



# CONTRACTS AND THE CORONAVIRUS

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Including Force Majeure, Impossibility, and Impracticability

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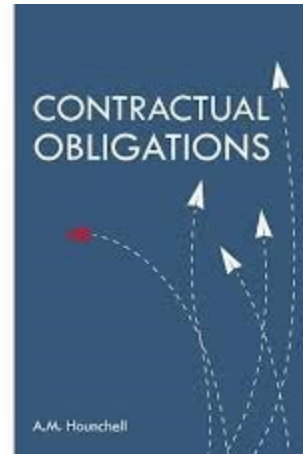
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# WHAT IS A CONTRACT?

- Roadmap to a relationship
- A meeting of the minds
- When two or more parties come together and commemorate an agreement that maps out their obligations to each other
- Not egregious or illegal

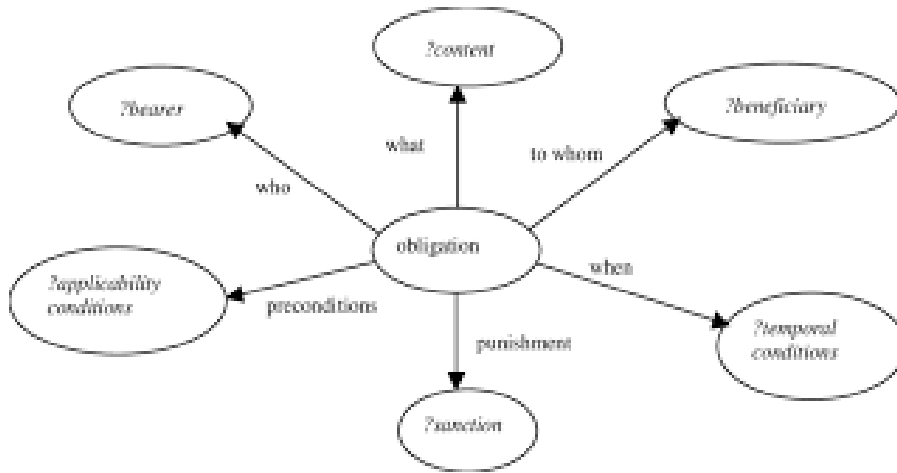


# INFORMATION:



- Who is entering into an agreement?
- For what purpose?
- Who is responsible to the other for certain defined tasks?
- What is being given in exchange for the tasks?
- What is the duration of the relationship regarding those tasks?
- Who owns the resulting physical and/or intellectual property?
- Other important issues.

# Define roles and obligations



- Offer remedies if parties breach their defined and agreed-upon promises
- Can be written or verbal, formal or informal, although advisable to have a formal, written agreement that clearly states the terms of a relationship

# Contracts



- **Statute of Frauds**
- **Competency, Consent and Legality**
- **Offer and Acceptance**



# Common Clauses

Introduction

Consideration

Grant of Rights

Term, Termination

Deliverables

Merger and Integration

Indemnification (“Hold Harmless”), Representation and Warranty

Non-Waiver

Alternative Dispute Resolution (Mediation, Arbitration)

Attorneys’ Fees

Choice of Law and Choice of Forum

Severability

Force Majeure

Counterparts

Prior Understandings

# Other things to consider

- Deadlines
- Intellectual Property ownership
- Confidentiality
- Non-compete



# FORCE MAJEURE: What is it?

Unforeseeable circumstances that prevent someone from fulfilling a contract

The term “force majeure” refers to an event such as an “act of God” that is beyond the parties’ reasonable control, not due to any party’s fault or negligence and that intervenes to create contract impossibility.

May excuse contract nonperformance **under certain circumstances**

The burden of proof is on the non-performing party seeking to trigger the clause



# Sample Force Majeure Language

Neither party shall be liable to the other if the performance of any obligation hereunder is rendered impossible by any circumstance beyond its control and not created by its own act or omission, including flood, fire, and other natural disasters, war, riot or social unrest, work stoppage, act of terrorism, and Acts of God. Each party shall resume performance pursuant to the provisions of this Agreement upon the abatement of the *force majeure*.

# Potential Force Majeure Drafting Issues

- Notice
- Doctrine of Impossibility
- Impracticability
- Frustration of Purpose
- Does the contract allow for extensions of time to perform or include duty to mitigate?

# Force Majeure - New York

Under New York law, these clauses are given a narrow and strict reading in accordance with their purpose, which is “to limit damages in a case where the reasonable expectation of the parties and the performance of the contract have been frustrated by circumstances beyond the control of the parties.”

New York courts do not like to interfere with contract provisions. “When the parties have themselves defined the contours of force majeure in their agreement, those contours dictate the application, effect and scope of force majeure.”

# What do courts consider?

- Is the force majeure clause applicable?
- Was the force majeure foreseeable?
- Was performance rendered impossible?
- Was it the force majeure that rendered performance impossible?
- Have all contractual requirements been met?



# Always Consult With Your Attorney!

- This presentation is not a comprehensive study in contract law, as it does not delve into the kinds of sophisticated contracts that creators in the arts and entertainment businesses encounter.
- It is advisable to consult with an attorney who can protect one's interests in contract drafting, negotiations, and interpretation.

# Q&A

Questions?





# THANK YOU!

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