

LESSON 4: DRAFTING AND UNDERSTANDING CLAUSES

Script:

Given the use of legalese, technical expressions, legal referencing words, assigning of special meaning to words with ordinary use and some of the other elements of contracts discussed earlier in this module, both understanding and drafting contracts is not easy. Even native English lawyers often struggle with this, on their first attempt. I will therefore try to give you a few tips which, hopefully, will make understanding and drafting of clauses a little bit easier.

First, review the **definition section** (usually placed at the beginning of the contract as its first clause), since it may prescribe certain meaning to ordinary words and agree with your **counterparty** on this (this is, the other party to the contract), including words that are of particular importance to you and your client.

Secondly, all **fundamental (or material) terms** should be defined completely. Much difficulty in contracts comes from incomplete or missing definitions.

Third, **never assume anything** and don't be afraid to ask for clarification. Assumptions are really the most difficult part of any contract. You read a contract that includes a section on how early termination will be triggered. Even if you think you understand what has been written, ask for an example, or simply say, "Just to make sure we are both on the same pages, does X really mean the following?..."

Moreover, ask yourself "What is missing?" Most often, this has to do with modification of a **template** you are working from – either **incorporating** new terms that are needed or **striking out** (meaning getting rid off) other terms which are unnecessary or won't be **enforced** by either party.

In other cases, especially if your client doesn't speak English well, think about how a section (meaning, a contract clause or article) could be **amended** to make it simpler or shorter.

At the same time, think about who is your counterparty; if it is a native English speaking lawyer, did you use precise legal vocabulary or did you use plain English terminology? While the latter could be easier to understand by your client, it could create the impression, in the eye of your counterparty, that you are really not familiar with the world of legal English.