Legal Issues and Cyber Law (HUM 4747)

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Non-disclosure agreements (NDAs)

A contract that requires one or more parties to keep certain information confidential and not to disclose or use it without permission from the other party or parties

Relation to trade secrets and confidentiality

An NDA is a common tool for protecting trade secrets and other confidential information from unauthorized disclosure or use by others.

An NDA can also create a duty of confidentiality between the parties that may not exist otherwise.

Purpose of NDAs

Collaboration: The parties may want to work together on a joint project or venture that requires sharing their trade secrets or confidential information.

Evaluation: The parties may want to assess the potential value or suitability of each other's trade secrets or confidential information for a possible transaction or partnership.

Transaction: The parties may want to buy, sell, license, or transfer their trade secrets or confidential information as part of a business deal or agreement.

Function of NDAs

🔒 The main function of NDAs is to prevent the unauthorized disclosure or use of the trade secrets or confidential information by the parties who receive them.

⏱️ Define the scope and duration of the confidentiality obligation

📄 Specify the exceptions and exclusions to the confidentiality obligation

⚖️ Provide the remedies and penalties for breach of the confidentiality obligation

🤝 Resolve any disputes or conflicts arising from the confidentiality obligation

Key elements of NDAs

1

Parties: The names and identities of the parties who are bound by the NDA, such as the discloser, the recipient, or both.

2

Information: The description and identification of the trade secrets or confidential information that are covered by the NDA, such as categories, types, or examples.

3

Purpose: The reason and context for sharing the trade secrets or confidential information between the parties, such as collaboration, evaluation, or transaction.

4

Signature: The acknowledgment and agreement of the parties to abide by the terms and conditions of the NDA.

Key clauses of NDAs

Duration: The period that the NDA and the confidentiality obligation are in effect, such as a fixed term, indefinitely, or until the information becomes public.

Exceptions: The situations or circumstances that allow the disclosure or use of the trade secrets or confidential information without violating the NDA, such as prior knowledge, independent development, consent, court order, etc.

Remedies: The actions or consequences that can be taken by the parties in case of breach of the NDA, such as injunction, damages, termination, etc.

Governing law: The law and jurisdiction that apply to the interpretation and enforcement of the NDA in case of dispute or conflict between the parties.

Governing law

NDAs are a type of contract that fall under the scope of **The Contract Act, 1872.** Therefore, they must satisfy all the essential elements of a valid contract as laid down in **Section 10** of the Act. These elements are:

- Free consent of the parties
- Lawful consideration and object
- Capacity of the parties
- Certainty of terms
- Possibility of performance
- Legal formalities

Thanks