

Paragraph one contractual conditions law general essay

Law



**ASSIGN
BUSTER**

It refers to those formal and substantive conditions

Formal:

Pursuant to the general definition of the contract which " is an agreement by which one or more persons undertake to one or more persons to give, to do or not to do something" this agreement between two or more persons is a legal act and the fruit of the free will of the parties that's why mediation clauses in a contract or the mediation contract itself must be in compliance with general terms of formal requirements of contracts: Consent: Consent is giving its approval. The consent of the party undertakes must be free and informed. Otherwise, there is lack of consent. These vices are the error, fraud or violence so parties to the mediation should not only agree to go through this process but also to know exactly what it does mean. It should be noted that this consent should be expressed in a written form in some cases but it's not required in many other legal systemsb- Capacity: The contracting party must be able, that is to say, to hold certain rights, and able to exercise them. Traditionally distinguished the capacity for enjoyment (possibility of possessing certain rights) and exercise capacity (ability to exert oneself the rights held by the person). Guardianship, curatorship and safeguarding justice are designed to protect adults who cannot perform certain acts by themselves. The objet: The object must exist, be determined and lawful. The object must be certain, it forms the subject of commitment. The object is first providing each contractor expects the other to perform. This is the legal process to considerThe legality of the object: it must conform to the public order and moralityThe cause: It must exist and be lawful.

Substantive:

More deeply the mediation contract must contain the following points:

Identity of parties to the dispute or, where adequate, their representatives;

Their full name, address, and any other data deemed necessary parties should be listed because the mediation agreement may be terminated and the representative in this case will be set and its data. Although not required, will mention the particulars of the mediator, since it is part of the contract. b)

Reference object type and conflict; the disputant parties should explain the problem raised to the mediator. A sufficient and complete description of facts is very important to identify where exactly it brakes. c) Declaration that the parties were informed by the mediator on the mediation effects and rules

because the mediator has to explain this process from its beginning to its end to the parties in order to guarantee that they are fully aware about mediation before resorting to it. d) The obligation to maintain confidentiality and mediator on the Parties' confidentiality as appropriate; e) The

commitment of the conflicting parties to respect the rules applicable to mediation. Thus, with the mediator, the parties will have to comply

themselves mediation procedure. f) The obligation of the conflicting parties to pay the due fees and costs for the mediator for his services during mediation in the interests of the parties. Mediating is a gainful activity because the mediator receives fees agreed upon by both parties. g)

Understanding of the parties on language mediation to be conducted; so, mediation shall be conducted in an appropriate language for the parties and the mediator. h) The number of copies that will be drawn if the agreement will be in written form, corresponding to the number of parties to the

contract; i) Required the parties to sign the minutes of the mediator, regardless of how the mediation will end. Interesting are also encountered similar provisions in art Article 1731. (2) Belgian Judicial Code which provides that a mediation protocol includes: 1. Names and addresses of the parties and their defenders; 2. Name, capacity of the mediator, and where appropriate, that the mediator is authorized by the special committee; 3. Evoking the principle of voluntary recourse to mediation; 4. A snapshot of the dispute; 5. Evoking the principle of confidentiality of communications exchanged during the mediation; 6. How to determine the mediator's fees and charges and payment arrangements; 7. Date; 8. Signatures of the parties and the mediator. Concept and legal character of the mediation contract: Contract mediation agreement by which the conflicting parties agree to a mediator resolve it amicably through mediation by submitting the average of all due diligence to this end by the parties on payment of a fee. The contract is a contract mediation synnalagmatic, solemnly, and with consideration. Regarding this nature, it follows from the interdependence of mutual obligations of the mediator and the parties. Thus, one of the main duties of the mediator is of the utmost for the parties to agree on mutually agreed, within a reasonable time. These obligations corresponding right mediator, that required the parties to pay fees. The mediation contract is, as a result, an onerous contract and it has a synallagmatic character. Another important requirement of the mediator is to give explanations on mediation, the parties show their willingness to resort to this procedure. However, parties must respond by engaging in cooperation throughout mediation. Mediation agreement is a contract for consideration, each party seeking to

obtain a result. In return for its efforts made to reach an agreement parties, the mediator is entitled to a fee and reimbursement of expenses incurred. Conclusion of the contract cannot take place simply show the will of the parties, as necessary formalities in this regard. Written form of the contract itself is required for valid contract formation. An interesting problem is that the *intuitu personae* character of the contract, by emphasizing the great importance of the person of mediator to trust on. 2. To determine the legal nature of the contract of mediation, we will consider in light of certain contracts that would be close. Thus, the mediation agreement cannot be treated as contract term, since the mediator does not meet the legal acts and deeds and on behalf of the parties, but on its own. It also differs from contract works because the contract of mediation is not to make material acts, but to use methods and techniques for the parties to conclude an agreement. Compared to the employment contract, contract mediation differs mainly in that the parties and the mediator does not create an employee/employer relationship. Finally, the mediation agreement may be likened to service contracts, noting that the mediator committed acts of professional quality. However, his mission is to provide a service, to lead the parties towards an agreement. It's a contract for the provision of services. The mediator's performance is the one which characterizes the contract, and it is a services' provision. As has been pointed out before, the mediator undertakes to use her/his best efforts to channel the communication between the disputants, so that they may conclude their own arrangement on the conflict. The issues presented lead us to conclude that this contract is a kind of self-reliant, being a contract independently with its own rules. In

addition, it is important to draw attention to the fact that this contract has always a plurality of parties, at least in one of the contractual positions, i. e., the disputants' position. In fact, it is likely that both parties are composed of two or more persons, for it is also possible that the process is conducted by a body of mediators. Finally, it is also worthy to reveal that the existence of legal regulations specially enacted for this contract varies to a great extent. It is nominated and regulated in some legal systems, whilst it lacks any specific rules -it is unnominated- in others. But, whatever may be the case, the main sources for the determination of the most fundamental parties' obligations, and of the mediator's duties in particular, are to be found both in the standards of conduct to which these professionals are often voluntarily bound, and in the deontological rules of a compulsory nature given by the institutions or associations to which mediators belong. Just to mention a couple of examples of the voluntary rules, there is a " European Code of Conduct for Mediators" to which the European Union has given express support, and a set of " Model Standards of Conduct for Mediators", adopted in 2005 under the auspice of the American Arbitration Association. As far as the obligatory norms concerns, the illustrations can be found in the International Chamber of Commerce (ICC) ADR Rules of 2001 which contribute to a vast standardization of the basic regulation of mediation contracts. The obligations that are most intrinsically related to the mediation process are instituted in every set of rules with a high degree of similarity. However, regardless of the high degree of standardization, the determination of the law applicable to the mediation contract in international situations is of utmost interest, for two main reasons. The first one is that *lex contractus*

establishes the limits of the freedom of the contracting parties. The validity of all the terms of the contract would always be examined in the light of this law. The second reason is that there are important matters that the parties do not tackle habitually within the wording of mediation contracts and that model rules and standards do not either regulate. In short, the mediator would need to know whether the disputants' obligation is separate or solidary (joint and several) (respectively). The answer is to be found in the law applicable to the contract