

## Contracts guard friendships

A handshake often isn't enough because memories may differ

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*Even between friends, deals are better made in writing to avoid any misunderstandings.*

For a sport that requires so much financial investment and requires so many distinct business relationships to compete successfully, it is surprising that most polo player contracts are sealed with no more than a handshake. That's not to say that a man or woman should not be taken at his or her word, but rather it is to say that once time has passed, people can differ on their recollection or understanding of what the terms of the original agreement actually were. We all lead busy lives, and it is sometimes difficult to recall exactly what was agreed to in an agreement made weeks or months earlier. Not remembering correctly can lead to unfulfilled expectations, over- or underpayments, and ultimately to either or both sides to an agreement walking away bitter. Disagreement damages reputations and may cost money, and in a sport with so few participants, damage to a reputation can take years to repair. There are so many possible ways a player-patron relationship can change that a handshake deal cannot possibly account for them all.

Let me give you a few examples: Player A plays with Patron B last summer. At the end of that season, they agree to play together in Florida in the winter for a specific monthly salary. With that understanding, the patron keeps and feeds the player's horses for several months. Come four months later in the winter, the patron decides not to play that season. The player is forced to find other employment. Should the player have to pay the patron for the four months his horses were cared for? Would your answer change if instead of the patron deciding not to play, the handicap of the player was raised during the first month of the boarding, and only at the end of the fourth month does the player demand an increase in the monthly salary from the patron for the winter? Would it depend on the amount of increase that the player demanded? Is the player free to seek other work or not? If he does accept other work, must he pay the past cost of the four months' board?

In another scenario, Player C contracts with Patron D for three years with a written contract each year. In the fourth

of these issues involve judgment calls. When counseling players and patrons on resolving issues, my first question to both sides is, what would satisfy you today? Is there any middle ground, and if my suggestion to one side or the other is to pay money (or give it back), I ask whether that course is not preferable to creating a long-term rift in a relationship. But these are issues that arise when the parties have not set out in writing what the agreement was.

With these types of issues in mind, I want to suggest to you that good written contracts make for sound business practices and good friends. What does that mean? Simply, write down the terms of your contract and have both parties sign it at the beginning of the agreement. By doing so, you avoid the problems of faulty memory or misunderstandings as to performance by either side later on. By avoiding these problems, you can remain on friendly terms with the person you have done business with.

That being said, what are the critical items you should have in a polo contract? The first is price. That is to say, specify

the patron to keep the team in the tournament and pay the player for consolation/handicap finals? If the team is eliminated, is the player released from further playing commitments and free to pursue other opportunities? What happens if the patron is hurt? What if it is the player who is hurt?

Player contracts are contracts of specific performance. That is, the agreement is for the specific performance of that particular player and payment by that specific patron. What happens if the player is injured either before the commitment begins or during? Who has the obligation to furnish a substitute player and horses? Set it down. If the patron is injured, does he or she have the obligation to keep the team in and pay the player? Patrons, I would argue, do have the obligation to keep the team in and pay, as the player has foregone other playing opportunities to play in that tournament. Players, conversely, have the obligation to find a suitable substitute and provide horses if necessary. If you want no confusion on these last parts, set down what is agreed to.

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year, the parties don't bother with a written contract, but continue playing together. Are the terms of the fourth year the same as the previous years' or not? If the patron is hurt at some point during the fourth year, can Player C seek payment from Patron D if Player C cannot find a job for a month or more? If so, at what rate? What if Player C, after being unemployed for a month, finds a new job that pays twice as much as the rate Patron D was going to pay him? Can Player C rightfully ask for payment for the month he was without a job, although in the next month he is making double what he would have made had Patron D not been hurt and continued to employ him? You see the problems.

Before I continue, I will say that many

exactly what the compensation is and how it is measured. How does a change in handicap affect the compensation? Is the salary to be paid per month, per game, practices included or not? When is payment due? Many polo contracts include horse purchase elements, i.e., Player A will play for Patron B at a given price so long as the patron agrees to purchase a minimum dollar or horse amount from Player A. Fine, if that's the deal, set it down, specifying the horses, the price and when the purchase is to occur.

The second critical element is the length or term. How long is the contract to last? Will it last for the tournament, for the month, the season or longer? Set it down. In the case of tournament commitments, what is the commitment of

As I have mentioned injuries, I want to take a moment to suggest that patrons set forth any understandings they might have about medical care for the player. From anecdotes, both good and bad, we have all heard of patrons taking great care of their players and their families if the player suffers injury while playing for the patron. We have also heard just the opposite. For me, the right thing to do is set these understandings down. Many may not take that advice, but there it is.

Continuing on with other terms that should be in the contract, another important area is a statement of reasons to end the contract before the term expires. Are there any good reasons to terminate a player contract, either by the player or the patron? You bet. Failing to



*A patron can't force a player to play his best if there is a misunderstanding about the contract.*

make timely payments, USPA suspension of player or patron, failing to bring the A string to the games, failing to attend practices, failing to fulfill any parallel obligations (horse purchases, etc.), accepting another job, hiring another player and the like. Because player contracts are contracts of specific performance by the player, a patron cannot force that player to play his or her best game if there is a misunderstanding about the terms of the contract. This is all the more reason to set forth the specific terms.

As well, a player cannot force a wealthy patron to pay on time or pay his or her full commitment. The player usually does not have the financial resources to pursue the matter very far in court. These last points are the very basis for my next suggestion



*If a player or patron gets hurt, then what are the obligations of either party?*

to be included in writing: Pick a neutral party as an arbitrator to whom the disagreement will be submitted and whose decision will be accepted by the parties as binding. That person should have no substantial ties or commitments to either side and should be readily accessible to hear both sides present the matter and render a decision quickly. Cases with agreed upon, binding arbitration may be resolved in short order, with a minimum of expense. There are also legal mechanisms to place in the contract to make the arbitrator's award enforceable should either party ignore the arbitrator's decision.

Now what about modifications after the deal is struck and written down? There are many reasons to modify a contract after it is formed. Some of them make sense, some may not. If both parties agree to the change, however, then it becomes a part of the agreement. The only rule is, do it in writing, with both parties signing the modification. This could be in the form of a quick letter with two signatures or a revised formal contract being executed again.

If you have read to this point, whether you are a patron or player, one thought that might have come to mind is whether or not insisting on a written contract will somehow either prevent the deal from

*If a patron/player relationship lasts longer than the term of the contract, will the same terms hold?*



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being created or decrease the desire of the other party to do business with you. The elements of a contract I have suggested can be set down in two pages, no more. There are other provisions that I would include pertaining to such items as injunctive relief and a few more. These provisions should be drafted by an attorney and help to cover all the bases.

For players, I say only this: You will look more professional if you insist on a written contract. Patrons will assume that you pay the same meticulous attention to your horses and your polo playing as you do to your business when you act in a professional, businesslike manner when

making a contract. The same is true when there is a dispute. If you have a contract and handle it in a professional manner, the patron cannot complain and the two of you are free to have a friendship without business disputes getting in the way. For patrons, I suggest to you that you will better be able to contain your costs and enjoy your polo, knowing that the commitments from your players are set forth clearly. You will also be able to enjoy the camaraderie of the sport and develop personal relationships with your players without business disputes spoiling the experience.

The contract that I have suggested is

not complicated, but it will avoid complications later. As I said before, good contracts make good friends.

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