

INTRODUCTION

Contract Law (or the "Law of Contract") is the body of law which regulates legal rights and remedies resulting from contracts among individuals and/or companies. It is part of private law because it does not involve or bind the State or individuals that are not parties to the contract, and it covers most of the commercial transactions that take place in day-to-day life.

In this section and the following, we will focus on *Contract Law* and *Commercial Contracts* governed by common law which, as opposed to civil law, is based on case rulings (a precedent set by prior court ruling) and statutory law (written laws enacted by a legislative body). It is worth recalling here that, for specific commercial contracts, such as those for the sale and purchase of goods, contract law may be supplemented or even replaced by other laws. In fact, in the United Kingdom, the sale of goods can also be governed by the Sale of Goods Act 1979, while in that other well-known common law country, the United States, it can be supplemented by another specific law, the Uniform Commercial Code (UCC). Unlike common law, the Uniform Commercial Code deals specifically with commercial contracts. It is a set of laws that govern transactions between countries and in business transactions. It was designed to create a uniform set of standards that regulate fairness in commercial transactions. The Uniform Commercial Code is a comprehensive set of nine articles or laws and rules. Likewise, the Sales of Goods Act 1979 regulates English contract law and commercial contracts for the sale and purchase of goods. This area of common law (contract law) relies on the *mirror image rule* which is based on the requirement for an absolute and unequivocal acceptance to an offer to create a contract. In other words, acceptance must be for the exact terms and conditions and anything different constitutes a counter offer that effectively rejects the original offer.

Definition of Contract

In the common-law system, it is difficult to give a precise definition of what is a contract. The general definition recites that "a contract is a legally binding agreement between two or more parties". However, the word "agreement" is used sometimes as synonym of the word "contract" but is there any difference? The answer to this question is positive meaning that the word "agreement" can be used with a more general, day-to-day meaning to indicate a decision or an arrangement among people or organizations, relating to business, social life, family, and other topics but without legal *force*. It is then self-evident that every contract is an agreement but not every agreement is a contract. Therefore, "a contract is a legally binding agreement between two or more parties enforceable in a court of law".

More specifically, a commercial contract is a written or oral promise between two parties to sell or buy goods or services. There are essentially six elements that make it a legal and binding document, which are:

1. An offer that specifically details exactly what will be provided;
2. Acceptance, which is the agreement by the other party with the offer presented;
3. Consideration, money, or something of interest exchanged between the parties;
4. Capacity of the parties in terms of age and mental ability;
5. The intent of both parties to carry out their promise; and
6. Legally enforceable terms and conditions, also called the object of the contract

In other words, a contract is enforceable when both parties agree to do or not to do something, back the promise up with money or something of value, both are of sound mind, intend to carry out their promise, and what they promise to do is

within the law. Most commonly, a contract is written and signed by the parties. There are several types of contracts that are considered enforceable.

An *express contract* is the most common contract type. In this contract, all elements are specifically stated. This can be written or done orally. Either way, offer, acceptance, and consideration must bind the parties together legally. And both parties must clearly understand the terms and conditions to which each is agreeing. An oral contract works the same way but you will hardly find this type of contract in commercial and business transactions. Not every contract is as transparent as an expressed contract.

An *implied in-fact contract* binds parties together through a mutual agreement and intent, but there are no expressed terms of the agreement. The contract holds mutual intention based on facts and circumstances, and makes a reasonable assumption from the circumstances and relations between the parties. For an implied in-fact contract to be enforceable, there are three elements that must be present: i) an unambiguous offer and acceptance; ii) mutuality of both parties to be bound to the contract; and iii) consideration. The elements can be determined by the behaviours of the parties. For example, when a guest orders a burger at a restaurant, it is assumed that the burger will be cooked and served to the guest's liking and the guest has every intention of paying for the meal.

An *implied in-law contract*, also known as a *quasi-contract*, works differently. In this type of contract, the elements are not specifically written or expressed. In fact, this type of contract is used as a remedy in a situation when one party to the quasi-contract received unjust enrichment resulting from not paying for a product or service rendered. In other words, if a product or service is rendered to a party without paying, it becomes inequitable for the rendering party. There are certain elements that must be present to qualify a transaction as a quasi-contract and those are the following: i) one party was enriched or received a product or service for which they did not pay; ii) one party was impoverished because they provided a product or service and received no compensation;

iii) a connection between the two parties exists; iv) there was no justification for the enrichment; and v) no remedy was provided. This contract provides for restitution to the suffering party by the unjust enriched party.

An *option contract* allows a buyer and seller to enter into a contract for the sale or purchase of goods or real property but the sale is contingent upon certain terms, like a timeframe or an action. For this type of contract to be enforceable, it must contain the same six elements as an expressed contract, plus the following: i) contract in writing; ii) in case of real estate contracts, the specific property location including the lot and block, sub-division, city, and state; iii) in case of sales or purchases of goods, the specific timeframe that gives the buyer a period of time to exercise his/her right to purchase; and iv) a final purchase price.

The option contract benefits a buyer because it gives a buyer the opportunity to take action on the contract prior to its finalization. Of course, consideration, or a deposit, must be given to the seller for the option. Should financing fall through, the seller has the right to end the contract and keep the buyer's deposit. As with any contract, it is important to specify all terms of the contract, like price, option action, timeframe, and any penalties, like loss of deposit.

Preliminary Agreements

Prior to signing a commercial contract, business parties usually entertain a preliminary negotiation phase where they get to know one other and introduce the main elements and conditions of the future business transaction. Generally, the outcome of such a preliminary phase is the drafting of a *preliminary agreement* setting the scene for fruitful negotiations and business. A number of names may be used to indicate preliminary agreement, which are merely synonyms for each other. However, there are effectively two types of preliminary agreements: ones that are intended to create binding obligations on the parties and ones that are not. In general terms, preliminary agreements that are always

intended to be binding are those that try to protect one or all of the parties' interests; those that are not intended to be binding are supposed to set the scene for future negotiations.

There are four categories of these preliminary agreements: i) parties agree on all terms but propose to have them restated in more detail in a formal contract (binding); ii) parties agree on all terms but have made performance of some of them conditional upon the execution of a formal contract (binding); iii) parties intend to be bound by the agreed upon terms while expecting a further formal contract to substitute the first and contain further terms (binding); and iv) parties do not intend to be bound unless and until they execute a formal contract (non-binding). If the wording "subject to contract" is included in a preliminary agreement that is indicative that the agreement is "non-binding".

Among the binding ones are the *Confidentiality Agreement* and *Exclusivity Agreement*. Parties that enter into these agreements intend them to be binding as to protect one's business secrets or to provide a safe environment for business negotiations.

Confidentiality Agreements

Sometimes called a non-disclosure agreement (NDA) or secrecy agreement, it is a legal contract between at least two parties that outlines the obligations not to disclose and how, or how not, to "use" confidential material or knowledge of information that the parties wish to exchange with one another for certain business purposes but without that information becoming known to a wider audience. It is often the first step to getting to know a counterparty or potential partner. This agreement creates a confidential relationship between the parties to protect any type of confidential and proprietary information or industrial secrets. As such, it protects non-public business information. A confidentiality agreement is commonly signed when two or more companies, individuals, or other entities are considering doing business together and need to understand the processes used in each other's

business for the purpose of evaluating the potential business relationship. The first step to determining the appropriate content for a non-disclosure agreement is to determine the type of agreement that you need.

Most agreements tend to be one-way or unilateral agreements, where one party wants to disclose certain information to another one but needs the information to be remain secret. Another type of non-disclosure agreement is a mutual agreement. Mutual agreements are much like unilateral agreements but in this case both parties will be supplying information that is intended to remain secret. This type is far more common when companies are considering some kind of joint venture or merger.

The key elements that must be addressed in a confidentiality agreement are:

1. Outlining the parties to the agreement;
2. Definition of what is confidential and identifying the confidential information;
3. The exclusions from what must be kept confidential (for example information already known to the public);
4. The term (months or years) of the confidentiality;
5. The term the agreement is valid; and
6. The obligations of the parties regarding the confidential information.

Exclusivity Agreements

These agreements are most often used in cases of acquisition of businesses and interest in companies. It is usually an agreement whereby Party A agrees with Party B that it will not negotiate with a third party for a specific period of time, so that Party B has an opportunity to negotiate and agree to a deal with Party A. This type of agreement usually imposes obligations only on one party, in our case Party A.

Letter of Intent

The most common form of preliminary agreement is the *Letter of Intent* (also known as a Memorandum of Understanding, Memorandum of Intent, Heads of Terms, etc.). The letter of intent usually contains: i) the identification of the negotiating parties; ii) the identification of the parties' objectives/goals for the outcome of their negotiation; iii) the object of the negotiation (e.g. the sale or purchase of goods, an acquisition or other); iv) a statement that the parties will negotiate exclusively in good-faith with each other, for a set period of time or until a particular event occurs; v) the financial implications of the project; vi) the due diligence process; vii) the time frame of the negotiation process; viii) the drafting and discussion of the final agreements, ix) the party that will bear the costs of the negotiation process; x) the duration of the negotiation; and xi) an anticipated way out for the parties. It is possible that a letter of intent contains the confidentiality and exclusivity arrangements that the parties have agreed to as well. The letter of intent is a declaration of the parties at a very early stage of contract formation in order to express the intention for a later, binding agreement. A letter of intent can be drafted as binding for the parties or not, and for this reason the majority of letters of intent contain a very clear provision that either nothing in the letter of intent is intended to bind the parties, or that only certain provisions are intended to be binding.

The letter of intent is generally used to bind a party to negotiate exclusively with another party for a specified period of time. At the end of this negotiation period, the parties will either a) execute a binding contract, or b) they will part ways with no further obligation to each other.

Standard Letter of Intent

DISCLAIMER

This sample contract is for example only and for training purposes. It should not merely be duplicated without consideration of an individual's particular situation. It is not intended to cover each and every commercial situation, nor can it anticipate specific needs.

A commercial contract is such an important document that you should consult an attorney in your jurisdiction before making any contractual commitment or signing any agreement.

[DATE]

Subject: Letter of Intent for the Acquisition of BELL LLP by SOUND LLP

Dear Mr,

This letter confirms our mutual intent with respect to the potential transactions described herein between SOUND LLP ("Buyer") and BELL LLP ("Seller"), including its shareholders. This document, in and of itself, does not represent an enforceable legal contract.

WHEREAS, Buyer is interested in acquiring all of the outstanding stock ("Shares") of BELL LLP, and will be performing certain due diligence with respect to Seller's corporation; and

WHEREAS, Buyer and Seller intend to negotiate the substantive terms of such acquisition, including the terms of Buyer's employment agreements with certain key employees and executives of Seller.

NOW, THEREFORE, the parties enter into this Letter of Intent as follows:

1. Terms. The principal terms of the proposed transaction would be substantially as follows:
 1. Real and Effective Acquisition. Subject to the successful due diligence, and the successful negotiation of a purchase price for the Shares, Buyer would acquire the Shares.

2. Consideration. The aggregate purchase price for the Shares is to be negotiated between the parties in good faith, provided that the Purchase Agreement (as defined below) and employment agreements can be successfully negotiated concurrently with each other.
3. Due Diligence Review. Promptly following the execution of this Letter of Intent, you will allow us to complete our examination of your financial, accounting, and business records, the contracts and other legal documents, and generally to complete due diligence. Any information obtained by us as a result thereof will be maintained by us in confidence subject to the terms of the Non-Disclosure Agreement executed by the parties and dated as of [DATE] (the "NDA"). The parties will cooperate to complete due diligence as expeditiously as possible.
4. Definitive Purchase Agreement. All of the terms and conditions of the proposed transactions would be stated in the Purchase Agreement and employment agreements, to be negotiated in good faith concurrently with each other, and if agreed, executed by you and us. Neither party intends to be bound by any oral or written statements or correspondence concerning the Purchase Agreement or employment agreements arising during the course of negotiations, notwithstanding that the same may be expressed in terms signifying a partial, preliminary, or interim agreement between the parties.
2. Expenses and limitation of liability. Buyer and Seller will pay our respective expenses incident to this Letter of Intent, the Purchase Agreement, the employment agreements, and the transactions contemplated hereby and thereby, and neither Party shall be liable to the other for any cause whatsoever arising under this letter of intent.
3. Public Announcements. Neither you nor we will make any announcement of the proposed transaction contemplated by this Letter of Intent prior to the execution of the Purchase Agreement without the prior

written approval of the other, which approval will not be unreasonably withheld or delayed.

4. Miscellaneous. This letter shall be governed by the law of England and Wales without regard to conflict of law principles. This letter, together with the aforementioned NDA, constitutes the entire understanding and agreement between the parties hereto and their affiliates with respect to its subject matter and supersedes all prior or contemporaneous agreements, representations, warranties, and understandings of such parties (whether oral or written). No promise, inducement, representation or agreement, other than as expressly set forth herein, has been made to or by the parties hereto. This letter may be amended only by written agreement, signed by the parties to be bound by the amendment. Evidence shall be inadmissible to show agreement by and between such parties to any term or condition contrary to or in addition to the terms and conditions contained in this letter.
5. Non-Binding Obligation. This letter of intent does not constitute or create and shall not be deemed to constitute or create any legally binding or enforceable obligation on the part of either party to this letter of intent.

If the foregoing terms and conditions are acceptable to you, please so indicate by signing this letter where indicated below and returning it to the attention of the undersigned.

Sincerely,

SOUND LLP

BELL LLP

Basic Confidentiality Agreement

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Sample agreement where the "Disclosing Party" is the person disclosing secrets, and the "Receiving Party" is the person who receives the confidential information and is obligated to keep it secret.

This Confidentiality Agreement (the "Agreement") is entered into by and between _____ with its principal offices at _____ ("Disclosing Party") and _____, located at _____ ("Receiving Party") for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship with respect to the disclosure of certain proprietary and confidential information ("Confidential Information").

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constituted Confidential Information.

2. Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure

or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

3. Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required and shall require those persons to sign Confidentiality restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

4. Time Periods. The Confidentiality provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

5. Relationships. Nothing contained in this Agreement shall be deemed to constitute either party as a partner, joint venturer, or employee of the other party for any purpose.

6. Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

7. **Integration.** This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both parties.

8. **Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights. This Agreement and each party's obligations shall be binding on the representatives, assigns, and successors of such party. Each party has signed this Agreement through its authorized representative.

Disclosing Party	Receiving Party
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Dated: _____	Dated: _____