



Travel is to make a journey or to have an adventure to somewhere by bicycle, train, airplane, car, motorcycle, or boat. It could be an exploration to somewhere new planned or unplanned to meet new people, new things and new places. There are different types of adventures waiting for you to explore.

There are lots of places to explore. Places could be urban or suburban. Some people loves to be with nature to free their minds and refresh their souls, but some like to be in the city. You will get lots of benefits such as exploring new culture.

By Shelia A. Huggins, Attorney

CONTRACT LAW

FOR WRITERS

NOTICES

Contract Law for Indie Writers: A No-nonsense Guide for the Startup Writer

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This guide is provided as a resource to help indie writers understand some of the contract issues they may encounter when starting out.

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INTRODUCTION

This guide is designed to help indie writers understand some of the legal issues that are often encountered in the writing and publishing world as an independent writer contracting out his or her services. It will assist you in understanding some of the basic legal principles involved, thereby providing an opportunity for you to better communicate with your attorney and those you are contracting with.

My writing background has included both fiction and nonfiction projects. As an independent writer, I've made numerous mistakes and missteps, and as an attorney, I've learned the legal nuances relating to contract law in the writing context.

Although there is no such thing as a standard contract, many contracts have similar provisions, and this guide contains some of those provisions plus over 50 questions to help you develop the contracts you need as an indie writer.

I welcome additional comments and suggestions for changes and suggestions for additional resources. You may visit my website at www.sheliahugginslaw.com and email me sheliah@sheliahugginslaw.com.

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Chapter 1

Understanding General Contract Law

GENERAL CONCEPTS OF CONTRACT LAW

In its simplest form, a contract may be thought of as an agreement or promise between parties, and although many contracts may be oral in nature, the law requires that certain contracts, like the assignment of a copyright, be in writing. People forget and meanings change over time, thus it is generally preferred to capture the terms of the agreement in writing...even if it is on nothing more than the napkin or receipt that happens to be closest at hand.

Contract law is based on the following five concepts, in addition to other requirements:

- Consideration – there must be an exchange of something of value in return for the promise or service of the other party.
- Offer and Acceptance – there must be an offer to enter into the contract and an acceptance of the contract terms.
- Legal Purpose – the purpose of the contract must be legal.
- Capable Parties – the parties must not be minors, and they must be mentally capable of entering into a contract.
- Mutual Assent – the parties must agree to voluntarily enter into the contract and to be bound by the terms of the contract. This is often referred to as a “meeting of the minds.”

THREE LIABILITY CONCERNS

Contract Liability

For writers, your contractual liability will depend on the work that you agree to perform for the party contracting your services. You should

always review your contract and consult an attorney before entering into any agreement. For writers, your liability will fall under breach of contract.

Federal Statutory/Regulatory Liability

Under certain federal statutory/regulatory law, a writer may be held liable for violations of the law and may be subject to fines and other statutory penalties. Liability may fall under the following laws:

- U.S. Copyright laws regarding copyright infringement
- U.S. Federal Trade Commission disclosure requirements
- U.S. Securities and Exchange Commission communication laws

Common Law Liability

Under common law, fraud, libel, and negligent and intentional misrepresentation are areas where writers may be liable. The list below provides examples of cases where writers have been potentially exposed to liability:

- Negligence where a writer published speech explicitly directing readers to incite or to engage in lawlessness, and the written speech was likely to incite and to result in lawlessness by the readers
- Negligence where a writer published instructional content and readers following those instructions were injured
- Misrepresentation where a fictional book was promoted by the writer as a nonfiction memoir
- Misrepresentation where a writer distorted data regarding a scientific study
- Libel where a writer disputed a doctor's claim of successful treatment

Chapter 2

What Exactly Are You Contracted To Do?

Contrary to popular belief, there is no standard contract that will provide everything you need. There are traditional publishing contracts that are typically used in the industry, and there are contracts with boilerplate provisions used by other independent professionals, such as bloggers, articles writers, and documentarians. These various agreements and provisions are not necessarily mutually exclusive. There are benefits to reviewing all of these and working with an attorney to decide what is best for your particular circumstance.

SERVICES AND FORM OF WORK

The first question that needs to be asked is what is the work that is being provided? The answer will most likely include objective and subjective information in order to nail down an understanding, and also allow for flexibility. The following questions provide a starting point:

- Is the work fiction, non-fiction, or creative non-fiction?
- Is there an expected word count?
- How is word count determined?
- Is there a page requirement?
- How is page count determined?
- What is the subject matter?
- Are citations required?
- What format is required for citations?
- Must it be original non-published material?
- What does non-published mean?
- Who is the target audience?

PERFORMANCE STANDARDS: OBLIGATIONS TO PRODUCE AND DELIVER

One of the trickiest provisions in a contract for writers is the performance standards provision. How you determine whether your submission will be accepted or deemed unacceptable will depend on the language in this provision.

The following examples discuss performance standards. The underlined wording represents areas of possible confusion. As a writer, you will want to be aware of such language, because they tend to be subjective in nature. Additionally, other provisions may seem burdensome or overreaching in nature.

Example 1

All of Writer's services shall be rendered promptly in a diligent, conscientious, artistic, and efficient manner, and Writer shall devote Writer's entire time and attention and best talents and abilities to the services to be rendered, either alone or in collaboration with others. Writer's services shall be rendered in such manner as Contracting Company may reasonably direct pursuant to the instructions, suggestions, and ideas of, and under the control of, and at the times and places reasonably required by, Contracting Company's duly authorized representatives.

Example 2

If the Contracting Company, in its sole discretion, reasonably deems the Writing, and/or any other materials delivered by the Writer to be unacceptable in form and substance, then the Contracting Company shall promptly advise the Writer by written notice, and the Writer shall cure any defects and generally revise and correct the Manuscript

and/or other materials to the reasonable satisfaction of the Contracting Company, and deliver fully revised and corrected Manuscript and/or other materials promptly after receipt of the Publisher's notice.

Example 3

The work to be performed by Writer includes all services generally performed by a Writer in Writer's usual line of business, including, but not limited to, the following services.

Example 4

Writer may select delivery of submission in WORD, or other standard format that Writer determines will be suitable for the Contracting Company. It is the Writer's responsibility to verify that the Writing is suitable for reproduction and that if the Images are not deemed suitable.