



## A primer on agreements, their framework and their consequences

The 2025 Practice Committee Conference on  
*How to use Contracts to Avoid Research Disputes*

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# 1. Contracts play a role in all human relations

- Contracts, agreements, deals, pacts – it all come down to **the same**:
- Two parties **agree to be bound**
- They do so by their own **free will**
- They **declare** this by giving promises to each other
- When bound, these promises lead to **obligations** for the parties
- Unless there are **valid grounds to avoid** these obligations
- In doing so, the parties become their **own “legislators”**
- This is so, because contracts may give rise to the **same legal consequences** as statutory **legislation** may

## Examples of contracts etc.

- The believer's relation to his or her God
- The social contract (Rousseau)
- Political deals
- Pledges of faithfulness between lovers
- Gentlemen's agreements
- Commercial contracts
- Contracts regarding research  
(the list could go on ...)

# Examples of consequences of non-fulfilment

- Spiritual distress; religious guilt, excommunication
- Social extradition
- Reputational harm and distrust
- Divorce or relationship breakdown
- Loss of respect and goodwill
- Termination, *legal* claim for damages, litigation
- Academic expulsion, *legal* consequence under the Act on Scientific Misconduct

## 2. Contracts vs. Statements of Intent etc.

- A contract may be perceived as the sum of a number of "**statements of will**" (i.e. promises) made by the parties.
- They express the **willingness to be obliged and to fulfill** the agreed
- Statements of **will** is something different from statements of **intent**
- When you state your **intent** to do something, you are free to **change your mind**.
- If your statement of intent is **truthful**, such changes are legitimate
- If you **lie** about your intention, you may violate **legal or moral rules**
- "contracts" presented as "**living documents**" are normally non-binding
- **At a maximum**, they include **statements of intent**.

### 3. The limits of contracts

- **Only parties** to the contract may be bound by it
- Clearly, you may **not** bind a **third party** by your contract
- And also obviously, a contract must respect **mandatory rules**, e.g.
  - **Administrative rules** (e.g. on
    - employment and rules and **work environment** regulations
    - legislation on the use of **animals** for scientific purposes
    - The act on **research misconduct** and **questionable research practices**
  - → The *Vancouver Rules*

## 4. How do a contract become binding?

- When the parties **agree** that it should (seen in context)
- And **express** their **willingness** to be bound towards the other party
- on **any media** they may chose (oral, written, by deposition)

### **Main rule:**

- No formal requirements (e.g. paper, ink or digital format)
- As long as the contentes of the contract can be proven
- Which, in itself, speaks for formalizing it (e.g. by signature etc.)

### **But:**

- Specific rules may provide otherwise

## 5. What if you regret?

- **You shouldn't**: The whole point of making contracts is that it should be relied on
- The contract is **not a "living instrument"**: The provisions should be applied as they were intended
- Therefore: If hesitant, the parties should agree on **escape clauses** (to the mutual benefit of the parties – if they agree), e.g.
  - **Conditions precedent** (in Danish: *suspensive betingelse*)
  - Agreed rules on **termination** (e.g. by x month's notice)
  - **Sunset** clauses
  - **Renegotiation** clauses (in the hope that they lead to a revised contract)

## 6. Are there no way out with no such clauses?

- **Basically no**, unless you have agreed for a way out  
*Look at it from the other party's position!*
- But the legal (or social) regime *may* provide for **modifications**
- Whether you should be bound forever in all terms and details **depend on the (legal) culture** within which the contract is made
  - The **common law** culture (e.g. UK/USA): No way out
  - The **civil law** culture (Denmark and the continent)
- Rules on contractual invalidity (the Danish **Contracts Act**)
- The Danish judge-made "**doctrine of failed assumptions**"
- But the party questioning the validity of a contract, must **prove its case**

## 7. What if the contract is silent or ambiguous?

- **If silent:** The situation is the same as if you hadn't contracted
- **If ambiguous,** you must go back to the "**meeting of the mind**" that created the contract. This is *common sense*.
- But first of all – you **talk to the other party**, e.g. with the aim of
- Agreeing to a **contract revision**
- If this doesn't work you may need to go into **dispute resolution** mode
  - Mediation (internally or with outside help)
  - Escalation
  - Litigation (in courts or arbitral tribunals)

## 8. What if the other party fails to fulfill its obligations?

- First step: You **communicate** with the other party
  - There may be a *misunderstanding*
  - Or something came up that may call for *renegotiation*
- Second step: If the party is in **breach**
  - You *study the contract* to see what is provided in case of breach
  - You *give notice* of the breach, stating your *claims*
  - You may use your (escape clause) right to *terminate* the contract *with notice*
  - You may *terminate without notice* if there is a “substantial” breach
- Third step: You go into **dispute resolution** mode
  - By mediation (e.g. by involving Named Persons at your faculty)
  - By involving outside authorities, collaborators or donors
  - By litigation or arbitration

## 9. Should you involve legal expertise to draft contracts?

- Legal counsel may be necessary, but it is *expensive*
- And like any other profession, they come in different *qualities*
- **First**, the parties must know what they want
  - During all phases to be agreed upon
  - Taking all possible scenarios into account (mindful of “Murphy’s law”)
  - Being inspired by paradigms or AI-generated
- **Secondly**, they must know what kind of legal advice they want
  - The legal expert cannot draft the contract for the parties
  - The parties should always know all the provisions they sign
  - Better a short and clear contract, than an extensive and confusing one
- **Thirdly**, they must decide which advisor(s) to trust

## 10. Should you involve legal expertise to solve disputes?

- Legal counsel is even more *expensive* as litigators
- And to many attorneys, most academic disputes are too small to give commercial sense to them
- For those reasons, the parties are often left alone with their dispute
- Therefore, there may be a point in *mediating* academic disputes
- In some cases, the Practice Committee may come into play
- In other cases, the dispute may be solved under other social regimes:
  - By putting social pressure towards a party
  - By involving the third parties who have granted money

## Summing up (1)

- Agreements may help the parties to **understand** what they want from the other party or parties, and what they are willing to offer
- And they are an effective tool to **hold parties** on to their promises
- In academic research, they provide for **legal and binding** consequences
- Which **stand**, even under changing circumstances
- Therefore, although not mandatory, they should be made in **writing**
- The parties should be careful to decide **how long** the contract should *run*, and under what circumstances it could be *avoided*
- Provisions to "**renegotiate**" contracts are **worthless** if they do not lead to new agreements

## 9. Summing up (2)

- Since the contract reflect the “meeting of the minds” of its parties, any irregularity should give basis for **new discussions** to solve any issue
- Contractual **ambiguities** always fall on both parties, if they have negotiated the contract carefully: Therefor, be nice to the other party!
- **Outside counsel** is expensive and should be used as a way to avoid decision-making for the parties
- Advice from lawyers should not be accepted if not understood
- When disputes and disagreements occur, the parties may take advice from outside counsel
- But, if at all necessary, the dialogue between the parties should be conducted by themselves

## 9. Summing up (3)

- For many purposes statements of intent may do the job
- Like “gentlemen’s agreement” this approach demands a certain flexibility by all involved, because they are not binding
- When following this path, the parties should be as flexible and accommodating as they were when they decided to collaborate