KREKELER LAW REPORT

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" RULES OF ENGAGEMENT "

February brings Valentine's Day, which leads us to think of love and romance. This sometimes in turn leads to engagement and marriage. Engagement rings are part of this process. But what happens if the engagement is broken off? Who gets the ring?

An engagement ring is a gift made in contemplation of marriage. In Wisconsin, and most other states, the gift is conditioned upon the subsequent marriage. If the condition (marriage) is not fulfilled, the donor may recover the gift.

It does not matter why the engagement is broken off, or if one party or the other is at fault. The very purpose of the engagement is to allow time to verify feelings and the hoped-for permanency of the relationship.

In Wisconsin, therefore, fault is not an issue when it comes to deciding who gets the engagement ring. The only issue is whether the condition (marriage) is fulfilled. Engagement rings must be returned if the wedding is cancelled.

Happy Valentine's Day!

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In This Issue:

SWEET STORY OF CHOCOLATE SUCCESS

During the week we celebrate Valentine's Day, over 58 million pounds and $448 million worth of chocolate candy will be sold to consumers across the United States. One of the most popular and top selling chocolate candy brands is Hershey's. The Hershey Company was founded by Milton S. Hershey. His innovative thinking, entrepreneurial mind, and love for chocolate, built this great American brand from the ground up to become on one of the largest and most successful chocolate manufacturers in North America. Hershey's climb to the top, however, was not as smooth as his chocolate may be.

Instead, Hershey experienced significant financial difficulties trying to grow his first few candy businesses. He opened his first candy store in Philadelphia at just 18 years old. Within six years, the candy shop went under and Hershey filed his first bankruptcy case. He opened candy stores in Chicago and New York, but these businesses also failed. These closures forced Hershey to file a second bankruptcy. Even though Hershey experienced these setbacks, he never gave up on his dream of owning a successful candy store.

Through his hard work and the fresh start bankruptcy provided, Hershey founded the Lancaster Caramel Company, which successfully used fresh milk when producing yummy caramels. His caramels were a hit. And with this victory, he decided to sell his caramel company and pursue chocolate again. By using his skills to develop a new milk chocolate formula, Hershey began manufacturing Hershey's Milk Chocolate Bars, which were affordable for everyone. In 1900, these bars were only just the beginning to his journey in becoming the chocolate mogul and visionary we know him as today.

How do Consumers in the United States Plan to Spend Their Money on Valentine's Day?	
Flowers	$2 billion
Candy	$1.7 billion
Evening Out	$3.8 billion
Greeting Cards	$1 billion
Gift Cards	$1.4 billion
Clothing	$1.9 billion
Jewelry	$4.3 billion

FEBRUARY REMINDER: RECORDS FOR TAX DEDUCTIONS

It is a new year, but January has already come and gone, and tax time is coming up. Some of us will wait until then and then pull out all of our 2016 information to figure out what expenses might be deductible.

That system can cost lots of dollars in missed deductions.

Now is the time to start keeping contemporaneous records for this year. You can keep track however you wish, whether on paper or online, but now is the time to make note of your January transactions. Actually, it would have even been better to have entered them daily as you went.

The more contemporaneous your record keeping, the better. Otherwise, we all tend to forget by tax time. Start your tax planning early this year, and do so by keeping contemporaneous records.

WHERE'S KREKELER?

David Krekeler has again been recognized in *Best Lawyers®* for 2017. Since it was first published in 1983, *Best Lawyers®* has become universally regarded as the definitive guide to legal excellence. Lawyers are not required or allowed to pay a fee to be listed; therefore, inclusion in *Best Lawyers®* is considered a singular honor.

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David Krekeler gave a presentation, "End of Company Life," at the U.W. Law & Entrepreneurship Clinic. The clinic offers free legal services to budding entrepreneurs and early stage companies. These services are provided by U.W. law students supervised by faculty and private sector attorneys.

Part of Krekeler's presentation is on the last page of this issue. Contact us if you would like more information about this topic or the Entrepreneurship Clinic, or if your organization would like presentation of its own.

WARNING SIGNS THAT YOUR BUSINESS MAY BE IN TROUBLE

Only about half of all new businesses survive their first five years. Only about one-third survive ten years. Two thirds of those businesses that close within five years do so because they failed financially. These percentages have not changed much at all over the last twenty years.

The reasons for failure are many. It could be a changing economy, such as 2008 and 2009. New or unanticipated competition can enter the marketplace. Unforeseen disasters occur. Other difficulties could have been foreseen but were not or were ignored, or simply bad management could lead to the demise.

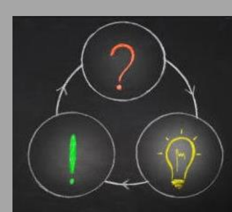
There are warning signs, however, which often include the following:

1. Accounts payable are not being met timely. This is especially indicative, and a problem, if the unpaid bills are taxes.
2. Poor accounting systems. If the business does not know whether or not it is making money, it likely is not.
3. Blaming the lender is something I hear repeatedly. It usually indicates an unwillingness to accept responsibility or to look for creative solutions.
4. Multiple lawsuits or judgments. These usually signify that the noose is tightening.
5. A poor relationship with the principal lender can indicate future problems. The underlying financing is usually critical to a business.
6. Lack of sales. Sales and the cash they produce are the lifeblood of a business. Whether sales are lost because of an over-reliance on one or a few big customers, or whether technology has changed the industry (think buggy whips and Kodak). Sales provide a reasonably good barometer of business health.
7. Paying debt and debt service obligations with additional credit. Financing by credit card or high interest hard money lenders is usually the start of a downward spiral.

<u>Solutions for failing business</u>.

The first step is to identify goals. Does the owner really want to remain in business? Sometimes the only reason to remain in business is because of the expectations of others, such as a family business, or a spouse. With the appropriate introspection and questioning, the real goal becomes simply extracting some equity from the situation. Sometimes the goal is to remain in the same form of business, but not conducted with the same entity.

The solution to the problem depends upon the goals. No one answer fits all businesses or all situations. Depending upon the goal, sales and leasebacks can be effective, as can transfers by receivership sales and friendly third parties. A similar approach might be acquisition of debt by friendly third parties. Bankruptcy, or serial bankruptcies, can also achieve appropriate goals.



Have a question? Idea for a future article?

If you ask for it – we will write it!

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