

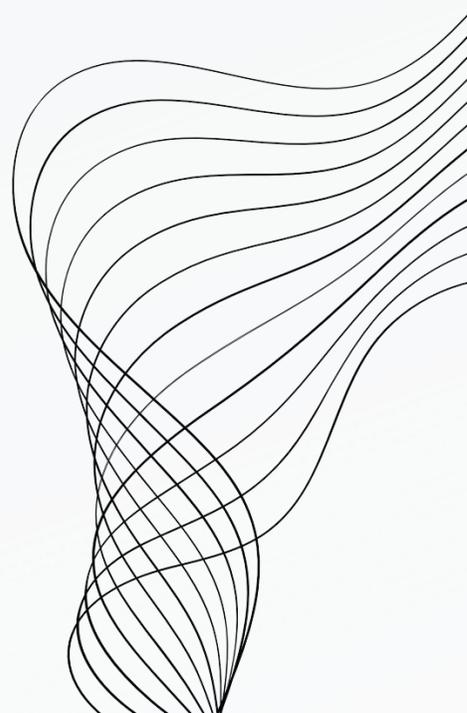


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**MEMORANDUM OF AGREEMENT
ON RESEARCH PRODUCTION:
HOW BINDING IS IT?**

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Introduction

- Memorandum of Agreement (MOA) as a legal contract signed by researchers
- Research given premium by academic institutions
- Research as a requirement for CHED COE and COD, PAASCU, PACU-COA, AUN-QA, Times Higher Education (THE)



Objectives

- Examine the legal value of MOAs signed by researchers and research directors in one comprehensive university in Manila;
- Raise awareness about the legal value of the document signed at the beginning of the academic year and the provisions that make it legally binding;
- Make researchers aware of the seriousness of the purpose exemplified in the contract and the possible sanctions that arise from their non-compliance of the provisions;
- Make clear the provisions to the stakeholders involved in research undertakings.

Research Questions

1. What is the physical structure of the MOAs signed by faculty researchers and research directors of the university? Do they follow the requisites of a legal contract?
2. What linguistic features are present in the MOAs signed by faculty researchers and research directors of the university? Do these features cause ambiguity in interpretation?
3. Which provisions are not complied with by both parties? Do the faculty researchers and directors see the seriousness of purpose exemplified by the provisions and the sanction/s that go with non-compliance of these provisions?
4. What gaps have been identified in the preparation of the MOA? How can the MOA be further improved?

Frameworks for Analysis

Bhatia, 1993, p. 101:

Language of the law: "several usefully distinguishable genres depending upon the communicative purposes they tend to fulfill, the settings or contexts in which they are used, the communicative events or activities they are associated with, the social or professional relationship between the participants taking part in such activities or events, the background knowledge that such participants bring to the situation in which that particular event is embedded and a number of other factors."

Frameworks for Analysis

Document examined via the requisites stipulated in Article 1318 of the Philippine Civil Code (Republic Act. No. 386), which underscores the necessity of the following variables:

- 1.) consent which is manifested by the meeting of the offer and the acceptance upon the things and the cause which are to constitute the contract;
- 2.) object which refers to those that are within the commerce of man and are legally allowed to be the subject of appropriation;
- 3.) cause or consideration which may include anything of value and therefore not limited to monetary interest.

Frameworks for Analysis

Article 1403 of the Philippine Civil Code provides the minimum requirement of simply being subscribed by the party charged, and as to the content, the document must note whatever terms the party wants to enforce.

- 1.) a listing of the parties involved;
- 2.) a purpose/statement of work;
- 3.) terms and conditions;
- 4.) appropriate bilateral signatures;
- 5.) duration of the agreement;
- 6.) any payment terms or special provisions as applicable

Frameworks for Analysis

Crandall and Charrow's (1990) description of linguistic features

- 1.) overly complex sentences (multiple embedded sentences)
- 2.) passives, especially those which delete the agent or doer
- 3.) whiz-deletion and
- 4.) unclear pronoun reference
- 5.) nominalizations
- 6.) multiple negations
- 7.) archaic and misplaced prepositional phrases
- 8.) some other features which include articles and demonstrative pronouns commonly found in legal language.

Method

- Descriptive and analytical in nature as it examined the physical structure of the MOAs and the linguistic features present in the provisions.
- The attempt to analyze all four contracts from the four research centers did not push through since all four were basically the same.
- A list of past faculty researchers who did not comply with the provisions, specifically on submitting their research outputs at the end of the academic year was requested. However, request was denied.
- All research directors were interviewed and took part in the study.
- Content analysis of the document was done by both researchers. However, the main proponent assessed the physical structure of the MOAs.

Method

- Validated by the second researcher whose field of expertise is in law.
- Linguistic features were manually analyzed but validated through the use of Lancsbox (Lancaster University corpus toolbox) software package was used for the analysis of some of the linguistic features. Gaps were identified pertaining to the validity.
- The study sought the approval of the Research Ethics Committee of one comprehensive university.
- Units of analyses: In examining the organizational structure of this genre, the unit of analysis was the paragraph. For the linguistic features, the unit of analysis was the word level. For the legality of the document, the unit of analysis was the sentence level.

FINDINGS

Organizational Structure

- **Move 1: Cause (Establishing the intention to collaborate)**
- **Move 2: Object or Subject Matter (Stipulating the obligations, specifying the terms and conditions, specifying other responsibilities)**
- **Move 3: Consent**

FINDINGS

Linguistic features of the MOA on research production

Overly-complex sentences

THE PUBLIC IS INFORMED

This agreement is between:

The Research Center for XXXXX, a research center committed to conduct research on XXXXX, organized and existing under the laws governed by the XXXXX, represented by its HEAD, XXXXX, hereinafter referred to as the
CENTER;

and

XXXXX, an academic staff of the XXXXX, Filipino, of legal age, with residence and postal address at XXXXX
hereinafter referred to as the ACADEMIC RESEARCHER;

FINDINGS

Linguistic features of the MOA on research production

Negation

Not be assigned a research load nor shall be awarded any research grant by the CENTER for two (2) years thereafter...

FINDINGS

Gaps in the Preparation of MOA

- Employing the sequential order of the moves presented in the earlier part of the study: Move 1: Establishing the intention to collaborate; Move 2: Stipulating the obligations, specifying the terms and conditions; specifying other responsibilities; and Move 3: Consent, it should be noted that while in the preceding discussion, Move 1 focused only on the beginning of the ANTECEDENT, Move 1 in this subsection expands its scope by including the introduction of the two parties getting into an agreement.
- A common archaic term used in contracts is *Know All Men By These Presents/Know All Persons By These Presents* (meaning Attention) followed by a description of the date and place of execution along with the contracting parties, the term used in this MOA examined is: THE PUBLIC IS INFORMED, a term more understandable to the ordinary lay.

FINDINGS

Gaps in the Preparation of MOA

Guevara (1998) in Alido (2019) states: "The cardinal rule in drafting legal documents specify the importance of naming the parties in full including their capacities and residences following a logical order in which the parties are to be named".

FINDINGS

Gaps in the Preparation of MOA

Instead of the educational institution getting into a contract, it is the CENTER that is shown to enter into an agreement, which is only one small unit of the entire educational institution. Although the representative's name has been indicated, it should be the institution itself that should have been cited. What follows is the ANTECEDENT equivalent to the WHEREAS clause, which likewise stipulates the name of the CENTER instead of the educational institution where the Center is subsumed. Another striking feature of the contract is the inclusion of the title of the approved proposal. While the inclusion of the title is necessary, the proposal submitted by the researcher and approved by the Center should have been appended to the contract.

FINDINGS

Gaps in the Preparation of MOA

Move 2 (Stipulating the obligations, specifying the terms and conditions; specifying other responsibilities) identifies the Obligations of the Center in Item 1.1 which include the giving of the research grant and its coverage spanning 10 months – from August 1 to May 31 of the following year. However, given the varying nature of the research conducted by the faculty researchers, the coverage should have been based on the timeline submitted by the researcher which may be at the end of the Special Term or July 31. As for Item 1.2, the MOA makes mention of the line item budget, which is part of the approved proposal and, therefore, should be attached to the MOA itself. Item 2 identifies the numerous responsibilities of the researcher. For instance, item 2.3 indicates the researcher's submission of the Year-End Accomplishment Report by the end of July. For new researchers, this may seem vague, especially if no orientation was given to the new researcher at the start of the academic year.

FINDINGS

Gaps in the Preparation of MOA

In Item 2.4, the submission of the paper by the researcher for publication to peer-reviewed journals might be misconstrued. Is the requirement only for submission or will such submission entail the article's publication? Another essential but missing information is the date by which the article should be published. This information is critical but not disclosed in the MOA.

FINDINGS

Gaps in the Preparation of MOA

As for Item 2.5, the researcher is expected to actively participate in the CENTER's sponsored activities which does not specify how many of these sponsored activities are to be attended and the duration by which the researcher should comply. Item 2.6 spells out the responsibility of the researcher to accept assignment/s to a specific committee but does not indicate what these committees are and how many of them.

FINDINGS

Gaps in the Preparation of MOA

- With regard to Item 3, which discusses the failure of the researcher to comply with the obligations stipulated in Item 2, the phrase "If the ACADEMIC RESEARCHER fails to comply with any of the above terms in Section 2 and the applicable sub-items without justifiable cause, the determination of which is the discretion of the CENTER", made it problematic.
- The combination of certain provisions in Item 2 providing no sufficient standard of performance and Item 3 granting the CENTER full discretion of what constitutes "justifiable cause" is tantamount to giving the CENTER, full discretion to determine the compliance or non-compliance of the researcher to the contract. The compliance of the concerned researcher cannot be assessed solely by one of the parties. As indicated in Articles 1308 & 1309 of the Civil Code, "the contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of the parties." However, the determination of performance may be left to a third person. Thus, the phrase in the agreement granting the CENTER the full discretion to determine what constitutes "justifiable cause" may result in Item 3, under certain circumstances, to be invalid.

FINDINGS

Gaps in the Preparation of MOA

With Item 4.1 which discusses matters pertaining to Intellectual Property Rights, it should not only state that the institution owns all the IP rights consistent with the IP Policy of the University. The Policy itself should be quoted or if not, attached as an annex to the agreement to be clearly integrated as part of the agreement and avoid confusion as to what version of the policy is applicable should the same be amended or revised. This way, the researcher is clearly informed of his obligations under the MOA and the policy.

FINDINGS

Gaps in the Preparation of MOA

- As for Move 3 (Consent), the signatory should not be the CENTER since the Center is not a juridical person with a separate legal personality from the UNIVERSITY. Thus, a line stating FOR THE UNIVERSITY should be indicated, manifesting that the head of the CENTER or the person in charge of the CENTER, whose name and signature appears therein, is acting as agent of the university.
- Witnesses do not have to be high-ranking officials of the institution. A witness may be any person of legal age with a sound mind. Thus, pre- or post-nominals are unnecessary as the term 'witness' only implies that the person has seen the act of signing of any or both of the parties involved in the agreement.

FINDINGS

Gaps in the Preparation of MOA

- Since an MOA usually ends with the notarial acknowledgment bearing the signatures of those who executed the act (excluding the witnesses), this may be considered as Move 4, separate from the giving of the consent.
- Notarization is the act of acknowledging before an officer of the court – the Notary Public, by the persons whose signature appears in the document as a signatory, that they signed the documents and that they voluntarily gave their consent to the deed or contract.

FINDINGS

Gaps in the Preparation of MOA

A document acknowledged before a Notary Public is a public document that enjoys the presumption of regularity. It is prima facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. (Ocampo vs. Land Bank of the Philippines, 591 SCRA 562, 571 [2009]). Otherwise stated, public or notarial documents, or those instruments duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved (Alfacero vs. Sevilla, 411 SCRA 387, 393 [2003]), cited in Gatan vs Vinarao, G.R. No. 205912, (S. C., October 18, 2017) (Phil.) <https://elibrary.judiciary.gov.ph/>. However, the same is not indispensable for its validity. Notarization of documents is optional unless a specific law requires that it be notarized for its validity. While notarial acknowledgment may be optional in this case, it is still recommended that it should carry Move 4 (Notarial Acknowledgement) as it automatically makes the contract a public document. De Leon (2003) in Alido (2019) underscores that the notarial acknowledgment may lend certainty and assurance to the novelty of the agreement since it is to be executed and listed in the registry book of instruments ratified by a notary.

FINDINGS

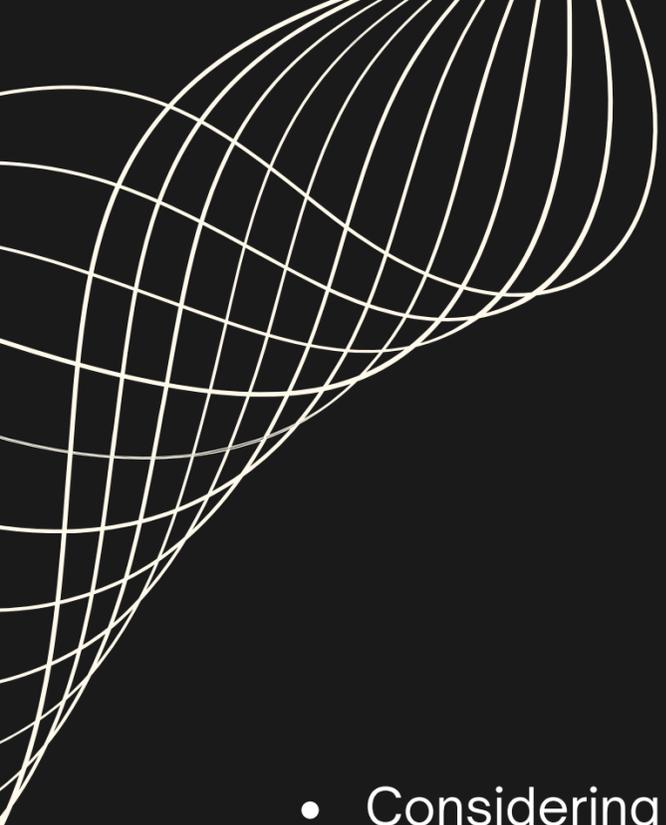
Gaps in the Preparation of MOA

The MOA examined pertaining to research may attract litigation because of its vagueness and incompleteness of essential information. Every contract should be made effective to prevent any future litigation.



CONCLUSION

- As contracts, MOAs hold the parties signing the legal document liable for whatever provisions are not complied with.
 - It is evident in this study that the MOA did not appear to have served its purpose. With the goal of the university to become a research university by developing a research culture among the faculty through the established research centers, it appears that the said move did not fully benefit the university. While the move may have helped the institution to achieve its goal to a certain extent, there have always been instances when fall-out risks are not avoided.
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CONCLUSION

- Considering that one provision is not implemented for the non-compliance of producing a publication by the end of the contract, the said move might also contribute to the lackadaisical attitude of some faculty researchers who do not feel any pressure to deliver what is expected from them. They should likewise realize that they should take to heart the seriousness of getting into an agreement.
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**THANK YOU
VERY MUCH
FOR YOUR
TIME!**

