

BUSINESS AGREEMENTS

Presented by



1. Contracts

- a. What makes a contract special is that it is binding on the parties.
- b. If one party doesn't hold up its end of the bargain, the other party has legal remedies.
- c. However, to be enforceable by a court, every contract (written or oral) must meet several requirements (page 109)
 - i. Consideration
 - ii. Offer and acceptance – communicate a willingness to be bound; i.e., when you click the “Place Your Order” button on Amazon. A few things to know:
 - 1) Not forever.
 - 2) Objective standard – The reasonable person rule, rules.
 - 3) Must contain essential elements.
 - 4) There is no acceptance if...
 - a) One party's response doesn't communicate readiness to be bound.
 - b) The response has strings attached.
 - c) The offer is based on lies.
 - 5) General rule – acceptance needs to be on same term as offer.
 - 6) There can be acceptance by actions.
 - 7) The “if you don't respond by XXXX we consider you have agreed.” is usually not binding.
 - iii. Legal purpose
 - iv. Capable parties
 - v. Mutual assent
- d. Typically, three (3) phases - whether written or oral:
 - i. Contemplating the deal
 - ii. Reaching an agreement
 - iii. Performance and enforcement

- e. Oral agreements
 - i. Usually as enforceable as written contracts.
 - ii. Challenge – what if one party remembers differently than the other; thus, certain contracts need to be in writing to be enforceable. Reference to California Statute of Fraud (page 332).
 - iii. In California these agreements must be in writing (not all inclusive):
 - 1) Sales of goods exceeding \$5,000.
 - 2) Contracts that have a length greater than one year.
 - 3) Sale of land.
- f. Letter of Intent – (aka) Memo of understanding or term sheet.
 - i. Typically, summarizes the business deal that has been negotiated.
 - ii. Binding or nonbinding – be clear
 - iii. Good faith required

2. Buy-Sell Agreements (buyout agreement)

- a. Sets the price and terms for the sale of owner's interest should owner want to depart in future
- b. Usually made when business is formed.
- c. Can include a **requirement** to buy out the interest of a departing or deceased owner.

3. Acquisition Agreements

- a. Entity purchase agreements – stock
- b. Asset purchase

4. Employment Agreement

- a. Most are oral – You're hired! Great I'll see you Monday.
- b. Create an at-will relationship between employee and employer.
- c. Beware of written employment agreements – often limit an employer's flexibility; however, there are some advantages also:
 - i. Employer wants control over employee's ability to leave business.
 - ii. Employee will be learning confidential information.
 - iii. Attract highly skilled people to work for the company.
- d. Typical contents of an employment contract:
 - i. Duration
 - ii. Responsibilities
 - iii. Pay and benefits
 - iv. Grounds for termination

- v. Noncompetition
- vi. Confidentiality
- vii. Ownership of employee's work product
- viii. Dispute resolution

5. Franchise Agreements

- a. Advantages
 - i. Instant name recognition
 - ii. Consistent products
 - iii. Operating procedures
- b. Disadvantages
 - i. Exclusivity
 - ii. Dispute resolution
 - iii. Royalty payments
 - iv. Supply pricing
 - v. Non-compete clause
 - vi. Advertising fees
 - vii. Unfair termination

6. Independent Contractor

- a. BEWARE – The distinction between and independent contractor and employee is critical
- b. Handout will be provided.
- c. Agreement should include,
 - i. Description of services
 - ii. Payment
 - iii. Expenses
 - iv. Tools and equipment
 - v. Permits and licenses
 - vi. Ownership of work product
 - vii. Taxes and insurance
 - viii. Indemnity
 - ix. Worker's compensation insurance
 - x. Term and termination
 - xi. Independent contractor status – use the latest standard clause.

7. Insurance Contract (or policy)

- a. Technically a risk allocation agreement
- b. Common elements of agreement
 - i. Claim
 - ii. Commission
 - iii. Condition
 - iv. Declarations
 - v. Deductible
 - vi. Endorsement
 - vii. Exclusions
 - viii. Policy
 - ix. Premium
 - x. Rider
 - xi. Underwriter

8. Lease – Commercial

- a. Typical types
 - i. Gross
 - ii. Net
 - iii. Triple Net
- b. Key issues to consider:
 - i. Type of lease
 - ii. Security deposit
 - iii. Alterations
 - iv. Property tax increases
 - v. CAM
 - vi. Insurance
 - vii. Rent fluctuations
 - viii. Personal liability
 - ix. Length of obligation
 - x. If rent is not paid
 - xi. If tenant can't stay
 - xii. Resolving disputes
 - xiii. Moving from space to space
 - xiv. Special restrictions
 - xv. Subleasing

9. Uniform Commercial Code (UCC)

- a. Good resource – www.law.cornell.edu/uniform/ucc.html

10. Some other types of agreements

- a. Promissory note
- b. Real estate
- c. Service agreement
- d. Settlement agreements
- e. Non-Compete Agreements (voided in California)
- f. Non-Disclosure Agreements

11. Statute of limitations on contract claims in California:

- a. Written contract – Four (4) years
- b. Oral contract – Two (2) years
- c. Injury – Two (2) years
- d. Property damage – Three (3) years

Source: **Contracts – The Essential Business Desk Reference**, Attorney Richard Sim, Nolo Press, January 2011