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Contractual Obligation

Did You Know?

Did you know that contracts can be either verbal, written or both? While **verbal contracts** are enforceable, they are hard to prove since the contract relies on the good faith of all parties. Therefore, it is best to reduce all agreements to writing. **Written contracts** may either be a standard form agreement or a document confirming the agreement.

A contract is binding when there is:

- An offer
- An acceptance
- An intention to enter into a contractual relationship
- Consideration

A contract can be terminated when there is:

- An **agreement** by all parties to terminate the contract
- A **frustration** where circumstances outside the parties' control makes it impossible to continue the contract.
- A **breach** where a party failed to comply its contractual obligations. The other party may terminate contract and sue for damages.

Challenges

Parties to a contract may disagree over the terms of the contract. There may be disagreement over the scope of work as outlined as well as the financial liability should a breach of contract occur.

Therefore, **contractual conditions** are fundamental. If conditions are not fulfilled, the contract will be terminated, and parties may seek damages. **Contract warranties**, on the other hand, are not fundamental in that a contract will not be terminated should a breach occur. However, parties can still seek damages.

Practice Tip

What to include in a contract?

A contract typically includes the following elements:

1. **States all parties:** legal names and full addresses
2. **Scope:** detailed description of work to be provided
3. **Payment terms:** lists payment amount, length of payment period, deadline and interest rate for late payments
4. **Consequences:** defines the responsibility of each party and the consequences of a breach
5. **Terms and Conditions:** exculpatory clause, terms for amendment and termination, warranties
6. **Signatures:** includes the signatures of all parties, the title and typed names of all parties and the signed date and location?

Before signing a contract:

1. **Read every word**-including the fine print carefully
2. **Define the terms and conditions** in as much detail as possible
3. Put any **changes in writing** and make sure all parties initial the changes
4. There should be **no blank spaces** to avoid altercations.
5. Ensure the terms and conditions reflect the negotiated agreement
6. **Seek legal advice**
Make sure you have **plenty of time** to read and understand the terms and conditions



Non-Disclosure Agreements

Did You Know?

In today's competitive business environment, it is critical for businesses to protect themselves and their inventions by drafting non-disclosure agreements. **A non-disclosure agreement** is an agreement that protects sensitive information from being shared with a competitor or a third party. In other words, the party with whom the information is shared cannot use or disclose that information without your consent.

There are two types of non-disclosure agreements. **A one-sided agreement** is used when only one party shares sensitive information with the other party. However, if both sides may potentially share sensitive information, a **mutual NDA form** is used.

Challenges

One of the main challenges of drafting a non-disclosure agreement is defining the meaning and scope of information covered by the agreement. Is confidential information limited to writing or can it include oral information? The disclosing party may want to define confidential information as broadly as possible, so the other party does not take advantage of any loopholes created by the contract. The receiving party may want the terms to be defined narrowly so as to know exactly what they can and cannot disclose. Dealing with oral information may be tricky. Without any limitations, oral information may be too broad to be deemed as confidential information. In practice, after confidential oral information is disclosed, the disclosing party has to draft in writing what oral statements are deemed confidential. When legal disputes arise, Courts have substantial discretion in judging the scope of confidential information covered by the agreement including the intention of the parties and the specific language used.



Secondly, there may be situations where it would be too burdensome for the recipient party to keep information confidential. The NDA may address these situations by containing exclusion clauses.

Exclusion clauses may include situations such as:

1. Information already known to the public
2. The recipient party independently developed a product without the use of confidential information
3. The recipient party is forced to disclose the information through a court order

Practice Tips

A non-disclosure agreement should include:

- The parties to whom the agreement applies:
 - Does the agreement apply to both parties? Does it apply only to one party? Is it between individuals or businesses? Employers and Employees?
- The duration of the NDA
 - How long does the agreement remain in effect?
- The geographical limitation of the NDA
 - Does it apply to a province? To a country?
- The scope of the information protected
 - Does it protect oral information? One aspect of an innovation?

It is important to store sensitive information on an USB key or own computer. Never email sensitive documents.

Business Tools

1. Pro Bono Ontario - Free Legal Advice Hotline

Free civil legal advice, including common corporate-law questions for small businesses. Phone: 1-855-255-7256.

<https://www.probonoontario.org/corporate/>

2. Office of the Employer Adviser

Free and confidential assistance for Ontario employers with WSIB matters and OHSA reprisal issues. Phone: 416-327-0020 or 1-800-387-0774.

<https://www.employeradviser.ca/contact/>

3. Toronto Small Business Enterprise Centre

Free business guidance and consultations. North York Civic Centre, 5100 Yonge Street; in-person service is available on Tuesdays.

<https://www.toronto.ca/business-economy/new-businesses-startups/small-business-support/>

4. BizPaL

Online search tool for permits and licences that may apply to a business.

<https://bizpal.ca/>

5. Ontario Small Business

Ontario government information on starting, operating and growing a small business, including legal and regulatory supports.

<https://www.ontario.ca/page/small-business>