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The Role of Culture in Commercial Disputes

Increasingly we are seeing litigation where the business culture of the parties is not well aligned with the court system.

In many cultures, deals are done on a handshake. Asking for a written document risks insulting the honor of the other party.

In circumstances where: a) a deal is done on a handshake, b) the deal later goes badly, and c) the parties resort to litigation, then the litigation often runs in to difficulties because:

- neither party can prove their case by reference to documents; and/or
- the parties characterize the deal in the form most advantageous to them.

For example, funds are advanced to a business venture and it is not clear whether it is by way of a: a) loan, or b) share purchase. Depending on the nature of the dispute, and the role - plaintiff or defendant - it may be advantageous to:

- present the funds advanced as a loan – quantifying damages based on the outstanding loan, and making use of the legal remedies for collecting on a debt; or
- present the funds advanced as a share purchase – quantifying damages based the benefits that should have accrued to the shareholder, and making use of the legal remedies for shareholder oppression.

Things get even more complicated when the parties provide descriptions of the deal in that are not consistent across different forums, such as: land transfer tax filings, PPSA registrations, land title registrations, income tax filings, and litigation.

I work with plaintiff's counsel to identify and address these inconsistencies.

Alternatively, I work with defendant's counsel to identify and exploit these inconsistencies.

[**Get My Help on Your Damages Claim**](#)