

## 5. Contracts: Drafting, Negotiating, Using and Discussing them

### 1 INTRODUCTION

- 1 Non-binding agreements and what comes next
- 2 Template or precedent?
- 3 The lawyer client relationship
- 4 Getting instructions
- 5 Wanting to extend the warranty period
- 6 Moving towards signing
- 7 Both sides are ready
- 8 They meet, pen in hand
- 9 Checking the signatories are authorised
- 10 Registration

### 2 BASICS (1)

- 1 Definitions, property
- 2 Transfers, absolutely or by way of security
- 3 Licences, leases and tenancies
- 4 How long will the contract last?
- 5 Exchange and completion or signing and closing?
- 6 Transferring ownership
- 7 Delivering property
- 8 Where does the buyer get the money to pay?
- 9 Giving something or giving it up?
- 10 What project financiers look for

### 3 BASICS (2)

- 1 When an intention to create legal relations is presumed to exist
- 2 Key concepts, partners
- 3 Does a contract have to be in writing?
- 4 Are contracts and agreements the same?
- 5 Where the terms of a contract come from, civil law and common law
- 6 Is there freedom of contract?
- 7 A type of law which contracts should not infringe. Complying with law
- 8 You construe this type of clause against the person relying on it

- 9 Different uses of the word law
- 10 Transaction or deal?

#### **4 WRITING and TALKING about them (I)**

- 1 A law student's options
- 2 Who you work for and what commercial contracts are
- 3 Who you work with
- 4 The sort of work you do
- 5 Mistakes people make
- 6 Preparing for a meeting, exercising restraint
- 7 It takes longer than you expected to draft the contract
- 8 The sort of contracts you draft, what's most important
- 9 Jane, we need to look at that old contract now, please.
- 10 Getting adjectives in the right order

#### **5 DIFFERENT TYPES (I)**

- 1 This one isn't simple
- 2 Raising the funds for M&A transactions
- 3 What does SPA stand for?
- 4 Buying the company or the business?
- 5 Performance levels
- 6 Joint ventures
- 7 Terms and conditions
- 8 Conditions of Sale
- 9 Whose terms – buyer or seller?
- 10 Lease Agreement or Agreement for Lease?

#### **6 DIFFERENT CLAUSES (I)**

- 1 Obligations
- 2 How strong are the obligations?
- 3 Request or require?
- 4 When the contract comes into effect
- 5 Examples of conditions precedent
- 6 What usually happens if the CPs aren't met

- 7 Representations and warranties
- 8 A valuable undertaking
- 9 How material changes are often described
- 10 When ownership passes

## **7 COMMONLY CONFUSED WORDS**

- 1 If and in case
- 2 Sanction and sanctions
- 3 In theory and in practice; theoretically and practically
- 4 Alternate and alternative
- 5 Adapting to, adopting and adhering to
- 6 Security and securities
- 7 Damage and damages
- 8 Commercial agreements and trade agreements
- 9 Stimulation and simulation
- 10 Prescribe and proscribe

## **8 DIFFERENT TYPES (2)**

- 1 Servicing, service or of service?
- 2 Agency agreements
- 3 Master / Framework agreements
- 4 Tenders
- 5 Knocking things down and building them again
- 6 Fixed fee and lump sum
- 7 Training contracts
- 8 I cannot tell you what this question is about – it's confidential
- 9 Things which are retained, costs and billing
- 10 Lateral epistles

## **9 DIFFERENT CLAUSES (2)**

- 1 Payment
- 2 What about tax?
- 3 What about payments to the tax authorities?
- 4 The seller wants to use the money immediately

- 5 Liquidated damages
- 6 Assignment of rights
- 7 “Assignment” of obligations
- 8 Statutory rights
- 9 How the contract and your statutory rights sit together
- 10 Termination

## **10 NEGOTIATIONS**

- 1 Fail to prepare, prepare to fail
- 2 A conditional proposal
- 3 Getting the deal done
- 4 Give and take
- 5 Last year’s deals
- 6 Making a deal and doing a deal
- 7 Trading points
- 8 You may need to haggle
- 9 Trying to get the deal done
- 10 You reap what you sow

## **11 DIFFERENT CLAUSES (3)**

- 1 The unexpected – what happens?
- 2 Governing law
- 3 Jurisdiction
- 4 States and state-owned entities
- 5 The clauses at the end of the contract
- 6 Unenforceability – what could happen if ...
- 7 Is everything there?
- 8 Oh dear, something’s missing
- 9 Your rights. Ciao, sayonara, au revoir, auf wiedersehen....etc Or not?
- 10 And the winner is ....

## **12 EMPLOYMENT, TAX and FINANCE**

- 1 Different types of employees
- 2 What they get paid
- 3 Lawfully reducing your tax bill

- 4 It's a lot more difficult now
- 5 How lenders try to control borrowers
- 6 Doing something with representations and warranties is one way
- 7 How borrowers fight back
- 8 But this borrower can't pay
- 9 The lender gives the borrower more time – at a price
- 10 Common events of default in finance agreements

### **13 DOING THINGS**

- 1 Perfecting a security interest
- 2 Correcting after signing
- 3 Advising on a Distribution Agreement
- 4 Clients sometimes want one of these
- 5 How to communicate formally under a contract
- 6 After a breach the good guy can't just sit back
- 7 A letter before action
- 8 Putting it in black and white
- 9 A lawyer discusses a client – arbitrarily?
- 10 Clients – can't live with them, can't live without them

### **14 WRITING and TALKING about them (2)**

- 1 Clause 10 provides ... sets out ....provides for
- 2 The contract doesn't provide ... provide for ... contain ... contain for
- 3 Oh dear, this is wrong
- 4 We told you to change the wording last week!
- 5 Prejudicial in whose eyes?
- 6 Different types of liability
- 7 A good draft except for one possible ambiguity
- 8 Think then write - doing both at the same time doesn't work
- 9 How the best lawyers write
- 10 If the deal goes off now ...

## 15 THE END

- 1 If you sign a contract at home you have 7 days to change your mind
- 2 If the CPs haven't been met or waived ...
- 3 The client is thinking of bringing the contract to an end
- 4 Keeping the client fully informed
- 5 More advice on termination
- 6 Expire or terminate?
- 7 Who usually has the contractual right to terminate?
- 8 An employment lawyer advises on terminating employment contracts
- 9 The advice includes the language you should use
- 10 My experience of JVs ending – the less said, the better