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“Legal-ese Speaking”

Boilerplate: The term "boilerplate" is used to describe those parts of a contract that are generally standard to it.

A **breach of contract** occurs when one or more of the parties to a binding agreement fails to perform, only performs in part, or interferes with the performance of another party to the contract.

THE INFORMATION YOU OBTAIN IN THIS NEWSLETTER IS NOT, NOR IS IT INTENDED TO BE, LEGAL ADVICE. YOU SHOULD CONSULT AN ATTORNEY FOR INDIVIDUAL ADVICE REGARDING YOUR OWN SITUATION.

Contracts – A Primer

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So much of what we do is governed by the law of contracts. We lease apartments and cars; we enter into
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Where In the World

Barbara Ann Mohajery, Esquire
Mohajery & Associates, PC

Our final destination in Australia was the lovely city of Cairns.



With its beautiful harbor!



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a contract of marriage; we buy and sell real estate and personal items; we have our cars fixed and clothing altered; and all of these activities are governed by contracts. A contract is nothing more than an agreement between two or more parties. It may be in writing or sealed with a handshake. A written contract is preferable because it spells out the intent of the parties and is easier to enforce in the event of a breach.

A contract is rather like a sandwich built from the top down. The top slice states who the parties are and the reasons for the agreement; the middle sets forth the meat – *i.e.*, the parties' agreement – of the contract; and the bottom slice contains all of the standard contract verbiage.

The Parties and “Whereas” Clauses

The first 'paragraph' of most agreements sets forth the date of the agreement and the names of the parties to it, followed by the 'whereas' clauses that establish the reasons for the contract; *e.g.*:

Whereas Party A contracted to purchase 100 widgets from Party B for the sum of \$100.00; and

Whereas, Party B delivered 100 widgets to Party A; and

Whereas, 60 of the 100 widgets were damaged in transit from Party B to Party A; and

Whereas, Party A has refused to pay the \$100.00 contract price to Party B; and

Whereas, Party B has filed suit against Party A for the \$100.00 contract price; and

Whereas, the parties wish to resolve their dispute without litigation.

Immediately following the 'whereas' clauses is the paragraph which legally binds the parties to their agreement, *e.g.*:

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions of this agreement, and intending to be legally bound thereby, the parties agree as follows:

The Body of the Agreement

The 'meat of the parties' agreement is set forth next. To what are the parties agreeing? Is Party B going to refund all or part of the contract price? Is Party B going to replace the damaged widgets with undamaged widgets? Must Party A return the damaged widgets to Party B? If so, who will bear the cost? If the widgets were insured, will Party A first have to seek coverage through its carrier and then Party B will compensate the difference to Party A?

“Boilerplate” Contract Clauses

Boilerplate (also “Miscellaneous”) clauses usually appear at the end of a contract. Because they are at the end, people often assume that they are unimportant, but boilerplate provisions *are* important because they affect your legal rights under the contract as much as do all other clauses.

While the purpose of boilerplate provisions is to save time by utilizing commonly used and understood language, it is nonetheless important to understand the meaning and the impact of such provisions in order to choose which ones are important for your particular contract. What if one party breaches the agreement? Will one party have to pay the other party's attorneys' fees? May the parties modify their agreement and, if so, with what formalities? Which state's law will govern in the event of a dispute? One very important standard contract provision is acknowledgment by the parties that all of the terms and conditions to which they have agreed are contained in the contract. ***Every promise or understanding between the parties must be written in the agreement! If it is not included in the contract, it is not part of the contract and is not enforceable!***

Although boilerplate provisions may seem "standard," they can still be tailored to meet your specific requirements. Every contract may be negotiated — even the boilerplate provisions. Every contract should be reviewed by your attorney **before** you sign it! Once you have signed on the dotted line, it's too late!

CALENDAR OF EVENTS

November 21: 8:30 AM

Small Business Basics Workshop

Topic: Legal Issues in Starting a Business

DeVry University

210 Sixth Ave., Ste. 200

Pittsburgh, PA 15222

Presented by: SCORE Pittsburgh

[Reservations Required](#) / Cost: \$45 per person

Register Online at www.scorepittsburgh.org

QUESTIONS AND ANSWERS

Q. Business Leases. When I first started my business, I signed a five-year lease, fully expecting that my business would do well and I would have no problem paying the \$1,000.00 per month rent. Three years into the lease, my business failed. I could not pay the rent, and my landlord terminated the lease. Now the landlord has demanded that I pay her \$24,000 because she has accelerated the rent. Can she do this?

A. Yes, if your rent is for the 5-year term and the lease contains an “acceleration” clause. As with any contract, your respective rights are determined by the terms and conditions of your lease. It sounds as though the rent for your space is \$60,000.00 for a five-year term, payable in installments of \$1,000.00 per month. An “acceleration clause” permits the landlord to demand the entire balance of the rent for the term in full if you are in default – in this case, having failed to pay one or more of the monthly installments.

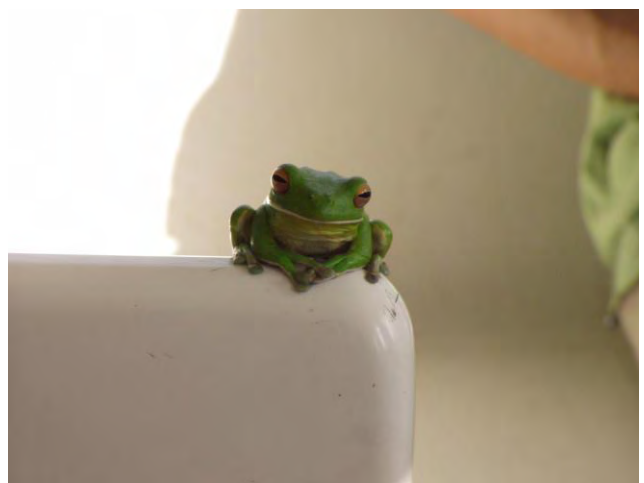
Q. “Shall” and “May”. I recently entered into a contract for lawn services, and notice that sometimes the word “shall” is used and sometimes the word “may” appears. Are these terms interchangeable?

A. No. Each of these words has a distinct meaning. “Shall” creates an *obligation* to do something; e.g., if the contract states that “Lawn Service *shall* cut the grass once per week,” then Lawn Service *must* do so. If the contract states that “Lawn Service *may* cut the grass once per week,” then Lawn Service may cut the grass more than once per week or less often, at its *option*.

We walked in the beautiful rainforest with abundant flora



and were greeted by the smallest of the local fauna!



From here it was on to Beijing and our adventures in China.