

What Bilbo Baggins's Contract Teaches About Plain Language

By Chadwick C. Busk and Michael Braem



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Contracts are rarely depicted in popular media such as cinema. But a notable exception is the movie-prop contract between Bilbo Baggins and the company of Dwarves in Peter Jackson's hit movie *The Hobbit: An Unexpected Journey*,² based on J. R. R. Tolkien's book *The Hobbit*.³ The prop contract says much about the public's perception of legal jargon, as do the comments we received from its author (more below).

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For those requiring a *Hobbit* refresher, here is the contract's background. The wizard Gandalf recommends to a band of 13 Dwarves that they hire the hobbit Bilbo Baggins to help recover their treasure in the Lonely Mountain. But the treasure is guarded by a terrible dragon, Smaug, and the journey to the Lonely Mountain is likely to be dangerous. The Dwarves are reluctant to hire Bilbo despite Gandalf's insistence that Bilbo has burglary skills, and Bilbo is even more reluctant to join the Dwarves. The parties' discussions culminate in the following Dwarf-drafted "acceptance," which is somewhat peculiar because there is no evidence of any "offer" from Bilbo:

[F]or your offer of professional assistance our grateful acceptance. Terms: cash on delivery, up to and not exceeding one fourteenth of total profits (if any); all travelling expenses guaranteed in any event; funeral expenses to be defrayed by us or our representatives, if occasion arises and the matter is not otherwise arranged for.⁴

Compared with this short memorandum drafted by Tolkien, Bilbo's contract featured in the movie is a quite different beast. The contract (entitled "Conditions of Engagement") was created by New Zealand calligrapher and artist Daniel Reeve.⁵ It consists of more than 3,400 words and is on one continuous sheet of parchment over five feet long! There are no pages—it unfolds by cascading downward. The document is an outdated scrivener's dream come true, showcasing Mr. Reeve's talents in making it appear wrinkled, aged, and formidable. And the document overflows with legalese—even the margins in the document are filled with meandering provisions written in tiny script. The contract's appearance is intimidating to any human reader—or hobbit.⁶

At least one capable attorney has analyzed the contract's substantive legal provisions,⁷ so there is no need to do so here. But since Peter Jackson requested a "visual gag," Mr. Reeve loaded the contract with all the pretentious rambling of typical legal jargon:

- Verbose provisions, e.g., "Each of the Parties severally represents, warrants and covenants that the party possesses the ability and right to enter into this Agreement and fulfill the obligations set forth herein, and has not made any commitment with respect to the matters here discussed, that are in conflict with this Agreement."
- Imprecise provisions, e.g., "Except as is set forth in the Key Provisions, Burglar will not cause, authorize, license, permit or allow any distribution of the Recovered Goods in any form whatsoever without the Company's written permission, which may be granted (or not) at the Company's sole discretion." [What are the definitions of the "Key Provisions" and the "Recovered Goods"? What does "distribution" mean in this context?]
- Conflicting provisions, e.g., the leader of the Dwarves, Thorin Oakenshield, as "Director" has the right to append "new material" to the contract, to be read as if originally included in the contract. But the document later states that it can't be amended except by a "writing signed and agreed by both parties thereto."
- Mystifying provisions, e.g., "all conditions imposed herein are deemed to survive loss or destruction of this document, whether by accidental or willful

mishap, fair means or foul, and any reconstruction, re-working, updating or improvements or additions made shall include a condition similar to this condition, notwithstanding any repetition, redundancy, overstatement or implication hereby recognized or disclosed.”

When confronted by this contract in all its obfuscating and intimidating splendor, Bilbo Baggins (portrayed by actor Martin Freeman) promptly does what any well-to-do, respectable, and adventure-loathing hobbit would do—he faints! Only after regaining his composure the next morning does Bilbo sign the contract and, with the five-foot-long document flapping in the wind, chase after the now-departed Dwarves to deliver it.

Daniel Reeve was kind enough to share his thoughts about creating this masterpiece of legalese in several e-mail exchanges with the authors last April. (The comments are used with his permission; some are shortened for brevity.) He stated that he takes a dim view of legal jargon in the real world:

Question: We know that you created this prop contract for *The Hobbit: An Unexpected Journey*. But who wrote the content after the few lines written by J. R. R. Tolkien?

DR: My first version of the contract was indeed just the few lines from JRRT’s *The Hobbit*. But it was soon apparent, after several iterations of the contract (each longer and more verbose than the one before), that Peter Jackson wanted a large document with LOTS of text—enough to bamboozle any poor hobbit (or potential burglar). And I had to make the contract long enough to make it a suitable visual prop for the movie.

Question: The contract contains a lot of legal jargon, redundant statements, and conflicting provisions. Are you a big fan of this approach to drafting contracts? Did a lawyer help you draft it?

DR: I composed the contract myself, using all the legal documents I could find, including my own employment

contract with the film company, in addition to many clauses of entirely original text. These base clauses do actually spell out the terms of the contract in more or less sensible fashion, but naturally I made them as wordy and legal-sounding as possible. After all, why stick to one word when you can use three or four?

Question: Why did you insert all those small-print sections in the margins?

DR: The insertions in the margins (and indeed in every available space) of ever-smaller and smaller text simply add to the look of the document. The only difference between WHAT was in the margins compared to what was in the main line of the contract was that the marginal clauses were often added as afterthoughts. And this is true not only of my creative process, but also of the content itself. It’s as if the Dwarves had only belatedly thought of things that they had omitted in the main body, and subsequently added them wherever they could find the space. It also makes it more difficult and confusing for a potential burglar to read, so that they’ll just give up and sign the thing regardless (as we all tend to do, when confronted with such verbosity).

Question: You are now a popular artist and calligrapher. Do you see legalese in the contracts that you review and sign in taking on new projects?

DR: I prefer to read a contract that is clear, concise, and avoids duplication. And I DO see evidence that contracts are tending toward a plain-language ideal—well done to the legal community for championing this! I’ve never had to hire a lawyer to help me understand a contract, but I’ve certainly seen many cases where a plain-language version would have been a great improvement. My burglar contract is indeed a caricature of the legalese of yesteryear, rather than of more modern contracts. And that is appropriate of course, given the setting of the film and the nature of the visual gag in the first place.⁸

By creating this ponderous prop contract as a visual gag in a popular movie and having the film’s protagonist be intimidated as a result, Reeve put legal jargon in its proper place: a fantastical realm. Would that all such contractual foolishness remained in that realm rather than remaining in use by practitioners today. But the prop contract is a rare case in which legal jargon makes for grand entertainment with no unfortunate consequences to the parties involved. After all, the Dwarves regain their treasure, Bilbo returns with his share of the loot (and a magic ring), and Smaug is slain—a happy ending! ■



Chadwick C. Busk, a 1977 graduate of Notre Dame Law School and veteran of the corporate legal trenches, is now honing his contract-drafting skills at www.busklaw.com.



Michael Braem has been licensed since 2006 and is experienced in civil litigation and contract law. He joins Chadwick in the never-ending quest for plain language in the law.

ENDNOTES

1. © Warner Bros Entertainment Inc. All rights reserved. Image from *The Hobbit: An Unexpected Journey* and the names of the film’s characters, items, events, and places are trademarks of The Saul Zaentz Company d/b/a Middle-earth Enterprises under license to New Line Productions, Inc. The authors thank Weta Workshop for its permission to use this image in the article.
2. *The Hobbit: An Unexpected Journey* (Warner Bros 2014).
3. Tolkien, *The Hobbit* (New York: Del Rey Books, 2007).
4. *Id.* at 28.
5. Daniel Reeve’s website is <<http://www.danielreeve.co.nz>>. All websites cited in this article were accessed July 13, 2015.
6. A further description of the prop contract is available at <<https://www.wetanz.com/the-contract-of-bilbo-baggins-prop-replica>>.
7. See, e.g., Daily, *Read a Lawyer’s Amazingly Detailed Analysis of Bilbo’s Contract in The Hobbit* (2013) <<http://www.wired.com/2013/01/hobbit-contract-legal-analysis>>.
8. E-mails from Daniel Reeve to Chadwick C. Busk and Michael Braem (April 2014) (on file with the authors).