



WRITING CONTRACTS

The Do's; Don'ts; Why's; and Why Nots

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Writing Contracts: Do's; Don'ts; Why's; and Why Nots

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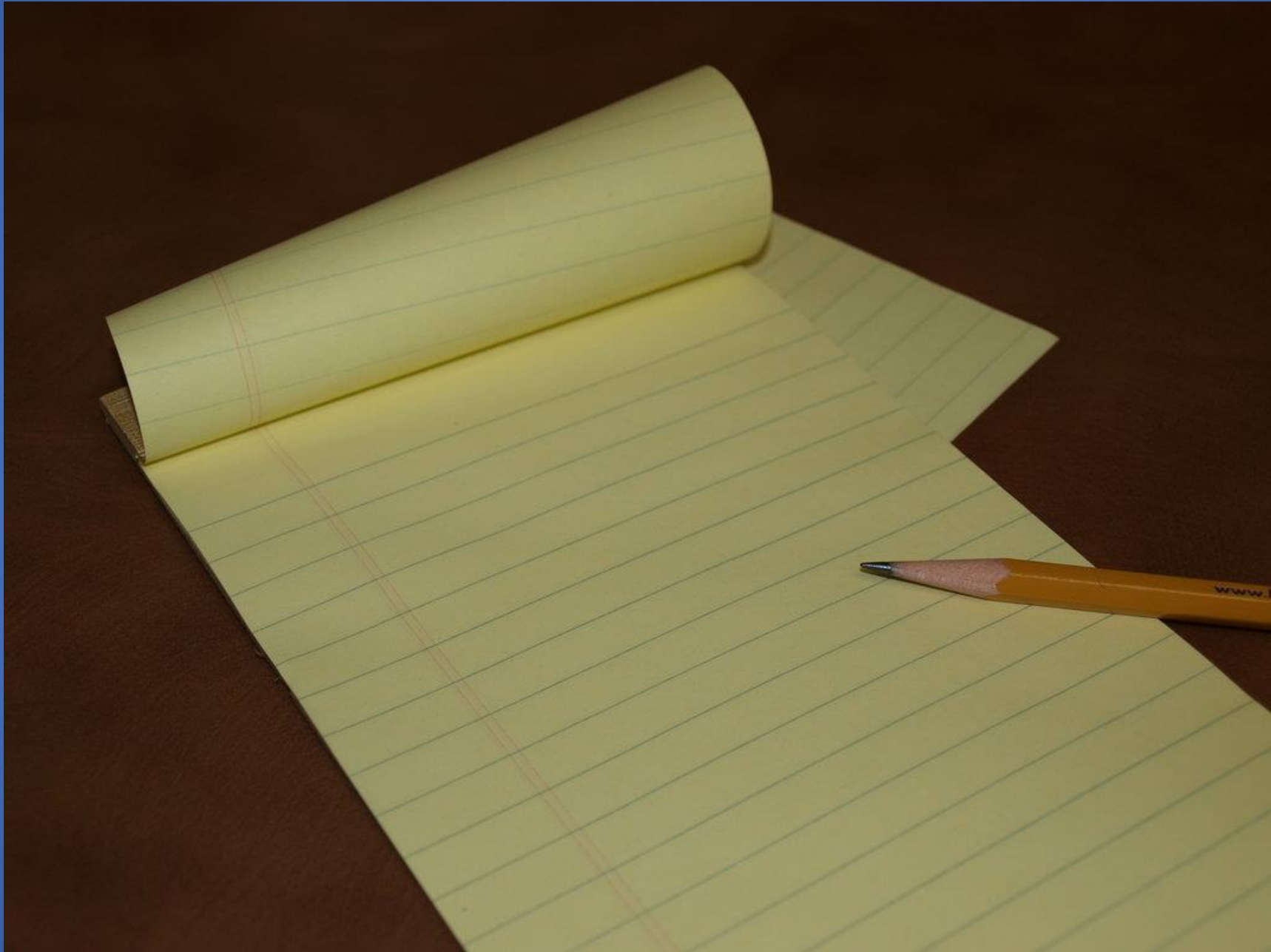
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A. Why is it important for you—as a
business owner—to know how to enter,
and write, a contract?













B. The six elements of an enforceable contract

1. Offer
2. Acceptance
3. Consideration
4. Competence/capacity of parties
5. Mutual consent
6. Legality



**HOUSE
FOR
SALE**





Lack of Mental
Capacity



Not Age
of
Majority





OFFEROR

- Shows intent to enter into a contract
- Makes a definite offer
- Communicates the offer to the offeree

"I'll pay you \$50 an hour to edit my book on Mesoamerican sewing techniques."



OFFEREE

- Shows intent to accept the offer
- Communicates intent to accept by proper means
- States acceptance that "mirrors" the terms of the offer

"I'll take the editing job."

Contract
for
Illegal
Purpose



CONTRACT

THIS AGREEMENT made this _____
by _____
and between _____
and _____

day of _____

20____

WITNESSETH: That in consideration
kept and performed on the part of _____
I. Said party of _____

(First Party)
(Second Party).

_____ covenants and agreements to be
_____ respectively as herein stated
_____ and agrees that it shall:

and said party of the second

C. What are the basic parts of a written contract?

Identification of the Parties:

“This agreement is between ABC Company (“ABC”) and John Doe (“Doe”).”

Standard Date:

“This contract is entered this 18th day of July 2019 between”

Effective Date:

“This contract is entered this 18th day of July 2019, effective August 18, 2019 between”

Purpose of the Contract, “Recitals”:

“RECITALS

WHEREAS, a dispute has arisen between the Parties; and

WHEREAS, the Parties desire no resolve their dispute without the resort to litigation; and

WHEREAS, the Parties intend that this contract be legally binding and enforceable;

NOW, THEREFORE, in consideration of the representations, covenants, and promises contained herein, the Parties agree as follows:”

Signature Blocks:

ABC Company

John Doe

By: _____

Its: President

An individual

D. What are some optional clauses in a written contract?

Integration Clause:

“This contract contains all the representations and promises of the Parties with respect to the matters addressed in this contract, and all prior written or oral promises not contained in this contract are hereby merged herein.”

Headings Clause:

“The headings used in this contract are solely for the convenience of the parties, and are not to be used in interpreting or construing the meaning of this contract.”

Choice of Law, Colorado:

“This contract shall be governed by and interpreted in accordance with the law of the State of Colorado, notwithstanding the application of choice-of-law laws providing otherwise.”

Choice of Law, Delaware:

“This contract shall be governed by and interpreted in accordance with the laws of the State of Delaware, notwithstanding that it is entered into and to be performed in the State of Colorado.”

Choice of Venue:

“The Parties hereby agree that the courts of El Paso County shall have exclusive venue to hear any dispute concerning this contract, and any action to enforce this contract shall be brought solely in El Paso County, Colorado.”

Arbitration or Choice of Forum:

“Any dispute arising out of or related to the existence, performance, or interpretation of this contract shall be decided solely pursuant to the Commercial Arbitration Rules then in effect of the American Arbitration Association.”

Waiver of Jury Trial:

“The Parties agree that any dispute arising out of or related to the existence, performance, or interpretation of this contract shall be decided solely by a judge in a court of competent jurisdiction and the Parties hereby knowingly, intentionally, and expressly waive any right to a trial by jury.”

Attorney Fees:

“The Parties hereby agree that the prevailing party in any dispute shall be awarded reasonable costs and attorney fees.”

The “American Rule” of Atty Fees:

Under the “American Rule,” attorney fees are not awarded unless provided for by contract or statute.

The “English Rule” of Atty Fees:

Under the “English Rule,” attorney fees are automatically awarded to the prevailing party.

Interest:

“Payment is due 30 days from the date of Invoice. Past due payments shall bear interest at the rate of 12% per annum.”

“Force Majeure” or Act of God:

“The obligations under this contract shall not be required in the event any force majeure or Act of God prevents timely performance including, without limitation, flood, fire, tornado, or terrorism, and in such event this contract shall be deemed void ab initio.”

E. What are contract conditions?

Condition Precedent:

“In the event that ABC Company acquires a contract by September 18, 2019 from the federal government to build widgets, then ABC Company and Doe agree that ABC Company shall hire Doe as an independent contractor at the rate of \$125/hour for the production of widgets.”

Condition Subsequent:

“ABC Company and Doe agree that ABC Company shall hire Doe as an independent contractor effective September 18, 2019; however, in the event that the federal government shall rescind or modify its contract with ABC Company to build widgets, then this agreement shall be of no force or effect.”

F. What are some common defenses to breach of contract lawsuits?

Am-bi-gu-i-ty

Vagueness

Sec. 8. The Congress shall have power
To lay and collect taxes, duties, imposts and excises
and provide for the common defence and general welfare
of the United States; but all duties, imposts and excises shall be uniform
throughout the United States:
To borrow money on the credit of the United States:
To regulate commerce with foreign nations, and among
the several States, and with the Indian tribes:
To establish a uniform rule of naturalization, and uniform
laws on the subject of bankruptcies throughout the United States:
To regulate the value thereof, and of foreign
and domestic coin, and measures:
To counterfeiting the securities and

Illusory Contract:

“The Parties agree to agree on a price for Doe’s independent contractor services.”

Fraud in the Inducement



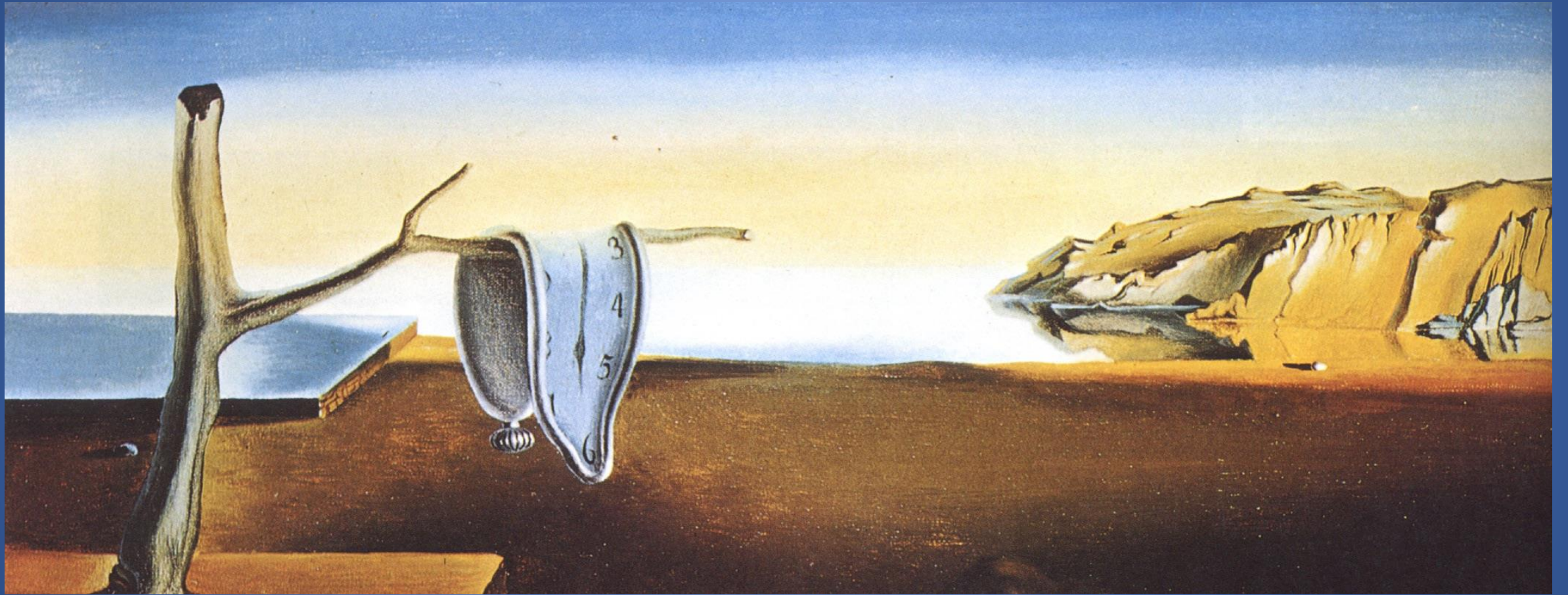
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Void for Coercion



Statute of
Limitations







Benefit of the
Bargain
Damages Only



G. What are remedies for breach of contract?

Specific Performance



H. SAMPLE CONTRACTS

1. Independent Contractor Agreement
2. Employment Agreement

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