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News From the Firm

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Message From Chris....

The commercial transactional world is driven by certain, basic, legal terminology that appears in many contracts. Understanding some of these better helps everyone. In the world of commercial transactions (between commercial parties), there are actions and behaviors that have previously occurred either between the same or different sets of commercial parties (which are commercial buyers and sellers of goods – **and all governed by the Uniform Commercial Code**) that, over time, come to govern the future actions and conduct of such commercial parties, in the event of a dispute that later occurs between such parties. Good stuff. See more below (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Understanding Legal Terminology Used In the Uniform Commercial Code

Question #1: What does “course of performance” mean?

Answer: In the event of a later dispute between two commercial parties, the court can look towards *the past behavior of such, same two parties which has occurred over the course of time on the same deal*. For instance, if a buyer has been taking delivery of certain goods from the seller on a certain calendar date of the month for a long period of time, then, the failure of the seller to deliver on such date or the buyer to accept delivery on such date (whether or not the calendar date is set forth in the written contract, if any) shall be very persuasive in such later dispute. In other words, the failure of either party to perform on such calendar date, after having performed on such date over a long period of time, disturbs the status quo of the relationship – a bad thing; the Court having jurisdiction over the dispute will view things through this lens.

Question #2: What does “course of dealing” mean?

Answer: Same fact pattern as above, however, the Court can instead look at the past behavior of the *same two parties which has occurred over the course of time on other deals (not the same deal)*. In other words, the failure of either party to perform on such calendar date will be compared against how the parties have gotten along, *for example, the twenty years before on other deals that they've done together*. Why the change? Well, it might be because the matter at issue has never occurred on the same deal in question, but it has happened on other deals they've done together....

Question #3: What does “usage of trade” and “industry standards” mean? Why would they be used?

Answer: Same fact pattern as above, however, in the *absence of any deal history between the same two parties* at issue which might serve as a guiding light in the matter at issue, the court will look at how *other, similar parties behave under the same circumstances*. The way such other, similar parties behave can be discovered by: **1)** looking at “*usage of trade*” (which is how certain business terms and dates are generally defined or handled by other, similar parties who conduct the same sort of trade together), and/or **2)** by looking at the prevailing “*industry standards*” which are common and prevalent in the same industry at issue - that they can persuasively settle or resolve the matter at issue. In such a situation, the Court uses these external customs, terms, practices or methods to resolve the matter at issue between such two commercial parties.

What My Clients Are Saying

“We needed some work done that, to us, seemed daunting. Chris walked us through the entire process, without a bump in the road. He made it easy. Chris is the consummate professional.”
Russ Florence / President & COO, Schnake Turnbo Frank / Oklahoma City, Oklahoma

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