

PRIVATE LAW

PRIVATE LAW

- Private law is a part of law that defines, regulates, enforces and administrates relationships among individuals, associations and corporations.

AREAS OF PRIVATE LAW

- Contract law
- Tort law
- Law of unjust enrichment
- Property law
- Family & guardianship law
- Inheritance law (law of succession)
- Intellectual property law (IP law)
- Commercial law
- Company law (Corporate law)
- Employment law

CONTRACTS

- **Contracts** – agreements between two entities, creating an enforceable obligation to do or to refrain from doing a particular thing.
- **Freedom of contract** - freedom to form contracts without government restrictions, that allows individuals to choose with whom to contract, whether to contract or not, and on which terms to contract. The contracting parties may arrange their legal relationship at their discretion, as long as its contents or objective are not contrary to the law, or the principles of life in community.

ESSENTIAL ELEMENTS OF A CONTRACT

- Offer
- Acceptance
- Consideration
- Intention to create legal relations

TYPES OF CONTRACTS

- What types of contracts do you know?

CONTRACTS

- Agency contract
- Agreement to prohibit competitive activity
- Bailment/ safe-keeping agreement
- Bank account contract
- Brokerage agreement
- Carriage contract
- Commission sales contract
- Confidentiality agreement/Non-disclosure agreement (NDA)
- Construction contract

CONTRACTS

- Consulting agreement/ Consultancy agreement
- Contract of annuity
- Contract of assignment
- Contract of service
- Contract to complete specific work/ contract to perform specific task
- Cooperation agreement
- Delivery
- Distribution agreement
- Donation
- Employment contract

CONTRACTS

- Exchange
- Contract of forwarding
- Franchise agreement
- Insurance contract
- Lease
- Lending for use/loan for use
- License agreement
- Loan
- Managerial agreement
- Mandate/Mandatory contract

CONTRACTS

- Partnership
- Contract of pension
- Pledge
- Publishing contract
- Sale/Purchase
- Settlement
- Sponsorship agreement
- Storage contract/ Contract of warehousing
- Supply
- Suretyship
- Tenancy

- By the contract of **sale** the seller undertakes to transfer the ownership of a thing to the buyer and to release the thing to him and the buyer undertakes to collect the thing and to pay the price to the seller.
- A **sale by instalments** is a sale of a movable thing to a natural person, carried out within the scope of business's activity at a price payable in specified instalments, if according to the contract the thing is to be released to the buyer prior to the full payment of the price.

- By the contract of **exchange** each party undertakes to transfer to the other party the ownership of a thing in exchange for an obligation to transfer the ownership of the other thing.
- By the contract of **delivery** the delivering party undertakes to produce things specified as to their kind only and to deliver them in parts or periodically and the receiving party undertakes to collect the things and to pay the price.

- By the contract of **lease** the lessor undertakes to give to the lessee the thing for use for a definite or an indefinite period of time and the lessee undertakes to pay the lessor the agreed rent.
- Agreement of lease with the right to collect fruits/profits

- By the **contract of leasing** the financing party undertakes, within the scope of its enterprise's activity, to acquire a thing from a specified alienating party on conditions set out in this contract and give the thing to the leasing party to use it or to use it and collect its profits for a definite period of time, and the leasing party undertakes to pay the financing party in agreed instalments the pecuniary remuneration equalling at least the price or the remuneration on account of the thing's acquisition by the financing party.

- By the **contract of loan** the lender undertakes to transfer to the borrower the ownership of a specified amount of money or of things specified as to their kind only, and the borrower undertakes to return the same amount of money or the same amount of things of the same kind and of the same quality.
- By the contract of **lending for use** the lender for use undertakes to allow the borrower for use to gratuitously use the thing given to the latter for this purpose for a definite or an indefinite period of time.

- By the contract of **donation** the donating party undertakes to render gratuitous performance for the benefiting party at the expense of his own property.

- A **mandate contract** is one in which an individual gives another person the power to carry out designated actions on the individual's behalf in legal dealings. The person authorizing another to act on the his behalf is known as the mandator, while the person receiving authorization to act on behalf of the other is known as the mandatory.
- By a **contract for specific task** the party accepting the order undertakes to complete a specified task and the party ordering the task undertakes to pay him remuneration.

- By a **construction works** contract the contractor undertakes to complete the object, envisaged in the contract and made according to a project and the principles of technical knowledge and the investor undertakes to perform the activities required by relevant provisions which are connected with the preparation of works, in particular to hand over the construction site and to provide the project as well as to accept the object and to pay the remuneration agreed on.

- By the **contract of carriage** the carrier undertakes to carry persons or things for remuneration within the scope of his enterprise's activity.
- By the **contract of forwarding** the forwarding agent undertakes for remuneration to send or to receive a parcel or to perform other services connected with its carriage within the scope of his enterprise's activity.

What type of contract is it?

1. A contract regarding the provision of services in the form of know-how transfer from party who is a specialist in the field to a party who needs advice and assistance in this area.
2. A contract regarding the legal relationship between a party lending financial support to another party in exchange for displaying e.g. the trademarks or logos of the financing party.
3. A contract by which one party allows the other party to have access to a business's proprietary knowledge, processes and trademarks in order to allow the party to sell a product or provide service under the business's name. In exchange for the right to run a business under the name of the first party, the second party is obliged to pay initial start-up and annual licensing fees.

Answers

1 consultancy agreement

2 sponsorship agreement

3 franchise agreement

- Debtor/creditor
- Obligor/obligee
- Principal/agent
- Lender/borrower
- Landlord/tenant
- Lessor/lessee
- Seller/buyer
- Donor/donee
- Mandate/mandatory

WHAT THE FOLLOWING ABBREVIATIONS STAND FOR?

- EULA
- NDA
- SPA
- ER
- EE

WHAT IS IMPORTANT WHEN YOU
NEGOTIATE A CONTRACT?

WHAT IS IMPORTANT WHEN YOU
DRAFT A CONTRACT?

WHAT IS A TYPICAL STRUCTURE OF A
COMMERCIAL CONTRACT?

WHAT ARE THE TYPICAL CONTRACTUAL
CLAUSES?

- HEADING
- COMMENCEMENT AND DATE
- PARTIES
- RECITALS
- DEFINITIONS
- OPERATIVE PROVISIONS
- BOILERPLATE CLAUSES
- SIGNATURES & SEALS
- SCHEDULES & EXHIBITS

STANDARD CONTRACTUAL CLAUSES

- FORCE MAJEURE
- CONFIDENTIALITY
- NON-COMPETITION
- NON-SOLICITATION
- TERM
- TERMINATION
- ENTIRE AGREEMENT / MERGER CLAUSE
- SEVERABILITY / SEVERANCE
- NOTICES
- ASSIGNMENT

STANDARD CONTRACTUAL CLAUSES

- JURISDICTION
- GOVERNING LAW
- ARBITRATION
- MEDIATION
- AMENDMENT
- SURVIVAL
- DEFAULT
- WAIVER
- WARRANTIES AND REPRESENTATIONS
- COUNTERPARTS
- BINDING EFFECT

NAME THE FOLLOWING CLAUSES

- *The Tenant hereby declare and warrant that the Tenant shall at any time be obliged to keep confidential all the information obtained including but not limited to the terms of this Tenancy Agreement, other agreements, statements, the contents of any discussions or negotiations between the parties prior to the signing of this Tenancy Agreement or the Landlords trade secret acquired due to the leasing of the Premises, and shall take such actions including but not limited to taking effective measures to prevent the aforesaid contents or trade secrets from being disclosed to any third party (other than the disclosure to the Tenants legal adviser or employees or agents in connection with the signing and execution of this Tenancy Agreement; and other than disclosure by the Landlord in compliance with the judicial or administrative orders legally made by state organs, governmental institutions, courts or social organizations) and refraining from using the aforesaid contents or trade secrets in any form, failing which the Tenant shall be deemed to be in breach of Clause 7.1 hereof, the Landlord shall be entitled to exercise all the Remedial Rights according to such clause.*

- *If a failure of the duty pursuant to the Agreement has been caused by a strike, a labor dispute, a civil war, a riot, an act of terrorism, an embargo, an earthquake, a fire, flood, an explosion, or other natural disasters, a government act or regulation, or other reasons that none of A, B, or C is responsible for and that none of A, B, or C can control, none of A, B, or C is to be blame for the said default to the other party.*

- *This Agreement may not be assigned by either party without the consent of the other party.*

- *All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.*

- *This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.*

- *This Agreement enters into force on the Effective Date and is concluded for the Initial Term, unless terminated earlier in accordance with this Agreement.*

- *The parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with the present contract in accordance with the ICC Mediation Rules.*

- *During the term of your employment, and for a period of one (1) year immediately thereafter, You agree not to solicit any employee or independent contractor of the Company on behalf of any other business enterprise, nor shall you induce any employee or independent contractor associated with the Company to terminate or breach an employment, contractual or other relationship with the Company.*

- *This Agreement may be modified only by a writing executed by both You and the Company.*

- *Any waiver of a default under this Agreement must be made in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be constructed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.*

- 1.3. *“Annual License Fee”*: the annual fee for usage of the Software and which includes SM Support Services for such year;
- 1.4. *“Documentation”* shall mean any program documentation, user manuals, handbooks and other materials describing the use, design, installation, operation and maintenance of the Software;

- *XYZ may terminate or suspend this Agreement and/or any ensuing agreement by written notice with immediate effect, without RESELLER being entitled to claim any damages and without affecting the other rights of XYZ under this Agreement or by virtue of law (including but not limited to any termination rights), if in total more than fifty percent (50%) of RESELLER's share capital is to be obtained by a natural person or legal entity that did not own at least twenty-five percent (25%) of RESELLER's share capital at the time of this Agreement's conclusion; or any share capital is transferred to a natural person or legal entity that manufactures or markets products that are competitive with any product marketed and/or developed by SM; or if there is a change in the top level executive management of RESELLER; or control over RESELLER is directly or indirectly changed in any other manner; or RESELLER fails to meet any response time agreed with its customer twice or more in one calendar month or three times or more in any consecutive period of four calendar months.*

- *This Agreement forms the entire agreement between the parties in regard to the (re)sale, licensing and distribution of the Products and the performance of the Services.*

- *This Agreement and any ensuing agreement shall be governed by and construed in accordance with the laws of the Netherlands. The UN Convention on Contracts for the International Sale of Goods (“CISG”) will not apply.*

- *The Parties agree that for the purpose hereof Confidential Information shall be understood as the information constituting the trade secret of the Ordering Party, in particular, any information of a technical, technological, legal, commercial or organizational nature, as well as the information pertaining to financial issues or future plans, perspectives or other information having a commercial value constituting trade secrets under Suppression of Unfair Competition Act of 16 April 1993 [ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji, (t. j. Dz. U. z 2018 r. poz. 419 z późn. zm.)] as well as any and all information constituting commercial, banking or professional secrecy.*

- *If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.*

- *The Parties shall submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the Courts of the Republic of Poland.*

- *All notices, requests claims, demands and other communications between the Parties shall be in writing.*

- *During the Restricted Period and within Restricted Territory, Executive shall not, directly or indirectly, without the prior written consent of the Company engage in any Restricted Activity for or on behalf of any Restricted Business.*

COMMERCIAL COMPANIES & PARTNERSHIPS

- What types of partnerships or companies do you know?

IN POLAND

- Registered partnership
- Professional partnership
- Limited partnership
- Limited joint-stock partnership
- Limited liability company
- Joint-stock company