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Indian contract law questions and answers pdf

March 1, 2008 15+ min read Opinions expressed by entrepreneurs co-workers are their own. Intellectual Property Q: If I get a patent for my invention, does that mean I have the right to produce, use and sell my invention? A: Do not assume that after obtaining a patent, you will then be able to make and sell your invention for free and clear. One of the most common misconceptions about obtaining a patent is that it gives you the right to practice your invention. The term right to practice generally refers to the right to manufacture, use and sell an invention without prejudice to the rights of others. In fact, the only right conferred by a patent is the right to exemption. In particular, the patent gives you the right to exclude or prevent others from creating, using, selling or offering for sale your invention in the United States or importing your invention into the United States. In the case of public utility patents, that right of exclusion is, in principle, provided for a period of 20 years from the filing of the patent application. In the case of design patents, this right lasts 14 years from the date of the patent. Q: When should I apply for a patent? A: The question of when to apply often depends on whether you are interested in protecting your rights only in the U.S. or whether you are interested in obtaining foreign protection. To maintain protection in the US, a patent application must be filed within one year of the public disclosure, sale or sale of your invention. However, this annual grace period in the US does not apply to most other countries. In most countries, the rule is rather that a patent application must be submitted before the invention can be made available to the public. Thus, most people will want to ensure that their patent applications are in the file before their inventions are disclosed to outsiders. However, this does not mean that you need to file a patent application in any country from which you want to do business before public disclosure. As long as you submit a U.S. application before making the invention public, you will still be able to pursue patent protection in most foreign countries if you also submit a corresponding foreign application within one year of one U.S. one. Authors/Attorneys: Catherine J. Holland, J.D.; Vito A. Canuso III, J.D.; Diane M. Reed, J.D.; Sabing H. Lee, J.D.; Andrew I. Kimmel, J.D.; and Wendy K. Peterson, J.D., practice lawyers at Knobbe, Martens, Olson & Bear LLP, one of the largest and most respected U.S. law firms specializing in intellectual property law. Together they are the authors of Intellectual Property, available from Entrepreneur Press. Business contracts Q: In contracts with suppliers, how can I change the section that states that a contract is automatically renewed every year? A: This can be easily like any provision in the printed contract. In the case of contract, which is drawn up with conditions specific to your company, please add a sentence that states that, notwithstanding other terms of the contract (this wording is valid), the contract expires after xx years or automatically renews no more than XX times. If the agreement is fully preprinted, request an entry on the printed agreement page. Either way, make sure that the term of the contract you want to change is modified in writing as part of the signed written agreement. Q: What are some of the most important things I need to do when signing a contract? A: There are some very simple steps you can take that will protect your personal assets and give your business an edge in a contract dispute. First, make sure that the signature block at the conclusion of the contract specifies the full legal name of your company, not your name. Your name, as a signer of the agreement, may be signed, but the agreement should clearly indicate the full legal name of your company as the entity concluding the contract. To gain an advantage in contract disputes, make sure that each signed contract has two originals and keep one of them. The initial page of both signed contracts with ink of color that will not be copied well, such as red. This discourages anyone from re-entering part of the contract for the benefit of one party and presenting the re-entered contract as the original. Author/Lawyer: Laura Plimpton has 26 years of experience as a corporate lawyer, business owner and management consultant. It has reviewed or developed more than 12,000 contracts. She is the author of business agreements, available from Entrepreneur Press. Hiring and firing Q: Can I monitor my employees' email? Do I have to tell them that? A: Employers monitor employees' emails for three main reasons: 1) preventing harassment and discrimination in the workplace, 2) preventing the disclosure of trade secrets and unfair competition, and 3) improving employee productivity and productivity. However, it is important that employers who want to monitor employees' emails reduce employees' legitimate expectations about privacy in their emails. Most courts found that employees naturally reduced their privacy expectations when using employer-supplied equipment such as computers and mobile phones. In order to reduce such expectations, all employers should adopt a policy that explicitly states that computers provided by the employer are owned by the employer, are intended to be used for legitimate business purposes and that the employer reserves the right to monitor for the reasons set out above. Q: What is a family holiday and do I have to give it? A: The Federal Family and Medical Leave Act (FMLA) is a basic federal law requiring employers to who have 50 or more employees within a 75-mile radius - - unpaid leave of up to 12 weeks for eligible workers. Most importantly, the FMLA states that whenever family and medical leave requirements under federal and state law differ, the employer must comply with all laws that provide greater rights to family leave for the employee. FMLA provides up to 12 weeks per year of leave for: 1) birth, adoption or foster care placement of a child, 2) care for a family member with a serious health condition, or 3) an employee's own serious health condition. Leave is unpaid (except when leave, sick leave or paid time off is used), but employers are obliged to continue group health benefits during the holiday. The staff member shall have the right to return to the same or a comparable post at the end of his leave. A: Serious health includes pregnancy-related disability. In particular, the definition of fmla of serious health includes any period of incapacity for work due to pregnancy or prenatal care. Employers should keep in mind that some states, such as California, have separate statutes that require disability leave. The FMLA also covers a disability related to the pregnancy of a member of the employee's family. The FMLA applies to employers who have at least 50 employees. Eligible employees are those who: 1) have worked for the employer more than 12 months before the start of the leave, 2) have worked at least 1250 hours in the 12 months prior to the start of the leave and 3) work in a place where the employer has at least 50 employees within a 75-mile radius of that location. Q: What should I do if I want to fire an employee who is not doing his job well? A: This is a complicated question that depends to a large extent on the circumstances. Communication with employees is crucial and no solution should come as a surprise to the employee. Therefore, even if employment is clearly at will, it is important to advise poor workers both on their exact performance deficiencies and on how they can improve their performance in these areas. It is equally important to document performance advice along the way. Following a few simple guidelines, employers can justify termination decisions if and when it is challenged. Employees are also much less likely to pursue claims if they believe their employer was fair to them and gave them an adequate opportunity to improve their performance in time before the termination of their contract. Q: What if I have to let the employee go because I can't afford to pay them? A : Maintaining employment relationships at will gives employers maximum flexibility in the event of a downturn Honesty is usually the best policy, and if an employer really can't afford to pay some employees, it should be straight out of the affected employees and not make up the reasons for termination. Often, economics can be the easiest way to However, in the event of termination or dismissal, employers should ensure that they do not make any promises made to injured workers regarding severance pay. Q: How can I make sure my employees don't disclose my company's trade secrets? A: Since trade secrets derive their value and legal significance from not discerning competitors, employers must establish reasonable steps to preserve their secrecy. Employees who have been exposed to trade secrets can use them to compete with former employers after leaving the company. To answer this, employers should consider: Requiring employees to sign non-disclosure agreements Conducting exit talks for all departing employees Using personal identification codes and passwords to access computers Disclosure of valuable information only on a need-to-know basis Requirement from working people or headers on documents identifying eligible information as confidential or proprietary Restriction of access to objects The use of blocked files to material not covered by the material, including clients and consultants The use of on-site security training staff on the importance of protecting business secrets and monitoring employees is also invaluable. Author/Attorney: Tyler M. Paetkau, partner at Littler Mendelson, P.C. LLP, has in the past been chairman and advisor to the State Bar of California's Labor and Employment Law Section. He is the author of Hiring and Firing, available from Entrepreneur Press. Creating a partnership Q : What is the difference between lender and investor? A: When you go into business with others, the issue of control is always a problem. The reason is that the time frame necessary to build a successful business is not always the same as a lender who wants his money back within a certain period of time. And it's not always the same term as an investor who wants to see a lot of returns on their investment as soon as possible. The best approach for an entrepreneur is usually to reinvest all profits back into the business in order to achieve early growth so important for the later success of the company. The problem is that the lender usually has a security interest in the company's assets and can take them over if the company defaults on its obligations. On the other hand, an investor may not have this security interest, but they will probably look at the business with a cautious eye at all times. The issue of control is a serious question to examine before engaging with a lender or investor. Q: What is the biggest problem in the overall partnership? A: Although it is necessary to submit the appropriate documents to create an LLC or corporation, a general partnership can be formed by no more than a handshake or handshake. In fact, act of cooperation, even without a formal document, document, legal relations. This applies to the husband and wife, as well as two or more people unrelated to them. The problem is that there is joint and several liability within the framework of the general partnership. This means that each partner can create monetary obligations for the company, and all partners will be personally responsible for the entire debt, even if they knew nothing about it. The creditor usually walks in the deepest pockets, in other words, the person with the most money counted. Make sure you know what each of your partners is doing to protect yourself from this issue. The best protection is to create a legal entity, whether it's an LLC or a corporation. This will completely eliminate the problem. Q: What is the problem when parents allow their children to take over the company? A: When you start a business, it's no secret that your corporate bank account isn't too big. As a result, most owners, banks and purveyors of significant equipment will not accept a corporate signature on their leases, loans and contracts. They will demand personal signatures and guarantees of the owners. When children take over the company, the owners' signatures are usually still on the original contract. If something negative happens, these signatures become critical. Parents usually have more wealth and money than their children. These assets become vulnerable to persons seeking payment obligations. Everything that parents originally signed - such as franchise, loan, car, printing press, etc-- are fair games, even though mom or dad may not have been involved in business for many years. To avoid this problem, you should treat the transition to the next generation as selling to a stranger as possible. In this way, the majority of creditors, lenders and the like will accept the transfer and respect the transition as a complete change of ownership. If it is a franchise, make sure that the company's shares are legally transferred, let the francho franchisee accept the transfer and, if necessary, prepare new franchise documents. If it's a loan, don't let the next generation just adjust, extend, or modify it. Pay it off and let your children sign a new loan document for an additional loan or time. If necessary, parents can agree to guarantee a fixed-term loan. If it's a lease, lease, or purchase agreement, make sure that new documents are created at the first opportunity. Author/Advocate: Ira Nottonson serves as a legal consultant and is a law review graduate at Boston College Law School. His current clients include House of Pies, IHOP, Orange Julius, PIP Printing and Quickprint. He is the author of Forming Partnership and co-author of the Small Business Legal Toolkit, both available from Entrepreneur Press. Small Business Legal Tool Kit P: Is my new employee or independent the question, the issue of controls should be looked at. The greater the employer's control over the employee, the greater the likelihood that the employee will be considered an employee. It is a matter of controlling the details of how a task is performed compared to controlling only the results. The IRS analyzes behavioral and financial controls, as well as the relationship between the parties. Behavioral controls include things like the amount of training provided, who directs the task sequence, etc. Financial controls refer to who bears the risk of loss, whether the employee incurs costs that are not reimbursed and the like. Finally, any contractual relationship between the employer and the employee and whether the employee is entitled to employment-related benefits are examined. The IRS is also considering whether the work done is a key aspect of the author's employer/lawyers: Theresa A. Pickner has a law practice that specializes in business, taxation and property planning law. He holds a Doctorate and . M in taxes at the University of Denver. She is a co-author of The Small Business Legal Toolkit, available at Entrepreneur Press. Ira Nottonson serves as a legal consultant and is a law review graduate at Boston College Law School. His current clients include House of Pies, IHOP, Orange Julius, PIP Printing and Quickprint. He is a co-author of The Small Business Legal Toolkit, available in Entrepreneur Press. Property protection Q: How can I protect my home if a judgment is handed down against me? A: Unless you're one of the few lucky ones who live in Florida or Texas that have unlimited household layoffs, household layoffs in most other states are too small to protect your home. The answer may be a qualified personnel fund (QPRT). QPRT is an irrevocable trust that takes the title to your home. If a verdict is handed down against you, the judgment will not be attached to the house because you no longer own it. QPRT are allowed by the IRS as a way not only to protect the house from creditors, but also to reduce property taxes. QPRT can be applied to the main residence or holiday home, but not to the income of the property generation. Q: What happens to my business if I can't run it anymore? A: It can be difficult to maintain business continuity in the event of illness or incapacity for work. In most cases, unless there is a partner or other key employee who can continue the company in your absence, you will have to value the company through a professional and offer it for sale. The problematic aspect of this decision is whether you have a capital position that can be sold. For example, a consultant whose activities are based on special knowledge may not have anything to sell, because an outsider may not be able to cope with the concept. Even if the buyer is qualified, the loyalty relationship between the trader and the customer cannot easily transferable. You can only have a list of customers to sell, which requires special negotiations. This also applies to masseurs, personal chefs and the like. If your business has more in-kind assets, such as a retail store, small production business, or restaurant, sales can be much easier and profitable. Authors/Attorneys: Robert F. Klueger (J.D.; LL.M.) is a lawyer at Klueger & Stein, LLP. He is allowed to exercise the law in California and before the U.S. Tax Court. He is a Certified State Bar Board of Legal Specialization and is an AV rated by Martindale. He has been practicing law since 1974 and represents clients against various tax authorities in all courts, including the U.S. Supreme Court. He is the author of Asset Protection, available at Entrepreneur Press. * The book comes out in May, so there is no link yet. Yet.

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