

# BUILDING BLOCKS OF A CONTRACT: THE FUNDAMENTAL ELEMENTS

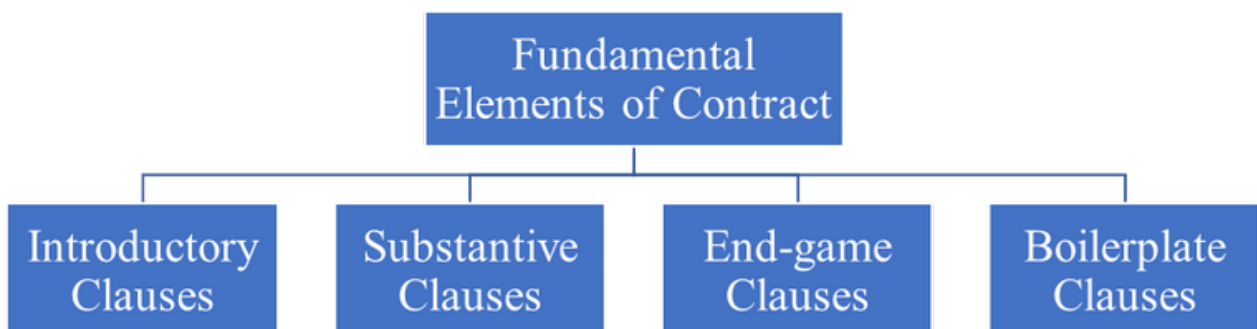
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Most contracts adhere to a standard structure i.e., organizing the contract's elements in a sequence that enhances clarity and facilitates easy understanding of the provisions. Logically, using a standard format for arranging clauses is also sensible. For instance, placing the details of the Parties in the middle of the contract, after outlining their obligations, would be illogical.

Contracts come in numerous types, depending on the transaction, subject, purpose etc. Each type may vary in length, types of provisions, language, or format. However, one commonality in all contracts is that they follow similar patterns. In other words, certain fundamental elements are present in all contracts. It comes out that, no matter how radically different one contract is from another, it must include these fundamental elements in any form to be considered complete.

The aforesaid fundamental elements of a contract can be the following:[i]



[i] Drafting and Negotiation of Contract by Mr. Ajar Rab

## **Fundamental Elements of Contract**

1. **Introductory Clauses:** The introductory section of the contract offers valuable information on the who, what, when, and why of the transaction. It essentially informs the audience about the nature of the contract, where it is made, the date of its creation, the background of the agreement, and what the Parties aim to achieve by entering into the contract. The Introductory Clauses predominantly has following components:

- i. Preamble
- ii. Parties
- iii. Recitals Interpretation Clause
- iv. Definitions

A brief understanding of the aforesaid components of the Introductory Clauses is provided below:

Preamble: The Preamble is the initial paragraph of an agreement, serving as a brief introduction. It identifies the agreement by stating its title, date, place of execution, and the Parties involved. Typically, the Preamble begins with the name of the agreement, which forms the title e.g. EPC Agreement, Supply Agreement, Concession Agreement etc. and it reflects the type of business. Further to this, the Preamble contains date and place of execution of the Agreement.

Parties: The Parties, clearly identify the parties on whom the contract is binding by mentioning the full name, description and addresses of the Parties. In a contract, a legal entity like an individual or a company is made a Party i.e., a company's department or unit cannot be made a Party, if it is not a legal entity.

Recitals: Recitals provide the context for entering into a contract. They outline each party's business activities, the services or products they require or offer, and their reasons for forming an agreement to meet mutual needs. Without Recitals, the title alone would reflect the general purpose of the agreement but not its specific objective. Including Recitals clarify the relationship between the Parties and their motivations for entering into the agreement. Recitals are particularly valuable for informing third parties about the contract's purpose and clarifying the intent of the Parties involved.

**Interpretation Clause:** The Interpretation Clause helps to avoid complexities and enhances clarity by precisely defining and interpreting the general terms used in the contract. By resolving and reducing internal inconsistencies, the Interpretation Clause makes the contract more robust and prevents any party from exploiting loopholes or misinterpreting the terms to their advantage. Additionally, an Interpretation Clause simplifies the contract and ensures that all Parties have had a reasonable opportunity to review the document.

For example, a contract might specify that the pronoun "he" can be used to refer to both males and females. This provision safeguards the contract from losing its liabilities or rights due to any adverse interpretation of the term "he."

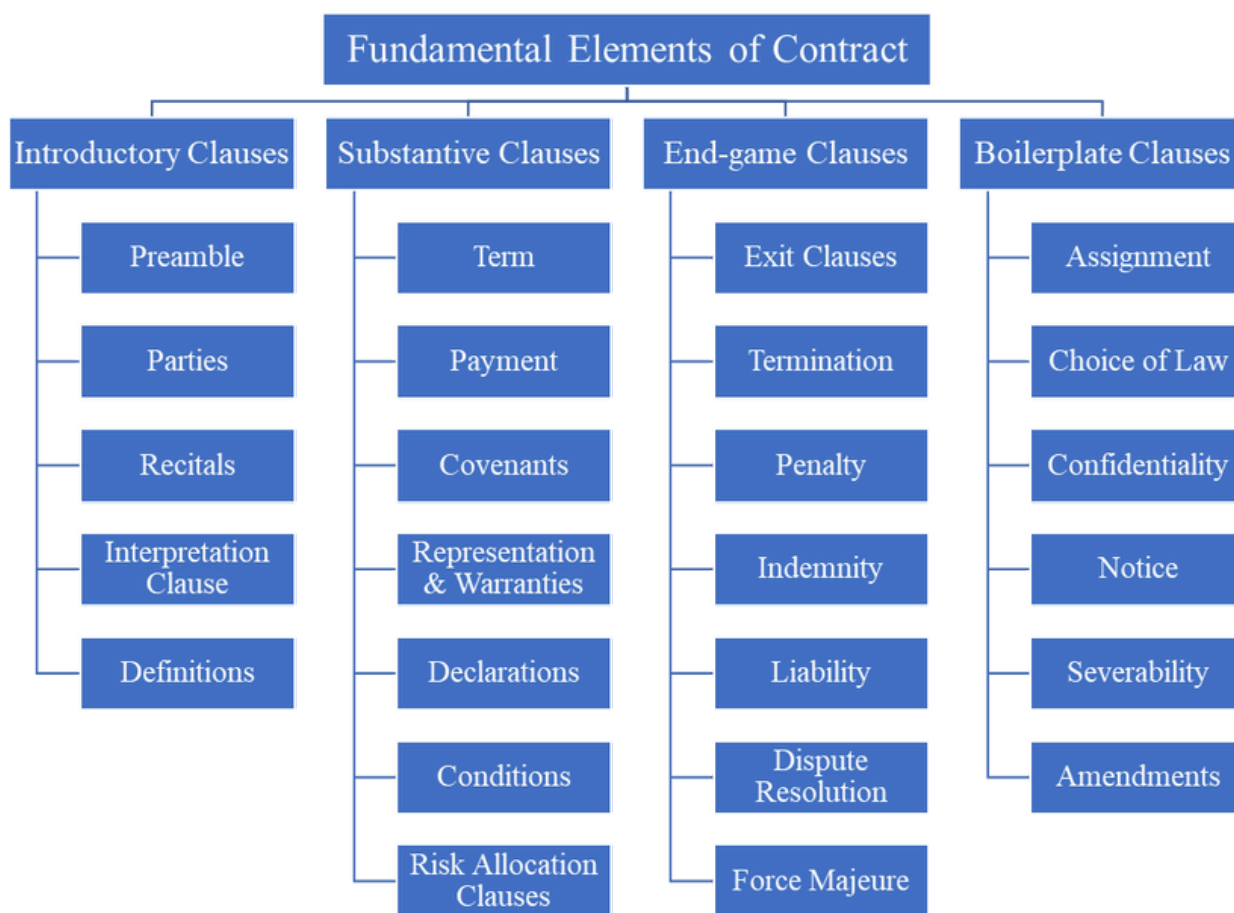
**Definitions:** Definitions in a contract are especially valuable when unclear or ambiguous terms could give rise to multimillion-dollar or rupee disputes, litigation, and liability. They improve the clarity, consistency, and precision of the agreement. By defining terms or concepts that appear frequently, Definitions ensure that each term is consistently interpreted in the same way. This is crucial when a word is often used but carries a specific meaning within the document that might differ from its common usage. A fundamental rule in contracts is that the first letter of defined terms must always be capitalized.

**Substantive Clauses:** Once the introductory section of the contract is complete and the background is outlined, the main part of the contract comes into play. This section defines the essence of the agreement and is commonly referred to as the substantive or operative provisions of the contract. Substantive clauses include clauses such as term, representation and warranties, covenants, conditions, declaration, and risk allocation.

**End-game Clauses:** Just like the saying "All's well that ends well", it's crucial for a contract to have a smooth and satisfactory conclusion. The conclusion of a contract can occur for various reasons. While these provisions are often referred to as termination clauses, the term "end-game" encompasses much more. In addition to termination clauses, it includes penalty clauses, indemnity clauses, liability clauses, force majeure provisions, and dispute resolution clauses.

**Boilerplate Clauses:** Following the end-game provisions, a contract typically concludes with a series of general provisions known as Boilerplate provisions. These sections provide a roadmap, guiding the Parties on how to manage their relationship and administer the contract effectively. Boilerplate provisions include; Assignment, Choice of Law, Confidentiality, Notice, Severability, Amendments etc.

Based on above discussion, various fundamental elements and clauses of a contract can be presented as below:



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