Structure of a commercial contract

1 February 2012
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COMMERCIAL CONTRACTS

Structure of a commercial contract

Handout 1: the structure and format of the contract
Handout 2: Specimen contract
Structure of a typical commercial agreement

- **Objective** - logical sequence – easy to read
- **Index** - clause numberings and headings, schedules
- **Parties**
- **Recitals** - history and background
- **Definitions** - terms which are long and repeated several times - a shorthand ‘label’
Structure of a typical commercial agreement

- **Main operative clause** - describes the main commercial transaction
- **Consideration** – cash/non-cash
- **Conditions**
- **Warranties**
- **Confidentiality**
- **Duration and termination**
Structure of a typical commercial agreement

- Miscellaneous clauses/‘Boiler plate’
- Schedules
- Appendices
- Exhibits
- Execution blocks
Structure of a typical commercial agreement: Recitals/Background

Recitals:

- History/background
- Statements of things that have already been done
- Explain matters of fact which are necessary to make the transaction understandable
Structure of a typical commercial agreement: Recitals/Background

- Use of ‘WHEREAS’ or BACKGROUND clause
- Term of the contract or not
Structure of a typical commercial agreement: Definitions

- Terms which are long and repeated several times - a shorthand ‘label’
- Location of definitions
- Introductory wording: Handout 3
- Layout
- Use of capital letters/bold
- Order of definitions
Structure of a typical commercial agreement:
Boiler Plate

Handout 4

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“Four Boilerplate Specials.”
What is Boiler Plate

➢ Wording that can be re-used over and over without change?

➢ A template wording?

➢ Boring legal clauses at the back of the contract?

➢ Standard contract clauses that can be useful whatever the contract covers?
What is Boiler Plate

Concerns the basic operation of the contract, rather than the commercial issues
What is Boiler Plate

-Origins in typesetting for newspapers printing
-Or in heavy industry
-Legal agreements use ‘boilerplate clauses’
-Jargon
What is Boiler Plate

- The term "boiler plate" was later adopted by lawyers to describe those parts of a contract that are "standard language"
Examples of Boiler Plate

- Further assurance
- Assignment
- Sub-contracting
- Entire agreement
- Force majeure
- Notice
- Governing law
- Guarantees
- Costs

- Arbitration/dispute resolution
- Service of legal process
- Counterparts
- Illegality/severence
- Waiver
- Counterparts
- Interpretation
How much Boiler Plate

Core boiler plate:

- Law
- Jurisdiction
- Dispute Resolution
- Notices (?)
How much Boiler Plate

Sometimes core:

- Termination
- Confidentiality
- Definitions
How much Boiler Plate

Can be useful to have:

- Assignment
- Interpreation (?)
- Entire agreement (?)
How much Boiler Plate

Sometimes deal specific:

- Waiver
- Force majeure
- No agency/no partnership
So, how much Boiler Plate

Short agreement/letter:
As little as possible

Watertight contract/no pressure to keep friendly: full scale boiler plate (?)
The end of the contract

- **Testimonial** – signature blocks
- **Schedules and appendices**