

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

March 2017

Boilerplate Contract Provisions Can Burn the Inattentive

By Joseph C. Oilers of Bierser Greer. Reprinted with permission.

Contracts come in many forms. And in business, business people sign all kinds of written contracts relating to building leases, employment arrangements, equipment purchases, and customer agreements.

Often when considering a contract, people will focus on the “big ticket” items within the document, for example items relating to pricing or performance. However, it is often the case that when disputes arise, provisions found in what is often referred to as the “boilerplate” provisions of the contract have a large, and sometimes even determinative, effect. For that reason, business people need to have these provisions in mind at the front end, during the drafting and execution of written contracts, and at the backend when a breakdown in the relationship between the contracting parties makes litigation more likely.

Before signing a contract, or assessing the prospects for the successful assertion of a claim or defense against another party to a contract, people should obviously read the entire contract at issue and understand all of its component parts, with the help of experienced counsel. This short piece will touch briefly upon just three types of provisions that often appear in less conspicuous parts of contracts that are often overlooked but worth serious consideration. These three relate to choice of law, choice of forum, and limitation of liability type provisions.

If a business person enters into a contract with another person or entity right across the street, the issue of what law would apply in any dispute between them will generally be simple. However, most contracts do not involve neighbors like that, but instead involve people or entities residing in different

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Tech Tip: How to use PrintFriendly.com to print a desired article

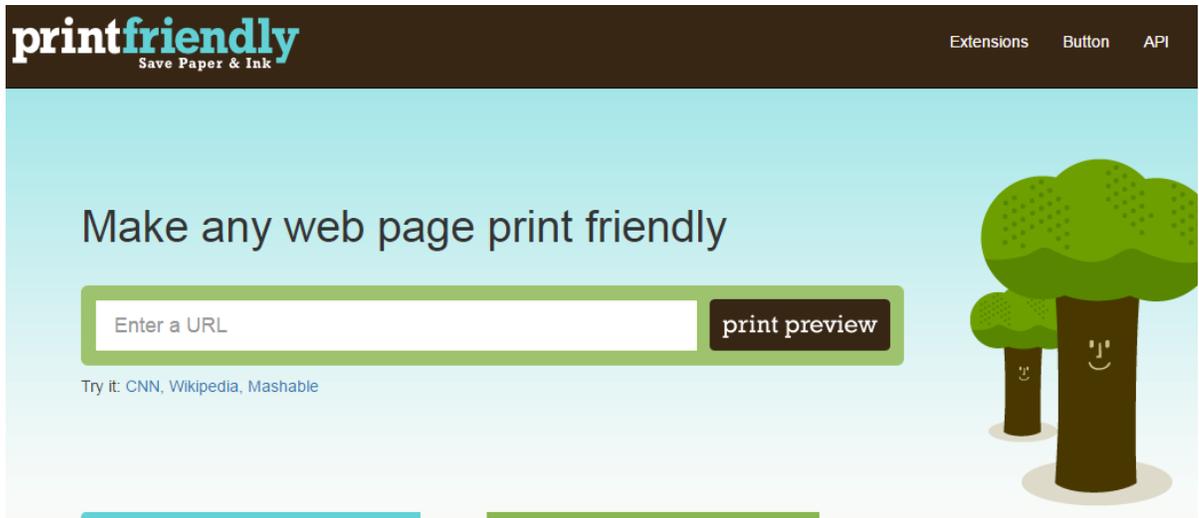
By Systems Librarian, Julie Koehne

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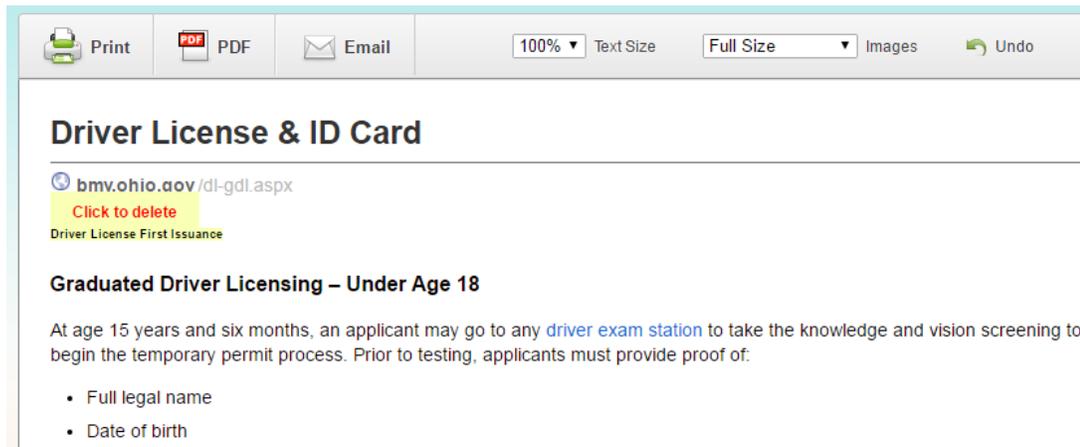
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1. Go to <https://www.printfriendly.com/>



2. Paste the URL of the web page you wish to clean and print, then press “print preview”.

3. Hover over any images or text you do not want to print, click on “Click to delete”, then click the “Print” option to print the cleaned up document.



Unpaid Subscriptions: Revocation of Privileges

We have some subscribers whose library privileges will be revoked March 1 for non-payment of 2017 subscriber invoices. We have to take that step but we will happily reinstate privileges upon payment in full. We hope we haven't disappointed those subscribers in any way. Call Vanessa at 513.946.5300 if you need more information or a replacement invoice.



Remote Research Assistance

We'd just like to remind our patrons that all subscribers, even if you do not have access to our databases off-site, can contact us by phone or email for remote research assistance. And even if you are getting what you need through Fastcase or other databases, please keep in mind that we have access to an even more robust collection on-site, including a 50 state Westlaw plan and numerous treatises and forms. Need an annotated statute? Need cite-checking? Need a few sample forms or pleadings? We're more than happy to consult our electronic databases and print collection and email documents to you in your home or office. You're welcome to use those resources on-site as well, but if you're looking to save yourself a trip, just give us a call at 946-5300 or shoot us an [email](#)!

National Consumer Law Center

Need a treatise on consumer law issues? Our subscribers who have access to our remote databases can read full-text treatises from the National Consumer Law Center off-site. Available topics include, credit reporting, debt collection, consumer credit, foreclosures, mortgage servicing and student loans. In addition to the full text, many of these publications contain sample forms and pleadings. Subscribers need to check out a login and password to use this service, so if you're interested, please call 946-5300 or [email](#) our reference staff.

County Auction

The Law Library sells its withdrawn books and discarded equipment and furniture via the Hamilton County auction site. We do put some low value materials on the free books shelf in the elevator foyer, but most of the books are bundled by state or topic and sold via auction. For more details about creating an account and to see what we're selling this month, click on the Surplus tab at <http://www.hamiltoncountyohioauction.com/app/>.



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towns, states, or countries.

A “choice of law” provision will often be found in contracts involving parties from different states or countries and, as its name implies, amounts to the parties agreeing at the outset on which jurisdiction’s legal rules will apply in the event of a dispute between the parties. Often, laws on an issue will be similar state to state, so these choice of law provisions may not have a great impact in the event of litigation. However in some circumstances, the law in one state can differ importantly from that of another. For example, non-compete agreements are still enforceable to some extent in many states, including Ohio, while in some states, like California, they have been made unenforceable.

A related concept, often embodied in a provision accompanying the choice of law provision, relates to the forum or venue within which any dispute between contracting parties will be heard. There are two variations of this theme, one being based upon geography and the other relating to the nature of the tribunal that will choose the winner and the loser. The first type simply provides that any dispute will be heard in a given country, state, or town, generally wherever the drafter or better positioned party resides. The benefits of litigating in one’s “own backyard” are obvious: the “home” party can rely on counsel with which it is familiar and can save money and time if proceedings occur a short drive away as opposed to a long flight. Also, that party and its counsel may be familiar with the local courts enough to have a sense for how long matters will take and likely best or worst case scenarios. Accordingly, parties will often attempt to include in their contracts a forum selection

clause that will make them the home team in the event of litigation. Parties need to be aware of such clauses when entering into their contracts and later, if litigation becomes a consideration or a reality.

Though not typically referred to as a forum selection clause, an arbitration clause is another type of provision that attempts to nail down at the time of contracting a specific venue for the hearing of any dispute rather than leaving that question an open one that may only get decided after a lawsuit is commenced. These provisions may go so far as to set time limits on the arbitration and specify the particular set of rules or panel of arbitrators for the proceedings.

A third, very general type of provision sometimes found “out of the way” in a contract though potentially very important relates to limitations placed on any possible recovery in the event one party successfully asserts a claim against another. These provisions may limit the amount of any recovery to the amount the prevailing party had paid over to the other or limit damages to compensatory only. These provisions might also include jury waivers or provide that a party asserting a claim unsuccessfully be responsible for the attorney fees and cost of the other.

Provisions like those outlined here can seem less important at the time of contracting but can become very important and even determinative when disputes arise. For example, parties in litigation have spent years and large amounts of money litigating the issue of where an underlying lawsuit has to occur or whether it must be submitted to arbitration rather than remaining in a court. Accordingly, when business people draft contracts or consider

those contracts put to them by others, they need to be sure to review all of these provisions with the help of experienced counsel. Similarly, if the time comes when a dispute arises with the other party to their contract, they need to assess their prospects with these “boilerplate” provisions, and all others, in mind or risk getting burned. For more information, contact [Joseph C. Oehlers](#).

Westlaw

As you likely noticed, we switched from Lexis Advance to Westlaw in January, providing much more robust access to materials than what our old Westlaw plan offered. We offered a CLE on Westlaw searching in February, but if you were unable to make it or still have questions, please feel free to ask our [law librarians](#) to help you find something or for tips on searching. We can guide you in person or direct you to helpful tutorials. We're happy to help!

Pardon our Dust (and Noise)

We'd like to thank everyone for their patience with any disruption in the library associated with the roof repairs. We're very excited to have our facilities updated and to protect our valuable library resources from leaks, but we understand that this can be a distraction from your legal research. We've been told that the repairs will be completed shortly and we plan to resume being a (mostly) quiet space for you to work as soon as possible.

Video tutorials

The Law Library has added a new link to the services section of our [website](#) to give you easy access to video tutorials we've produced. The tutorials, available via our [YouTube channel](#), provide information about certain library resources and instructions for utilizing them. They include topics such as renewing your books online, using our Lexis Digital Library to check out ebooks and signing up for a CLE via our website. We produce them in-house using SnagIt software, which allows us to narrate what we're doing on the computer screen, providing step-by-step instructions to guide you. Have a suggestion for another tutorial? Just let us know!

Alerts & News Updates

The Law Library offers a variety of ways for subscribers to keep up with the latest legal news. In addition to our [blog](#), we offer bi-weekly [topical emails](#) for a variety of practice areas. We can also set up news, case and legislative alerts for subscribers. If you have any questions, or are interested in setting up alerts, contact our [reference staff](#).



Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, IntelliConnect, Lexis Digital Library e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and IntelliConnect Law, Business, Tax, and Accounting

An add-on plan for Lexis access is available for subscribers in solo practice

You and the Legal System: Wage and Hour Issues

Attorneys Alison De Villiers and Kristen M. Myers will discuss Wage and Hour Issues on Friday, March 17 at noon in the Law Library. The session will address mistakes commonly made by employers in paying employees, including off-the-clock work, over-time, treatment of services charges, and payment of tipped employees. This session will especially benefit employees who are paid by the hour, and employers of non-exempt employees.

To register, call 513.946.5300 or register via our website at

<https://lawlibrary.hamiltoncountyohio.gov/event-registration/?ee=106>

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact [Laura Dixon-Caldwell](#).

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event on our *You and the Legal System* series. Tom Hodges will discuss Landlord Tenant Issues on April 14.

Contracts

Law Library subscribers now have access to a variety of resources on Contracts. If you have questions, or have a suggestion for a title to add, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300

Accounting for long-term contracts
KF6289.A1 T35 no. 575

Advanced business contracts : acquisition agreements.
KFO215.S4 A383 2014

Consultant & independent contractor agreements
KF898 .F567 2014

Corbin on contracts [Revised edition]/
KF801.A75 C651 2016

Entertainment industry contracts : negotiating and drafting guide
KF2992 .E57 2016
(Note: Available via Lexis Digital Library.)

Friedman on contracts and conveyances of real property
KF670 .F72 2006

Government contract guidebook
KF849 .A87 2016

How to draft a contract
KFO150.A25 H69 2015

Lindey on entertainment, publishing and the arts : agreements and the law
KF2992 .L5 2014

Nuts and bolts of contract drafting
KFO150.A25 .N88 2013

Secrets of bulletproof contract
KFO150.A25 S43 2014

A short and happy guide to
KF801.Z9 E674 2012

A treatise on the law of contracts
[[WILLISTON CONTRACTS 4TH]
Number: KF801.A75 W541 4th 2016

Online Resources Remote Access **CCH IntelliConnect**

Government Contracts Report Letters
Government Contracts Reporter
HR Compliance Library

EBSCO

Business Buyout Agreements
Complete Guide to Selling a Business
Leases & Rental Agreements
Legal Guide to Web & Software Development
Working With Independent Contractors
Legal Forms for Starting & Running a Small Business

Fastcase

Alternative Clauses to Standard Construction Contracts
Covenants Not to Compete
Drafting Internet Agreements
Drafting License Agreements

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

March 17: You and the Legal System: Employment Law: Wage and Hour Issues

April 14: You and the Legal System: Landlord Tenant Law



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