
OFFICE OF UNIVERSITY COUNSEL REVIEW OF ISSUES IN CONTRACTING

or: How I Learned to Stop Worrying and Love Limitation of Liability

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LEGAL RESTRICTIONS

- Out-of-state or foreign law or jurisdiction
 - “Excluding its conflict of laws provisions”
 - There be monsters with GDPR
 - VFOIA (Sponsors’ favorite) and 2.2-4342 (Only for procurement)
 - Arbitration (and side note about Mediation)
 - Indemnification
 - Accepting responsibility for “all actions” of employees
 - Authorities of the Attorney General
 - Sole control of defending indemnifiable claim
 - Injunctive relief w/o posting bond, attorneys’ fees, and liquidated damages
 - Waiving jury trial
 - Truncated time to make claims
 - Sovereign immunity
 - Liquidated damages (again) and security interest
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PURPOSE OF A CONTRACT

- Binding obligations
- Risk and responsibility allocation (see, e.g., “all actions” of employees)
- Boundaries of disputes (e.g., punitive damages)

COMMON LEGAL ISSUES

- Shift in the basic bargain
 - Limitation of liability (LOL but in a bad way)
 - Indemnification limit (monetary caps and only IP)
 - IP rights, especially data
- Beware/Be aware of all third-party systems and services
- Sponsor/vendor storing and accessing UVA data
- Interplay of contract and consent form (tail wagging the dog)
- Trying to make a PI a “party” or personally responsible

Who benefits and who should accept the risk?

ASK ME QUESTIONS ANY TIME