

THE FOUR C'S OF CONTRACTS

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In teaching the basics of contract drafting over the last several years, I have found that the attributes of a solid contract boil down to four simple points. Just like grading a diamond, each of these points makes a contract more valuable. Regardless of the complexity of the transaction or the length of the contract, it's my experience that good contracts all share these basic elements:

CLARITY. Defining clearly the “who, what, when, where and how much” is at the heart of all good agreements. Clarity makes sure that the parties' expectations are aligned. One excellent tool for providing clarity is the use of examples. Creating examples not only helps provide clarity, but it helps you think through the transaction and address contingencies that you may not have thought of.

CERTAINTY. Think of a contract as the rules of a game. Words like “will” and “shall” provide crisp direction, whereas phrases like “best efforts” leave matters in the eye of the reader. One word that has no place in any contract is “etcetera.” It's the wild card that can be anything anyone wants it to be. While that's great in poker, it's lousy in contracts.

CONSENSUS. It seems obvious, but good contracts reflect a “meeting of the minds.” While this is not to discourage tough negotiation, it is to say that sneaking something into a contract is a sure-fire recipe for a dispute. At a recent lecture I gave with a retired judge (who is now a mediator), the judge added “fairness” as a corollary to this element. As he explained, one sided agreements run a much higher risk of being ignored by the other party and, in some cases, by the court.

CONSCIOUSNESS. Each provision of the contract must serve a purpose that you understand and accept. Quite simply, if you don't know why a provision is in your contract, you cannot know whether it's something you can agree on.

Over the years we have made available several tools on our website that help meet these elements, including our [Checklist for New Contracts](#) and our [Guide to Contract Terms](#). Make use of these tools and, using the Four C's, let us help you make all of your contracts shine like a diamond.