A written agreement is relationship or enterprise *infrastructure*, not a legal nuclear bomb

The contract-drafting process should be conducted as a good-faith, win-win negotiation

Written contracts are not effective protection against dishonest or greedy counterparties

Don’t negotiate with people whom you do not trust, except in settlement negotiations where you want to avoid a lawsuit

If the relationship or the deal really matter, it pays to invest in good legal advice

Before negotiating a contract, make a written list of features that you want in the transaction or relationship, share the list with your attorney and use the list to guide the drafting process

Control (or share control over) the document draft

Draft enterprise governance (if appropriate) and dispute resolution clauses carefully, using appropriate ADR features, to eliminate deadlocks and minimize the need for litigation

Make certain that anything you want to happen in the deal or relationship is included in the final written agreement, then include a “full integration” clause

Carefully draft for frustration, force majeure, and impossibility (see Emanuel’s outline for definitions)

Carefully review the draft agreement several times, from soup to nuts

  - Make sure you have addressed or intentionally abandoned everything on your wish list
  - Make sure that the language is clear, active, and cannot be misunderstood (unless ambiguity serves some identifiable purpose)
  - For enterprises, joint ventures, partnerships, and so forth, be certain that entrance, capitalization, operation, compensation, profit distribution, governance, and exit issues – including what to do in the even to death or disability -- are all “tied down”

Remember cultural differences: contracts are culture-dependent in that

  - Most Americans view a written contract as a “final agreement,” whereas in some other cultures (as in China and Russia) a contract is only a negotiating starting point
  - in the United States, clarity and specificity are contractual virtues, but in other cultures they may signal lack of trust
  - outside of Europe and the former British Empire, insisting on a tight dispute resolution clause may poison the business relationship