpose, a contract can be drafted with the detailed clauses and statements of both parties towards their responsibilities and obligations to each other.

3.4.1. The Offer

A contract consists of two parties who wish to work together in order to obtain a stated objective. The first party makes an offer to the other party for the procurement of products, a research proposal, or hiring an employee, and so on (Mulcahy and Tillotson, 2004). The offer, written in the contract, and using specific terms with the intention of becoming binding, is proposed to the other party (Russell, 1996). Example of an offer:

> *Party A (i.e., the University of _____ in Saudi Arabia) offers Party B (i.e., AgriCulture Research Center in Bakersfield, California, USA) a research proposal to develop an efficient and scientific agricultural system for successfully growing fruit trees in the arid climate and deserts of Saudi Arabia. The university is committed to enhancing food production in Saudi Arabia within the next five years in return for a specified monetary amount. Its Agricultural Department has hired professional personnel who are excited to be involved in field work, as well as statisticians to record developments in the pilot/discovery area, including senior level students who will be learning to apply textbook knowledge during onsite experience.*

3.4.2. The Acceptance

The acceptance always follows the offer, and the two components of the offer and acceptance constitute mutual consent; both the offer and the acceptance are a promise (Helewitz, 2010). The second party accepts the objective of the contract from the first party to fill the order for the products, to carry out the proposed research, or to accept the employment contract. Example of acceptance:

> *Party B (AgriCulture Research Center) accepts the offer from Party A (the university). AgriCulture Research Center is excited at the prospect of involvement in a project for enhancing a country's food security in an arid climate. We are looking forward to a mutually satisfying experience and establishing professional relationships with the university staff and the Saudi Ministers of Agriculture.*

3.5. Definitions Section:

Certain phrases and words used in contracts are defined for clarification so that everyone concerned understands the legal impact of such meanings for both parties. The definitions section is positioned at the beginning of a contract, after the prelude (Adams, 2004). The following are examples of definitions usually found in contracts:

> *Agreements: Refers to this Research Collaboration Agreement/ Contract including its schedules and annexes. Commencement Date: The date the contract is signed.*

3.6. Contact Information for Authorized Persons:

The parties will need to choose the means for an expedient delivery of copies of the contract and other notes and documents during the time period of the project until its completion (Adam and Cramer, 2020). Such delivery processes include email, registered mail, or fax. In addition, the parties must designate their contact persons if the parties decide to send or receive termination notices or amendments.

The names and addresses of those authorized individuals, along with their position titles, shall be included in this clause, as well as those who are designated to sign and execute the main contract. Such information is essential for expedient and ongoing communications between the parties throughout the process. For example, a contract may stipulate that the duration of the agreement is for a specific number of years; if the parties do not send a notice of their desire to end the contract as soon as it is determined, the contract will automatically run for another year. Parties and their authorized contacts are usually busy as leaders of their institutions and may not always keep track of every contract they have signed. While the importance of this clause may not arise until further down the road, it needs to be included during the drafting of the contract.

4. Actions in the Contract Clauses

The clauses in a contract provide clear directions regarding each party's rights and obligations, as well as the mechanisms for termination of the contract if circumstances rise to that level.

4.1. Terms and Conditions of the Contract:

Significance and distinction of *terms and conditions:* Most people—including lawyers—may not differentiate between the terms and conditions, since they are usually written together and seem to mean the same thing. In fact, *terms* designate the duration of time that a party has to deliver its obligations under a contract, while *conditions* define the obligations of each party in a contract (Guth, 2008). The terms and conditions must be specifically written and scrutinized by each party to avoid any misconceptions or confusing communications that may cause problems or even invalidate a contract down the road (Blum, 2007). If it is determined that the contract has misrepresented the facts, or if pressure was used to influence another party to cooperate, the agreement is ruled invalid. In addition, if the contract conceals any important facts, it would not be legal. Explicit conditions—those written into the contract—must define the intent of each party. Finally, it is critical that the parties are both of legal age, as well as competent to sign the contract. Writing contractual conditions can be complicated for the following reasons:

- A condition never appears without being attached to an obligation.
- The language signaling a condition can vary from one contract to another, and even within a contract.
- A judge may interpret the condition as a covenant.
- The failure of a condition does not necessarily create a liability or assign the right to damages, and never breaches the contract; either it satisfies, or it fails.
- Failure, however, may have unpleasant consequences, such as allowing one party to terminate the contract. Yet, there is no right to damages even if the condition fails to occur. When considering the writing of a condition, use the following terms to signal a mandatory obligation: *if, provided that, in the event of, unless, it is a condition of,* and *must.*

An example of an obligation subject to a condition:

> *The university's obligation to make the payment is conditional on the satisfactory progress report submitted by the receiving party; an* example of a discretionary subject to a condition: *If Party B fails to submit the progress report at the time designated, the University may impose a fine of $1000.*

Conditions, just as terms, should be explicitly written, establishing a performance obligation. The condition might include expectations such as:

> *It is expected that both parties will seek to maintain a cooperative climate with each other, respect differences of opinions, and readily communicate both digitally and face-to-face as the work proceeds. Field reports shall be regularly submitted (the last day of each month) and provided to all staff involved, with onsite meetings of staff from both parties to discuss the contents within one week (seven days) of receiving the reports.*

4.2. Representation and Warranty Clauses:

Representations and warranties are not synonymous although, again, many lawyers may not understand the differences, using them interchangeably. A *representation* is a statement of fact or present

intention that influences a party to consent to being part of a contract. Such a statement made before or at the time of writing the contract, regards a past fact or existing circumstance related to it. A representation can only be made with regard to past and/or present facts, so the verbs must be written in the past or present tense. A representation is related to matters of fact (i.e., *one party details their relevant education and experience*) or a present intention (i.e., *to sell products that are authentically designed and made of quality materials*) during the contractual negotiation phase that may encourage another party to enter into a contract.

A *warranty* is a promise that a fact is true, usually regarding the condition of the product stated correctly. Unlike a representation, warranties can be extended into the future. For example: *The product will be free of defects for one year from purchase date.* A warranty in contract law is a promise or guarantee from one party to another that the facts as written in the contract are true and reliable (Adams, 2001). A contractual warranty is an obligation that the facts relating to the subject of the contract are accurate. For example: *The warranty guarantees to cover the condition of products or equipment that will be utilized in the project, as well as repairs or exchanges that are required in the event that the product does not function as originally described or intended.*

Here is an example of the use of representation and warranty together in an acceptable situation: The sellers represent themselves as the owners who have the authority to sell the property and warrants that the property is represented truthfully. Misrepresentation can result in the rescission of a contract, while failed warranty and representation could create liability and damages for misrepresentation and breach of warranty.

Finally, the law recognizes two kinds of warranties: implied warranties and express (written) warranties (Gittings and Bagby, 1998). Implied warranties are unspoken and unwritten promises, created by state law, that also protect customers.

4.3. Dispute Resolution Clause: When Things Go Wrong:

The relationship between parties is overseen by a contract, whether private or commercial. When two parties come together to define the terms and conditions of the agreement, there is usually no anticipation of any future conflicts with each other when looking ahead to the work being carried out (Kayali, 2017). If conflicts do arise, however, the parties must have agreed upon ways to quickly resolve these issues during the drafting of the contract.

Thus, both parties need to be aware of the specific processes to be followed, and the remedies that are available (Rowan, 2012). Court-litigated disputes can draw time, money, and other resources away from growing the business or completing the research. Rather than seeking a court resolution, which can be a costly and lengthy process, including a strong dispute resolution clause may provide a more advantageous outcome. Alternative dispute resolution options include arbitration, conciliation, mediation, and negotiation, which can be stipulated for a specified time period, with a deadline set for arriving at a consensus.

These processes are informal, cheaper, and faster in comparison to traditional litigation procedures. Usually, parties from different countries are eager to have the dispute resolution clause included in their contract rather than subjecting it to a foreign legal system. This clause always designates a period of time for the parties to try to resolve their dispute through alternative options, such as approximately a month or more (Atlas et al., 2000). In addition, the number of mediators or arbitrators will be determined, as well as the techniques for handling the dispute process (Nurk, 2009). It is logical to begin with mediation for a designated period of time, but if this process does not work well, the parties can move to arbitration.

4.4. Arbitration Clause:

The next resolution process to consider is arbitration. An arbitration hearing is similar to a small claims trial in the United States, wherein each party presents evidence supporting their position. The hearing ends with the arbitrator's ruling in favor of one side or the other (Erkan, 2011). Unlike mediation, an arbitrator is under no obligation to try to find a compromise. Usually in the drafting stage, the parties will negotiate the following particulars prior to arbitration action: the number of arbitrators and mediators, the applicable law binding the location of the arbitration, and the procedures employed when choosing an ad hoc arbitration or an arbitral institution, either of which will apply its preferred procedural law. The seat of arbitration is the most important aspect (Paulsson et al., 2011). Parties tend to ask each other to agree to have the seat of arbitration in their respective state jurisdiction. If they cannot agree to each other's states, they must agree to designate a third neutral location. For example, parties from the U.S. and Saudi Arabia commonly agree to choose England or France as a third neutral party.

Parties can also strengthen the outcome of arbitration by inserting terms in the arbitration clause indicating that the outcome is binding and final. However, some parties may not accept the final judgment of arbitral awards. Instead, they may turn to litigation in which the judge dictates the governing law and jurisdiction of a contract.

4.5. Termination of Contract Clause:

A contract can be terminated in three common ways:

4.5.1. Breach of Contract

A contract is broken with no legal excuse provided: one of the parties fails to complete a required portion, or acts against the contract terms and conditions, such as the quality of services or due dates for delivery (Callahan, 2009). Contracts occasionally allow such parties a time period in which to rectify the breach after one party receives such a notice from the other party.

4.5.2 Termination for Cause or Termination due to Force Majeure (Natural Disasters)

Neither party is liable, in the event of a natural disaster, for failure or delays in performing the obligations set forth in the contract, or any causes reasonably beyond their control, e.g., death or illness (Vinter and Price, 2006). In addition, the politics of countries can have an impact on the completion of the contractual work when ties are broken between governments of the parties contracted, which may affect the delivery of the products specified in the contract.

4.5.3 Termination for Convenience

Either party may terminate the contract for any reason, including the context of the contract no longer being viable, the terms not suiting the parties' changed needs, or the withdrawal of financial backing (Wilson, 2008). The terminating party, however, may be required to give advance written notice to the other party on an agreed upon timeline (Miller, 2008). The parties, or their legal representatives, may negotiate how soon the termination notice is to be given in advance of officially terminating a contract. Normally, this notice would urge the other party to finish any work in hand, and refrain from authorizing any extra spending or work. The time period must be reasonable for the type of contract to give the terminating party time to prepare itself for ending the contract, as well as the submission of invoices and reports. This period of time between the notice of termination and contract termination puts the terminating party in a precarious situation; the other party may expend the budgeted funds for the whole project during this period. The notice, therefore, should

state clearly that all spending ceases after receipt of a termination notice. The party initiating such a termination will also be obligated to pay for time and materials utilized up to the termination date. Along with the costs, the initiating party must turn over all documents, notes, computer programs, and other relevant information to the other party.

Termination is usually thought of as a last resort, but it can also be quite useful if certain clauses in the contract need to be rewritten or even renegotiated (Collins, 2003). If termination is invoked by one of the parties, some parts of the contract may and should survive, such as confidentiality and intellectual property rights. In other areas, items in a sale or a purchase order may remain effective even when the contract expires or is terminated. Termination for convenience gives either party resilience, while preserving their interests in perhaps an extended contract at a time in the future.

The termination for convenience clause is often overlooked in contracts because neither party expects problems due to the normal optimism at the beginning of drafting a contract. Even if it is not used by either party for the lifetime of the contract, and may not always be enforced, it can be a critical element when something goes extremely wrong or circumstances have changed, such as an unanticipated budgetary problem. Termination for convenience is a go-to clause and can be invoked when either of the parties decides, for example, that the services or supplies are no longer needed.

Furthermore, the termination for convenience clause is a very powerful tool for public or private parties by providing more opportunities for a party to terminate a contract (Haghpanah and Almasi, 2018). On a cautionary note, a party cannot terminate for convenience unless the termination clause is clearly and expressly written; it is always drafted to allow unilateral decisions to terminate at any time. To terminate a contract at one or the other party's convenience is the reason behind the existence of the clause; terminating a contract for convenience does not often require grounds. Parties or their representatives must compose this clause to stipulate the termination for convenience in their favor. It is not always a simple task to convince the other party to agree to grant a termination for convenience without allowing some restrictions, such as providing notice in advance and a time period for the notice before the contract is officially ended.

4.6. Governing Law and Jurisdiction Clause:

Governing law indicates which state or country law will be used to decide the dispute (Cordero-Moss, 2011). Jurisdiction refers to the location where any disputes will be resolved. If the parties do not know for sure what the applicable law provides, then they do not know if the contract is actually legal in that jurisdiction. Which law should they choose? For both individuals and companies in Saudi Arabia, the governing law would be Saudi law. It is to a party's advantage to choose the law they know—their own state or country—rather than guess at other jurisdictional laws. Thus, if residents of another country wish to do business in Saudi Arabia, the Saudi law for mediation/arbitration is workable, and the courts would not interfere, provided the contract includes a mediation/arbitration clause. Legal representatives should be consulted in such matters. Example of a governing law/jurisdictional location: *The governing law and jurisdiction for this contract will be the Saudi law and courts.*

4.7. Confidentiality Clause:

Confidential information may include ideas, valuable business and commercial information, unpatented inventions, intellectual property, trade know-how, processes and products (Stim and Fishman, 2001). In addition, parties should notify each other if any information provided is of a confidential nature. A party may stipulate a period of time for confidentiality, which may be negotiable. Example of a confidentiality clause:

> *All documents, notes, or statements submitted during the contract drafting meetings from either party are to be considered confidential unless permission is given in written format by the parties.*

4.8. Indemnity and Liability Clause:

An indemnity/liability clause focuses on any risks or losses that may occur during the time of the contract, ensuring that one party is protected in case of liability caused by the actions of the other party (Adoranti, 2006). Such a clause stipulates compensation for each other if any harm or losses are experienced as a result of the contractual work. A provision in the contract stipulates which party (or both parties) commit to compensate the other (or each other) for any harm, liability, or loss arising from the contract (Espenschied, 2010). The rationale for computing the amount of compensation is usually described in the clause itself. Parties must consider if there is a need for the indemnity/liability clause in their particular contract. An indemnity clause is dependent upon the parties' motivations, as well as the overall purposes of the agreement.

Liability is implemented through an indemnity or a hold harmless clause in the contract (McKeown, 2015). A limitation of the liability clause is a provision in a contract that limits the amount of exposure a company faces in the event a lawsuit is filed or another claim made. This limitation can cap the amount of potential damages to which a party or company is exposed. Negotiating a fair limit in any drafted contract is critical. Most laws accept and enforce the limitation of liability clause as long as it is clear and concise, and the cap has resulted from negotiations between the parties. Furthermore, it may be best to highlight the clause so that it stands apart from others in the contract. Finally, keeping records of the contract negotiations in the area of the limitation of liability can be proof that these amounts were part of contract negotiations.

One of the best examples of indemnity is when an insurance company indemnifies a property owner from losses or damage to that property. The business owner transfers the risk of having to pay for negligence to the insurance company. In another example, a business owner may buy indemnity insurance for professional liability. An indemnity agreement is sometimes called a hold harmless agreement to assure that one party does not attempt to sue another party for negligence.

5. Conclusion

As a practicing contract lawyer at a Saudi university, I am immersed in a range of work, encompassing everything from research projects to employment cases, as well as overseeing other lawyers. Most of my focus is on parties, as well as legal staff. Often lawyers, when beginning to draft a contract, will follow templates or similar contract documents without scrutiny, and the framing of the new contract in hand may be little more than copying and pasting. In contrast, the construction of an agreement and its clauses would usually begin with the participants, their interests, priorities, and values. What are the stipulations of each party, their intent or objective? What are their respective duties and legal obligations to each other? On what points can the parties be flexible and negotiable? Clauses and sections must be individually designed for each party, yet with the understanding that compromise is expected and indeed encouraged.

This paper stresses not only the basic organization of a typical contract, such as the placement and order of the various sections and

schedules, but also the essential clauses that lawyers from both Saudi Arabia and the West may need to understand when getting together to draft a contract as two intercultural bedfellows. The research sheds light on the critical clauses vital for those who speak English as a second language, along with lawyers who may be involved in drafting a contract and negotiating terms and conditions with a foreign partner. However, the clauses included in this study may not be everything that a lawyer must know about drafting contracts, especially the techniques for negotiating the wording of clauses. Thus, in drafting a contract, when discussing offers and counteroffers with parties and other legal staff, the consequences of how the clauses are put together must be analyzed carefully.

Conferencing with parties is challenging when strong positions and desires are imposed during the negotiation for a fair and balanced deal. Saudi lawyers should be aware of the relevant statutes of American states, as well as those of the federal government, so that the appropriate input is given during the drafting process. Indeed, awareness of the influential factors surrounding the contract may promote positive relationships, leading to greater flexibility during negotiations. Requests and suggestions are more reasonable when lawyers are knowledgeable and astute about the regulations of each other's countries, conceding certain points in the contract consistent with each other's laws.

The organization of a contract should flow logically to reveal the framework and coherence of all sections and clauses. It is vital that the language used in the contract includes appropriate words and verb tenses needed to clarify choices versus obligations, and that such sentence constructions should be highlighted for the parties. The elements of a contract or agreement reflect the parties' objectives, the SOW, and the offer and acceptance, as well as clarify the definitions that spell out the trajectory of the parties' plans.

The legal aspects must be detailed with regard to the terms and conditions, which can be commonly confused and may seem to be inter-related, even for lawyers. The differences between the two are rather distinctive in purpose: terms of a contract relate to specific time periods for contractual achievements, as well as timelines for monetary transactions, whereas conditions explicate the expected responsibilities by both parties.

Mutual trust between the parties is essential, and part of a contract requires that they honestly represent who they are and their qualifications and experience. Legally, if doubt about each other surfaces, or if facts are misrepresented, the contract can be voided. Along the same lines, contracts contain warranties on any products that are purchased, so that the parties are assured of quality control, repairs, or exchanges.

Other critical clauses set out how the parties must work together to avoid conflicts and possible obstacles that may arise at a future point in time. Although it seems difficult to imagine any issues coming up at this point, lawyers and parties must be mindful and plan for contingencies. In this way, the types of resolutions, including those that may be handled by termination actions, should be thoroughly discussed. Clauses must contain such termination options for parties who may experience monetary shortfalls or other unforeseen circumstances that may occur. The termination for convenience clause is especially conducive for parties when new information is received that circumvents the original contract or requires some major changes to it.

With regard to more technical aspects, e.g., intellectual property, financial details, structuring the SOW, and realistic timelines, lawyers may need to seek advice from university experts or those working in partner industries during the contract drafting stage. However, if legal staff feel pressure from their administrators to approve questionable contract details, it is incumbent upon the lawyer to point out the possible unintended consequences of ensuing lawsuits in the future. In addition, legal action can be considered when there is a suspicion of untoward financial issues that arise during the project's development, or after its completion. In the end, legal staff may come to realize that guiding and directing participants with a light touch will promote harmony rather than create an adversarial atmosphere of distrust and suspicion.

6. Recommendations

Most of my recommendations are focused on parties, as well as legal staff. Thus, it behooves lawyers in their working relationships with parties to avoid using confusing and convoluted language when writing clauses. They must be easily comprehensible and should be written in plain language that is understandable and reviewable by people in various professions, as well as the general population. Lawyers also tend to insert legal jargon that may perplex and discourage participants from opportunities to further the arrangements. Additionally, if unneeded clauses are inserted, the relationship between the parties can become too complex.

The language of contracts may also cause parties to question the reasons Saudi lawyers need to negotiate and draft contracts in English. In fact, the English language is globally utilized for businesses, transactions, and contracts. When an individual from Saudi Arabia interacts with a person from the Philippines in Italy as tourists, their common language may be English. Thus, lawyers from Saudi Arabia and France use English as the language of the contract. Even when writing a contract in both languages, parties will stipulate that in the case of future disputes, the English language will prevail. This also applies to an arbitration clause between, for instance, two parties from the Netherlands and Saudi Arabia who choose to go to arbitration in France; the language stipulated in the arbitration clause would be English. Unfortunately, translations from one language to another, either by fluent speakers or internet platforms, will never be quite sufficient or accurate, since legal terms may inherently have different meanings in other languages.

Drafters of contracts are negotiators by default, so knowing their clients' priorities and possible options is essential. In addition, legal staff cannot readily negotiate the various circumstances that arise during the drafting period unless they know their parties' desires, as well as their flexibility. What options are available, for instance, if one party asks the other to submit a notice of termination 60 days in advance and is refused? Would the university accept 45 days instead? While negotiating and drafting, lawyers can give up some points and seek concessions elsewhere.

Another little-known practice that may prove useful during the offering and counteroffering periods while drafting contracts focuses on discussing certain particularities in clauses that are questioned by one of the parties. Crossing out the sentence in question and replacing it with the counteroffer seems to be more effective and direct than highlighting it and writing the counteroffer in the margin. This kind of haggling may go on indefinitely as lawyers comprehend the prevailing needs and concerns of the other party. When asking for a modification or substitution in certain points of a clause, the other party may respond that one is non-negotiable, but they may concede a point in another clause. Such approved changes will be contained in amendments or annexes, necessitating a new round of negotiations and revisions. Parties must be cognizant of their position before painting themselves into a corner.

Indeed, executing contracts is usually not the end of drafting. Parties may add amendments later that become a part of the contract, such as dates, payments, and SOW. Delays may also occur due to further

consultations with the departments that will be involved. For lawyers to protect themselves, they should have the administrators or other stakeholders sign these changes, giving permission to make such revisions. It is wise to consider backup documentation to avoid potential altercations or even lawsuits in the future. Drafting and negotiating a contract is the art of what is possible, and lawyers are the artists.

Bio

Ali Salem Almarri

Department of Private Law, College of Law, King Faisal University, Al Ahsa, Saudi Arabia, 00966538486195, asaalmarri@kfu.edu.sa

Dr. Almarri, a J.S.D. graduate of the Washington University School of Law, Saint Louis, Missouri, USA, is currently an assistant professor of contract law, alternative dispute resolution, and director of the Private Law Department. He is also executive director of the lawyering high diploma graduate-level program. He gained mediation experience in the U.S. while working with American mediators. In addition, he serves as a contract consultant for the King Faisal University with experience in local and international contract drafting and negotiations between universities and businesses.

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