

Paper for the 27th of October

It is quite usual in contractual negotiations to determine some features of the future agreement, or the general agreement of the parties, in a pre-contract. Please give an account of different types of pre-contractual agreements and explain the divergent approaches of Civil and Common law as regards the 'contract to negotiate'.

NB: The French Civil code has undergone a major reform of contract law. Please keep in mind that since October 1st 2016 the matter of pre-contract is now ruled by special norms (These norms do not alter the content of the French law, but stabilize the existing doctrine).

French Civil Code 1804	French Civil Code 2016 (as from October 1 st 2016)
No special law, but cf. Avant-Projet Catala (8.19), p. 369.	<p>Art. 1123</p> <p>The <i>pacte de préférence</i> [which is some kind of preliminary agreement between the parties] is a contract by which a party takes on the obligation to give priority to the beneficiary over other potential contracting partners in case the former chooses to conclude a contract.</p> <p>If, in violation of a <i>pacte de préférence</i>, a contract is concluded with a third party, the beneficiary may ask for compensation of his losses. If the third party knew of the existence of the <i>pacte</i> and of the beneficiary's intention to invoke the <i>pacte</i>, the beneficiary may take action for annulment of the contract or ask the judge to take the place of the third party within the contract concluded.</p> <p>[...].</p>
	<p>Art. 1124</p> <p>A unilateral promise to contract is a contract by which a party, the promisor, promises another, the beneficiary, to give him the exclusive right to conclude a contract whose essential elements have been determined, and for whose formation only the consent of the beneficiary is missing.</p> <p>Revocation of the promise during the period granted to the beneficiary to express his agreement cannot prevent the contract which was promised from being formed.</p> <p>A contract concluded in breach of a unilateral promise with a third party who knew of its existence, is invalid.</p>