

## A SPIT AND A HANDSHAKE

One of the things that differentiates testing in law school from traditional college tests are the crazy hypothetical questions that have no correct answer. These questions evaluate a student's ability to identify the legal issue, explain the applicable rule, analyze the question by applying the rule to a set of facts, and defend any conclusion that is reached. The question is never intended to have a "correct" answer, but rather it tests the student's ability to "think like a lawyer." Below is a hypothetical question related to a festival & event contract that is very similar to what you'd see in law school.

### Let's Give It a Shot!

The Kentucky Sockeye SalmonFest landed the big one. They just signed No Luck Bait & Tackle to become the title sponsor of a festival celebrating a fish that couldn't find Kentucky swimming upstream or downstream in the muddy Ohio. J.R. Jayhawk, President of the SalmonFest, memorialized the deal with Bait & Tackle in fine Kentucky tradition. They spit on their palms, agreed the sponsorship was valued \$50,000 and then shook on it.

As SalmonFest approaches, advertising for the event ramps up. Unfortunately, Emily Wildcat, who coordinates all print and media advertising for the SalmonFest, forgot to include Bait & Tackle as the title sponsor. Further, representatives from Bait & Tackle are not provided tickets for the Salmon Launch, the opening ceremony and largest event of the SalmonFest.

Bait & Tackle is furious and claims J.R. Jayhawk lied to them about what they would receive for the \$50K. Jayhawk retorts claiming that he didn't remember tickets or signage as part of the deal and that Bait & Tackle just wanted to be a good corporate citizen by supporting the Festival. Bait & Tackle files suit claiming that the SalmonFest breached their contract. SalmonFest responds by saying, "What contract?"

What are the essential elements of a contract for Festival and Events? Is there a contract?

When looking at a contract for festivals & events, here are some basic elements to consider (note that the elements in bold and italics are absolutely essential to any contract):

- **Identify the parties** – Clearly state who the Agreement is between
- **Term** – There must be a specific length of time in which the Agreement is effective
- **Specifically define what each party promises to do or deliver to the other party.**
  - When must performance occur?
  - Is there a specific form or performance of delivery?
- **Renewal periods**
  - Automatic right of renewal?
- **Fee**
  - Policies for refunding the fee
  - Policies for late payment
- **Cancellation**
  - Who may cancel the event?
  - What happens if the event is cancelled?
  - Refunds? Note that in the week of the cancellation, most of a festival's hard expenses have already been realized. Most of the advertising for the event has also happened.
- **Intellectual Property rights** - parameters upon which your IP can be used
- **Indemnification/Assumption of Risk**
  - Festival indemnifies sponsors
  - Vendors indemnify the festival
- **Insurance**
  - Policy limits and additional insured language.

### So Was There a Contract Between Salmonfest and Bait & Tackle?

Yes. In most instances, an oral contract is valid. In this case there will be evidence showing Bait & Tackle did not receive the full value of the sponsorship fee

paid. A party seeking remedies can sue for restitution of any benefit that has not been conferred. I'd highly recommend, however, that you not rely on the spit and a handshake and instead memorialize all agreements in writing!

Now, look, I understand that all of you are not lawyers and so writing a complete contract for your festival is a pretty daunting task. More than anything, I'd like to just encourage you to review the contracts that you have for sponsors and vendors to make sure they incorporate the items listed above and that all details are updated. As always, if you have any questions, please feel free to contact me at [jenenglish@kdf.org](mailto:jenenglish@kdf.org) with any questions.

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