

Contracts And Riders. The Basic Concepts Of Contracts.

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In this article, we will begin a discussion of contracts and riders. Contracts are the heart of the business of student activities. Without the power of contract law, directors of student activities could not do their jobs. It should go without saying that it is the first order of business for every student activities director, as well as every agent and entertainer, to seek out a certain degree of knowledge on the subject of contract law.

Despite this obvious prerequisite, I have found that many university representatives, agents, agencies, and entertainers routinely do business in the college market without a proper knowledge of the basic concepts of contract law. This lack of knowledge can be dangerous for the unsuspecting novice, and can often lead to serious problems and expensive lawsuits—not to mention the bad blood that always comes with a deal gone sour.

A well-written contract is like a well-paved two-way road, with bright signals and easy to read signs to tell everyone exactly what to do. When both parties to a contract have a concrete (or, at least, a reasonably solid) concept of what deal is being struck and what their rights and obligations are under the contract at issue, problems are much less likely to occur. A well written contract is beneficial to all parties, since each party will have a good idea as to what is expected of them, as well as what they can expect of the other party. As the old saying goes, "Good fences make good neighbors."

In this article, I will attempt to lay out a simple definition of contract terms, which should aid you in your endeavors to turn fruitful negotiations into well-formed binding contracts. I should note that I will

focus on the most basic of terms. These definitions and examples should be helpful to any novice in the field, but they are little more than a first step into the complicated world of contract law.

First, we will start with the basics. What is a "contract"?

A contract is defined simply as, "A promise, or set of promises, that the law will enforce or recognize in some way." Usually, these agreements are manifested in a written document, which is kept by both parties as proof of the agreement. Nevertheless, oral contracts are also valid, so long as all of the requirements of a "contract" are present.

So, what are the requirements of a contract?

Every contract is comprised of the same four basic elements: An offer, acceptance, consideration, and intent. The last two elements, consideration and intent, are rarely at issue in entertainment contracts in the college market.

So, addressing the last two elements first, for our purposes, "consideration" usually simply means payment in exchange for services. When school A pays artist B for performing at the school on date X, the consideration for the school is the performance the school wants from the entertainer, while the artist's consideration is the money promised to the artist for the performance. This is rarely an issue in performance contracts, except in rare circumstances to be discussed later.

Similarly, "intent" is rarely an issue either. "Intent" basically means that both school A and artist B were willing parties to the contract and intended to form a contract.

The first two elements, on the other hand, are often much more troublesome. What constitutes an "offer" and an "acceptance" has been the subject of many lawsuits in the college marketplace. The

exact moment when negotiations have ended and a contract formed is sometimes not as bright a line as one would expect. As we learn more about what constitutes an "offer" and an "acceptance", we will see that even these most basic elements of a contract can often be elusive.

The concepts of "offer" and "acceptance" can be easily demonstrated with a simple scenario. Let's assume that Aaron wants to buy a baseball from Bobby. Aaron tells Bobby that he would be willing to buy the baseball for \$5.00. This is an "offer". At this point, Bobby has two options: Bobby may either accept the offer by telling Aaron that he will agree to sell the ball for \$5.00, or Bobby may reject the offer by telling Aaron no. These are Bobby's only real options.

Confusion often comes in when Bobby makes what is commonly called a "counteroffer". Using the above example, Bobby may tell Aaron that he will not sell the ball for \$5.00, but he will sell it for \$6.00. This is a "counteroffer". A counteroffer is not an acceptance, but is actually a rejection of the original offer. What Bobby has actually done is to institute another offer whereby acceptance is now up to Aaron— does Aaron want to purchase Bobby's baseball for \$6.00?

An offer becomes a contract only when it is accepted by the other party. When the other party adds conditions or terms not contemplated in the original offer, the party has made a counteroffer and the parties are still only negotiating.

The tricky part is that "not contemplated in the original offer" part. We all make contracts where not all of the terms are spelled out in detail. Does it kill the offer if Bobby accepts the purchase price, but adds that he wants delivery by sundown?

The overriding concept here is the concept of the "meeting of the minds". The central question is generally whether or not both parties, whom we assume are dealing with each other in good faith, have the same concept of what is being exchanged. In other words, has Bobby unconditionally accepted the core of Aaron's offer, or has he added

terms which constitute a counteroffer and require an acceptance from Aaron.

Getting back to our example. Lets say Bobby accepts the offer of \$5.00 for the baseball. However, Bobby also adds a stipulation that the baseball must be delivered by sundown today. Is this a counteroffer, or an acceptance of the original offer? Bobby has added new terms not spelled out by Aaron, but he has also unconditionally accepted the core of the deal, which is the price of \$5.00. What if Aaron originally intended to deliver the ball tomorrow?

You can see that, when the parties have agreed to a basic deal, but have yet to determine the precise details and arrangements, the parties can often begin to walk a fine line between acceptance and counteroffer. In extreme cases, these conditional acceptances/ counteroffers can run so far afoul of the original offer as to vitiate the offeror's consideration or intent. Unclear offers can lead to unclear acceptances, which can clearly lead to trouble!

"But," I hear you asking, "what does this have to do with the college campus activities market?" Riders, that's what!

Contract riders are very useful tools in our business. A rider is meant to be a way for a school and an agent or artist to come to a basic agreement on major issues such as price and date, while leaving certain "nuts and bolts" technicalities for later determination. When a school contracts with an agent representing an artist, the contract rider is often an absolute necessity, because the agent may not be fully aware of certain technical or personal requirements the artist may have.

The problem I have seen time and time again, however, is that some artists and agents have used riders as a way to make outrageous demands after the contract is already signed. I have heard of artists that have used riders as a way to demand first-class airfare, limousines, or luxury suites at hotels. Riders can and have been

certainly abused.

The questions I want you to ponder for next month are, what roles do contract riders play in the college market? Moreover, what roles should contract riders play in the college market? Can there really be a meeting of the minds without total agreement on all issues? Are riders a useful tool or a loophole which needs to be closed? What can we do to alleviate rider abuse? You tell me!

Next month, we will continue our discussion on riders. Then, we will share some stories and tips on how to make better contracts. I would love to hear some of your tips and stories about contract riders and their uses at your schools.

Email your contract rider stories to me at:

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