

Are you running a startup, working as a freelancer or managing your own business? Whatever you do in life, you're going to HAVE to deal with contracts, so they need to make sense!

Whether you're reviewing a contract that you've been asked to sign or you're drawing up a contract for a client, you need to understand what you're signing and agreeing to (or asking your client to agree to) *before you sign*.

Traditionally, contracts were long, intimidatingly dense documents that were full of legalese, making them hard to understand. It's no wonder that most people just sign where they're told or simply avoid dealing with contracts at all (the good old stick-your-head-in-the-sand approach).

But, believe it or not, when you do it properly:

A contract is *one of the best investments* you can make in your business.

Find the story!

A contract is easier to grasp if you realise that it's just a story – the story of the relationship you're forming.

As in any story, there are characters (the main parties to the contract) and a plot (what these parties will do together) but there's also something which makes it different from normal stories – an alternative ending (this involves the claims, liability and termination). Think of it as a "Choose Your Own Adventure" type of story – if the adventure is people not doing what they said they would do!

These are the elements you need to look for in any contract before you sign it:

1. Characters = Parties

On the first page of the contract, you'll see who the parties to the contract are. It'll usually say "Between X and Y" – which means X and Y are the characters in this story.

What's important here is to figure out who you're doing business with – is it a sole proprietorship, a partnership or a corporation? The answer to this question will have a huge impact on who you claim against if the relationship doesn't work out (and as much as you might like to be positive, you need to guard against this "not-such-a-fairy-tale" ending).

What if you're contracting with a designer to produce a piece of work but the contract is with her corporation? If it's important to you that it's she does the artwork herself, you'll need to specify this in the contract – your contract is not with her but a separate legal entity.

2. Plot = Provisions which set out what the relationship should be like (the terms)

Purpose

What's this contract *for*? What's the reason you're entering into this agreement?

You'll find the purpose at the stage of the contract which starts with "**Whereas**". For example: "*Whereas the Contractor provides social media management services and is desirous of providing same to the Business.*"

Sound like too much legalese? You don't need to use legal terminology but it's good to

understand the meaning when you need to sign the dotted line. You could just say (or ask for a rewrite that says): The contractor agrees to manage the social media accounts of the company (namely, LinkedIn, Twitter and Instagram, for example).

Remember: a stranger should understand every term of your signed contract! Be as clear as possible and use words that would make perfect sense to anyone who reads them.

Obligations of each Party

This is the meat of the contract – what exactly are each of you responsible for? What can you expect from the other party?

This part of the contract will usually come after a heading mentioning obligations. You'll also know you're reading an obligation when the clause starts with "**The [party] shall...**" The words "shall" or "must" or "will" should give you a head's up that you're reading about an obligation.

It's important to know your obligations (and those of the other party) so you can understand what each character is expected to do, how and when they must do it, and what their rights under the contract are.

Make sure that if you read through the plot (aka the purpose and obligations of each party), you can clearly identify each character's role in it.

It pays to *be as clear as possible* when outlining obligations. Err on the side of over clarification rather than not being detailed enough. *Spell. It. Out.*

My mother always told me, “when you assume, you make an ass out of you and me” and I love saying this to my kids and my clients! Don’t assume that something obvious to you is obvious to the other person.

To avoid disputes and misunderstandings, *be as clear and detailed as possible.*

Payment/Compensation

You’re not running your business as a charity!

Don’t be afraid to be *extremely* clear about how much you get paid, as well as specify the consequences for non-payment (how, what and when). It helps to be a little paranoid when laying out or reading your contract: what are all the ways it could go wrong and what should the consequences be if things go pear-shaped (for both parties)?

If you’re the one reviewing a contract you’ve been provided, make sure you understand what’s included in the price and what’s not.

3. Alternative Ending

Escape Route

Whenever I go to a concert, sports event, or anywhere crowded, one of the first things I look for is my escape route.

How will I get out of here quickly if sh*t goes suddenly downhill?

Review your contracts with the same “*what to do if sh*t hits the fan*” mindset.

You'll know that you're reading about the escape route when:

- You see a heading entitled “**Termination**”
- You read anything about ending the contract.

Ask yourself: “how can I get out of this with the least amount of money and trouble?”

Pay close attention to notice periods and justifications for termination and think about it both from the “I want to get out” and the “but where will that leave me if the other party wants out?” point of view.

The contract should be clear about:

- Whether there are any refunds if the contract ends
- If someone must continue paying for a certain period after the contract ends.

Liability and Indemnity

These words can strike fear into the heart of anyone who falls short of their obligations! Simply put, liability and indemnity are lawyer-speak for what you are responsible for if something goes wrong.

You may see a clause which includes: “**each Party agrees to indemnify and hold harmless the other Party....**” By agreeing to this, you say that if you do or fail to do something that results in some kind of liability for the other party (i.e. causes harm or damage to someone else), you will make sure they aren't out of pocket for the costs associated with this liability.

Here's an example:

You choose a graphic designer to create a new logo for your company and she signs a contract with you. The designer, without your knowledge, copies a logo design and presents it to you as an original creation. You love it and launch your new business with the logo, only to promptly get served with a cease and desist letter by the original owner!

If your contract contains indemnity provisions, *the designer* will be responsible for all legal costs and rebranding expenses associated with her error, *not you or your company*.

Governing Law and Dispute Resolution

In today's increasingly global world, more and more businesses expect consumers to agree to arbitration provisions where the governing law might be unfamiliar to you and your lawyer.

If something does go wrong, *how*, *when* and *where* you can have the matter settled becomes extremely important.

For example, it can be difficult and costly to bring a claim if:

- you agree to a contract where the governing law is that of the State of California,
- and the dispute can only be resolved through arbitration,
- but the arbitration can only take place in San Diego,
- and you must pay half of the arbitrator's fees as well as your lawyer fees.

As a business owner presenting a contract, you should be trying to find ways to either avoid court altogether or put in some speed bumps in the way!

Mediation and/or arbitration make for a quicker, cheaper and most importantly, *private dispute resolution*.

It's particularly important avoid public disputes if you're in an industry where reputation is everything. Consider including a non-disparagement clause which essentially says: "Look, if we disagree, we're going to try to resolve it, but we're not going to disrespect anyone on the internet because my momma taught me better than that" (shoutout to my fellow Destiny's Child fans).

Now that you have a better idea of the fine print that you *used to* ignore (because you won't do that anymore, right?!) read on for a checklist to complete before you sign any contract...

Checklist when writing or reviewing a contract

Don't sign unless you understand and are comfortable with:

- The parties to the contract (who are they, exactly?)
- What's expected of you?
- What's expected of them?
- The money situation?
- How you will get out of it if sh*t hits the fan? (aka - how painful is it to leave?)
- What you are restricted from doing.
- What rights you are giving up (waivers of liability etc.).
- What the procedure is if there's a dispute and whether it's fair to you.