

「中國文化大學 111 年度教育部高等教育深耕計畫 計畫成果紀錄表

子計畫	子計畫 B
具體作法	B4-1 法學院「企業法務人才跨域培育計畫」
主題	B4-1 法學院「企業法務人才跨域培育計畫」
內容 (活動內容簡述/執行成效)	<p>主辦單位：法律學系 活動日期：111 年 4 月 15 日 (五) 13:00-15:00 活動地點：大新館 301 教室 授課課程：涉外民事法律問題專題 主 講 者：王偉霖 業師今日分享[英文商務契約]</p> <div style="display: flex; justify-content: space-around;"> <div style="width: 45%;"> <p>TABLE OF CONTENT</p> <ol style="list-style-type: none"> 1. Is MOU Legally Binding? 2. Non-Disclosure Agreement(NDA) for Finite Period? 3. What Makes Secrecy? Choose Mark Clause Or Not 4. Is the Agreement Signed by CFO Valid ? 5. Are the Title and Preamble a Part of the Agreement? 6. Is the Disclaimer of Liability Valid? </div> <div style="width: 45%;"> <p>TABLE OF CONTENT</p> <ol style="list-style-type: none"> 1. Is MOU Legally Binding? 2. Non-Disclosure Agreement(NDA) for Finite Period? 3. What Makes Secrecy? Choose Mark Clause Or Not 4. Is the Agreement Signed by CFO Valid ? 5. Are the Title and Preamble a Part of the Agreement? 6. Is the Disclaimer of Liability Valid? </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="width: 45%;"> <p>1 IS MOU LEGALLY BINDING?</p> <ul style="list-style-type: none"> ✧ Memorandum of Understanding - MOU <ul style="list-style-type: none"> ➢ Meeting Minute of the Initial Negotiation ➢ Same Nature as the Letter of Intent (LOI) - Not an Essential Element of an Agreement ✧ MOU as a Preliminary Agreement <ul style="list-style-type: none"> ➢ If the governing law is Taiwanese laws, the Civil Law specifies that based on a preliminary agreement, parties have obligation to enter into an agreement, unless it is clear that the MOU or LOI is for reference only. However, such obligation may be waived given by Force Majeure. If one party is liable for failure entering into an agreement, the other party may request damage compensation. ➢ It is noteworthy that according to Civil Law §153, a MOU may be considered as an agreement provided that it specifies licensed technology and amount of license fees. </div> <div style="width: 45%;"> <p>2 NON-DISCLOSURE AGREEMENT(NDA) FOR FINITE PERIOD?</p> <ul style="list-style-type: none"> ✧ Purpose of Non-Disclosure Agreement (NDA) <ul style="list-style-type: none"> ➢ To bind the parties, their agents, and employees in the following three ways: <ol style="list-style-type: none"> 1. To use the information properly and protect it from unauthorized use, publication, or disclosure 2. To restrict access to confidential information to those who do require such access to effectuate the licensing agreement 3. To abstain from using the information to unfairly compete or obtain unfair advantage against the disclosing party </div> </div> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="width: 45%;"> <p>DETAILS IN NON-DISCLOSURE AGREEMENT(NDA)</p> <p>NDA Shall include as much information as possible (from the perspective of the licensor), e.g.</p> <p>"The confidential information as mentioned in this Agreement shall include all industrial information and data, including but not limited to formulas, patented and/or unpatented inventions and techniques, business and marketing plans, trade secrets, know-how, and all kinds of intellectual property rights that belong to the Company, <u>regardless of whether be of essence</u> to the operation of the Company"</p> </div> <div style="width: 45%;"> <p>3 NON-DISCLOSURE AGREEMENT(NDA) WITH LIMITED SCOPE?</p> <ul style="list-style-type: none"> ✧ Example <p>Confidential information may include customer detail, supplier detail, operations, marketing plans, strategies, or product information, design plans, drawings, data, protocols, equipment, business associates, names, or other technical information. Any tangible confidential information disclosed must be marked as confidential at the time of disclosure, and any oral or non-tangible confidential information disclosed must be identified as confidential at the time of disclosure. The information disclosed may include information relating to various Domestic and International e-commerce sale Projects ("Projects") or the marketing, sale, and development in both the United States and International markets.</p> </div> </div>

WHAT MAKES SECRECY?

CHOOSE MARK CLAUSE OR NOT

× Example

- The Parties acknowledge and agree that all Parties' information that is marked "Confidential", except as specified below, that comes to be known by reason of work under this Agreement, is confidential to each Party and will not be disclosed to unauthorized third parties.
- The Parties will use the same standard of care, and will bind their employees, agents or representatives to such standard, to prevent disclosure of such confidential information so each uses to protect its own confidential information and trade secrets.
- Information received by either Party under this Agreement will not be considered confidential if the information: (a) is not marked "Confidential"; (b) is known to the other Party or is in the other Party's possession at the time of executing this Agreement; (c) is in the public domain at the time of disclosure; (d) is independently developed by the other Party; or (e) is disclosed to the other Party by a third party with written approval of the first Party.

NON-DISCLOSURE AGREEMENT (NDA) FOR FINITE PERIOD?

× Example

- The ideas and the expressions hereof contained in the Licensed Program and Licensed Materials are confidential, proprietary information and trade secrets that the Customer will receive in confidence. The Customer shall not in any manner or form disclose, provide or otherwise make available in whole or in part, any Licensed Program and/or Licensed Materials to any third parties, except for Customer's employees and consultants who are bound by appropriate non-disclosures. The obligations expressed within this Section 3 shall survive termination of this Agreement.

THE AGREEMENT SIGNED BY CFO VALID?

× Example of Both Parties' Signing

INTENDING TO BE LEGALLY BOUND, the parties have executed this Agreement on the day and year first written above:

Licensor Technology Company Licensee Manufacturing Company

By: _____ By: _____

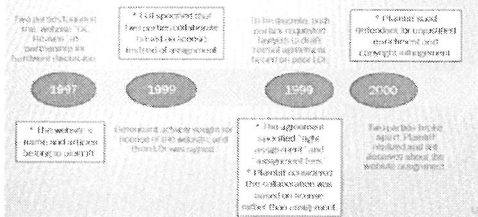
Name: _____ Name: _____

Title: _____ Title: _____

ARE THE TITLE AND PREAMBLE A PART OF THE AGREEMENT?

× Case Study - "License" v.s. "Assignment" in Copyright

+ 2001 Taipei District Court Appellate Civil No. 1964



× Court Holding

- The court rules that the amount of money involved in this case is significant enough to spur plaintiff to study the agreement, specifically the difference between "license" and "assignment." Therefore, plaintiff's claim was overruled.
- The LOI specified "license" instead of "assignment." However, the court rules that both parties agreed to "assignment" due to the later formal agreement. Therefore, it is critical to distinguish between "license" and "assignment" when it comes to copyright transaction.

IS THE DISCLAIMER OF LIABILITY VALID?

× Example

- With respect to LICENSED PATENT, PATENT UNDER APPLICATION and PRODUCT, LICENSOR makes no warranty or representations of any sort, express or implied, including without limitation warranties of merchantability and fitness for a particular purpose of non-infringement. LICENSOR makes no representations and provides no warranty that the use of the LICENSED PATENT will not infringe any patent or proprietary rights of third parties.

MUST FIGHT : GOVERNING LAW CLAUSE

× Example

- The validity, performance, and all other matters pertaining to this agreement will be governed and construed in accordance with the laws of the state of California. In the event of any dispute, the parties submit to the exclusive jurisdiction in the United States District Court for the Northern District of California in San Francisco.

LESSER VICTORY : ARBITRATION CLAUSE

× Example

- Any dispute, controversy or difference arising out of or relating to this contract or the breach thereof, shall be settled by arbitration in the City of New York, in accordance with the arbitration law of the State of New York and under the rules of the American Arbitration Association, whose award shall be final and binding on both parties and whose expenses shall be borne by the parties against whom the award is made.

WHAT IS A TRUE EXCLUSIVE LICENSE AGREEMENT?

× Example

- Technology Name : "XXXX" (hereafter referred to as TECHNOLOGY)
- Technology Content : XXXXXXXX (as Appendix 1)
- License Territory : Use Technology Content to make, sell Licensed Product in Licensed Territory
- Licensed Territory : XXXXXXXX
- Licensed Product : XXXXXXXX related products
- Type of License : Exclusive
- Licensee : Party B
- With respect to TECHNOLOGY, Party A retains the title to technological information and know-how. In the terms of this Agreement, Party A has no right to enter into a license agreement with any third party, without the consent of Party B.

PENALTY V.S. PUNITIVE PENALTY

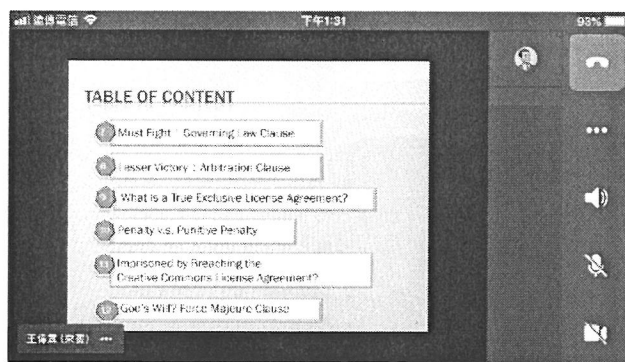
× Example

- Licensor may terminate this Agreement by written notice to the other party if Licensee fails to meet the payment and interest terms under Article 5. Given the extent of breach, Licensor may also claim to Licensee the delay penalty by 1% of the total fees each month.
- Licensor may claim to licensee the punitive penalty of NTD 5 Million in licensee's breach of Article 4-2, 6-2, 6-3 and 11-2. Licensor may, without notice, terminate this Agreement and claim damage compensation, in licensee's breach of other Articles in this Agreement.

執行成效：

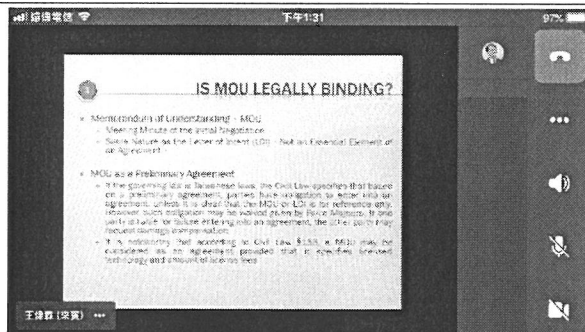
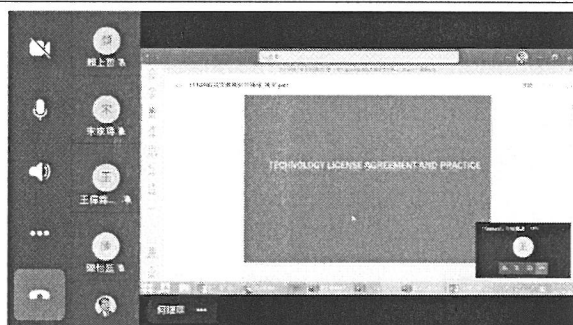
藉由業師分享英文商務契約，可以讓學生從業師簡報中了解現況與契約應注意細節，例如如果有違約延遲罰款等比例..etc，師生討論熱烈，也讓學生可以從不同角度切入思考，易使學生容易理解且感興趣，加上授課教師一起說明互動，學生受益匪淺。

相關圖片



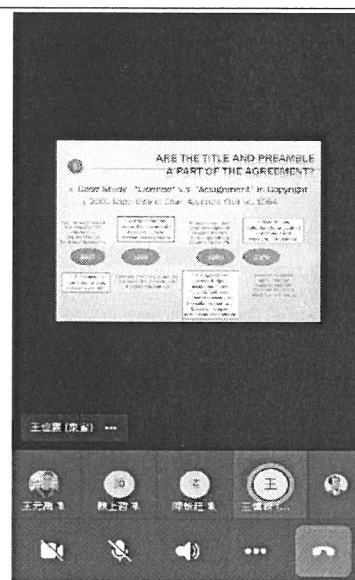
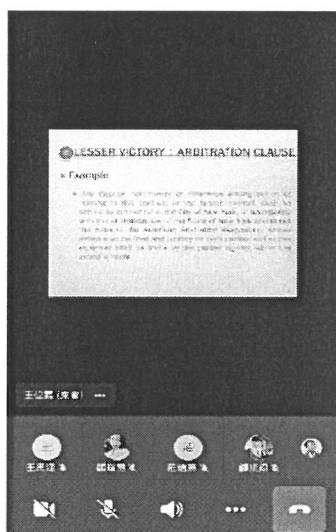
業師及授課老師線上授課情形

業師講授簡報



介紹業師

業師授課



業師授課

業師授課