

CONTRACT DRAFTING HANDOUT #1

Prof. Leslie Burton

Example: The will.

Husband dies. His will provides:

“My property is to be divided equally between all of our nephews and nieces on my wife’s side and my niece.”

There are 22 nieces and nephews on wife’s side and one niece on husband’s side.

How is the property to be divided?

Example: The insurance policy.

An insurance policy covers injuries that happen to a “relative.” It defines relative as follows:

“Relative means your relative or anyone else under 21 residing in your house.”

The policyholder’s adult son, who does not live with him, is injured. Does the insurance need to pay?

STEPS TO TAKE TO PREPARE FOR DRAFTING A CONTRACT

Consult with Client

Prepare an outline (“term sheet”)

Negotiate with other party

Re-draft the outline

Write, re-write, edit

PARTS OF A CONTRACT

Title

Date

Introduction

Identifies the parties and states the purpose and that they agree.

Recitals/Factual Background

“The Employer has started a new Bangladeshi restaurant and wants to employ an experienced chef who knows how to prepare Bangladeshi food. The Employee has been trained at the Cordon Bleu Bangladesh and has worked in two Bangladeshi restaurants in Bangladesh over the past ten years.”

Definitions

Terms (substantive provisions)

- **Operating clause(s)** explains how things will be done.
- **Termination clauses** tell how the contract will end.
- **Damages**
- **Litigation place or jurisdiction or arbitration clauses.**

Signatures and dates

PROCESS OF REVIEWING A FORM CONTRACT OR PROPOSED CONTRACT

- 1.** Read every word in the document.
- 2.** Remember the client's needs.
- 3.** Try to ascertain/ understand the substance of what the contract says.
- 4.** Answer these questions:
 - What are the main points?
 - What are the different categories or ideas that the contract is trying to achieve?
 - What purpose does this contract seek to achieve?
 - Why is each provision there?
- 5.** Organize into a basic structure.
 - Does a different organization than the original form make more sense?
 - What is the most logical order?
 - How should it flow from beginning to end?
- 6.** Rewrite.
 - Use plain language.
 - Focus on the client's needs.
 - What can you take out?
 - What should you add?
 - What other elements can be rewritten?
- 7.** Consider the visual aspects.
 - Font size
 - Points
 - Headings
- 8.** Revise.

HYPOTHETICAL: You are about to run a marathon. You have been asked to sign this document. As a lawyer, you are unhappy with the language and you want to re-draft it. Don't worry about the lack of Introduction, Recitals, or Definitions. Concentrate on the Terms (Substantive Provisions) that are already in here and how you would re-write them. Three paragraphs are here but you need to work only on the first one. Start by asking yourself the questions from step 4 of the Process of Reviewing a Form Contract.

WAIVER OF LIABILITY

I know that running/walking in a road race is a potentially hazardous activity. I should not enter and run/walk unless I am medically able and properly trained. I agree to abide by any decision of a race official relative to my ability to safely complete the run/ walk. I assume all risks associated with running/walking in the RACE on May 5, including but not limited to falls, contacts with other participants, the effects of the weather including high heat and/or humidity, low temperature, traffic and conditions of the road, all risks being known and appreciated by me.

Having read this release and knowing these facts and in consideration of your accepting my entry, I, for myself and anyone entitled to act on my behalf or on behalf of my estate, waive and release RACE ORGANIZER and all sponsors of the race, any other persons assisting with the race, the officers, Board, Board members, agents, servants, employees, and their successors and assigns of each and every of the above from all claims or liabilities of any kind arising out of my participation in the run/walk even though the liability may arise out of negligence or carelessness on the part of the persons referred to in this waiver.

I also grant permission for the use of any photographs, motion pictures, recordings, or any other record of my participation in this event for any legitimate purpose. I understand that if the race is canceled because of circumstances beyond the control of the race committee and sponsors, including, but not limited to unsafe weather conditions or governmental ban, my entry fee will not be refunded.