

OVB LAW & CONSULTING, S.C.

NEWSLETTER

Monthly Newsletter - Your Legal Nook!



Firm Update:

Episode 5 of the Bottom-Up Podcast is out! Podcast hosts, Emil Ovbiagele and Kristen Hardy, are joined by their guest, and new shareholder at Godfrey & Kahn, S.C., Attorney Rebecca Lopez.

This episode highlights the importance of “filling your cup” when navigating new legal environments. Their advice to young lawyers - be substantively strong and form genuine relationships within the legal community.



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"Darkness cannot drive out darkness, only light can do that.
Hate cannot drive out hate, only love can do that."
Strength to Love, 1963.
- Martin Luther King, Jr.





RETRIEVING YOUR MERCHANDISE FROM U.S. CUSTOMS

U.S. Customs and Border Protection ("CBP") is an agency responsible for enforcing customs laws and regulations, including the seizure of goods that violate trade laws. If your goods have been seized by CBP, it can be a stressful and overwhelming experience, but it is important to understand that you have rights and options to retrieve your goods.

U.S. Customs has five days from the date of arrival of cargo in the United States to detain the cargo for examination. If an importer's merchandise is detained, a written detention notice indicating the cause of detention, expected duration, type of tests or inquiries to be done, and information needed to expedite the disposition of the detention is required to be sent to the individual whose merchandise has been detained. The detained merchandise will then be sent to a Centralized Examination Station for a comprehensive inspection by CBP officers. The examination process can take up to thirty days and during this time, CBP will determine if the goods can be released or if they need to be permanently seized. If CBP decides to seize the merchandise, a written notice must be sent to the owner or importer of the goods. This notice will include the identification of the seized cargo, the location of the seizure, and the legal basis for the seizure.

After being notified of a seizure by CBP, the owner or importer of the goods must file a petition challenging the grounds of the seizure within thirty days. This petition serves as a means for the owner to request the release of the seized shipment, by either disputing the alleged violation or acknowledging it, but requesting release due to mitigating circumstances. The outcome of the petition will determine whether U.S. Customs grants the release of the seized goods or denies the request and retains the merchandise.

If your merchandise has been seized and is in the custody of CBP for over thirty days, you may have the option to seek relief under the Federal Tort Claims Act ("FTCA"). The FTCA provides a mechanism for individuals to bring a claim against the U.S. government for property damage or loss caused by the negligence or wrongful act of a federal employee acting within the scope of their employment.

Retrieving your seized goods from U.S. Customs can be a challenging task, but the skilled lawyers at OVB Law & Consulting, S.C. can assist you in navigating the process to reclaim your lost goods.

"IF THE WRONGDOER KNEW ABOUT THE CONTRACT BETWEEN THE OTHER PARTIES AND DELIBERATELY INTERFERED, LEADING TO A BREACH, THEY CAN BE HELD LIABLE FOR THE BREACH."

— KANG HAGGERTY



BUSINESS TORT LAW: HOW FRAUD AND INTENTIONAL INTERFERENCE IMPACTS A BUSINESS

Tort law covers a range of misconduct such as personal injuries, negligence, and malpractice. They are put in place to relieve injured parties from harm caused by other individuals or businesses. A business tort is a wrongful act committed against a business entity, either intentionally or due to negligence/recklessness, that causes a loss to a company. Though not always criminal offenses, some torts may be charged as such in a court of law.

During a business transaction, business fraud can be classified as omitting known information, knowingly making false statements, and other actions that are unfaithful to a partnership. Often, this is seen when a fraudulent entity pretends to engage in legitimate business and cheat others by not delivering services or the goods promised. To have a strong tort claim, it is important to prove that there was an intentional misrepresentation, the defendant relied on the deception, and there was some form of harm or financial loss by relying on the misrepresented fact.

Tortious conduct, or intentional interference, is unlawful, as is deliberate interference with a company's business or contractual relationships. Most cases of interference will result in a breach of contract someone had with another party. It is important to note: the person interfering must be knowingly and consciously interfering with normal business operation and lying while doing so. Blackmail is another way tortious interference can be seen in the business world by way of coercion as a means to break a contract.

Damages are legal remedies in the form of compensation given to the victim for any losses. There are two forms of damages. Special damages compensate for specific financial loss the plaintiff suffered and general damages are intangible and non-monetary loss the plaintiff suffered. Punitive damages are awarded to punish the defendant. This often occurs once the court has deemed general or special damages will not adequately compensate the plaintiff for their loss. There are alternative dispute resolution tactics such as mediation or arbitration, especially if there is a contractual relationship present, but business litigation may be the best way to recoup damages.

Although the above examples are not exhaustive of the many applicable claims, tort law is meant to protect businesses and the people involved. Business torts are often devious in nature and boil down to wrongful business practices. If you believe your business have suffered loss in any knowing or negligent manner, the attorneys at OVB Law & Consulting, S.C. may be able to help recover damages.



CRAFTING EFFECTIVE TERMS AND CONDITIONS

As businesses continue to innovate, they have used technology to make it easier than ever for customers to sign up for services or purchase goods through the internet. Many business and consumer contracts are executed online, via e-signature or, in many cases, through the click of a button. Though these express contracts are often challenged and disputed, both parties to the contract can usually agree to one thing: they both assented to entering into the agreement. There is another type of internet contract out there though, where the same cannot always be said. These contracts can typically be found in the fine print at the bottom of most websites, usually under the phrase: terms and conditions or terms of service.

Terms of service, or terms and conditions, are now standard when browsing the web or engaging with online service providers. Terms and conditions not only unilaterally bind web users and site visitors to the website owner's preferred terms of service, but they also protect website owners from potential liability.

Website terms and conditions are generally presented in one of two formats; "browserwrap" and "clickwrap." Browserwrap covers contracts that are agreed to simply by continuing to use a site or engage with a service provider (i.e. if you do nothing, you're agreeing to the terms). Think of the average website you visit and passively interact with but never agree to any specific terms. Somewhere on that site, you will find a small button that will lead you to terms and conditions wherein your use of the site is considered as consideration and acceptance of said terms.

Clickwrap, in contrast, requires an affirmative action by the user or customer before moving forward (i.e., "To continue using this website, please click the box marked 'I Agree'"). Although the names are similar, when it comes to legal challenges, clickwrap terms are often more likely to be enforced by a court. Users often challenge website terms and conditions, arguing they are contracts of adhesion and therefore, are unenforceable. That is, they fail to meet the two basic tenants of contract law: offer and acceptance.

Courts also disfavor terms and conditions that are modified or updated without the knowledge and assent of those bound by them. As noted above, the best practice for showing an individual is bound to terms is to show they made an affirmative action to agree. Therefore, even after a user has agreed to the terms once, any changes or modifications to those terms should also be expressly consented to by the user. Many businesses and websites require the user to click a button titled "I Agree" or similar language. Luckily for most businesses and website owners, implementing a clickwrap agreement is a simple and easy way to ensure their terms are enforceable.

Contracts can be great tools to limit risk and protect a business's rights. But they're only useful if they're enforceable. Knowing the legal requirements of effective online contracts is essential to modern businesses as they engage with online customers. Contacting an attorney can help you to ensure your contract terms effectively protect your interests and are said terms can be relied upon if needed. The attorneys at OVB Law & Consulting, S.C. are experienced in business contract matters and will work diligently to protect your company's interests.