

Transacting by Texting

In 2012, there was an article in the New York Times (*"sry gotta bail mayb nxt tme"* Sunday, October 28, 2012 "Style Section") that described how the "face-to-face fallout of being a flake has all but disappeared" given the rise of texting. The people interviewed for the article told how it had become common practice to make multiple social engagements with the expectation that most if not all would fall through at the last minute. The article warned of this "new normal," and how anyone who did not join in the practice was setting themselves up for disappointment. A sort of "if you can't beat 'em, join 'em" approach to universal flakiness and refusal to commit.

Reading this article really made me feel like a 20th Century country bumpkin, what with only having acquired a Smart phone in 2012. Here I was, thinking that all these people around me had suddenly turned into flakes. Surprise, surprise – they had! I just didn't see it coming.

But how is this relevant to a legal column, you might ask? Because having had this phenomenon pointed out to me, I realize that its implications exceed the bounds of purely social behavior and now, in fact, have become a significant legal problem – particularly to an industry that likes to do business without written contracts.

The horse industry is truly an industry that likes to do business on a handshake. I can pontificate until I'm blue in the face, but I will NEVER convince everyone to use contracts. I accept that. But here is a new hazard to not doing so. The recent reliance on communicating by Smart Phone has made even the "handshake" deal something of a prehistoric concept: business is getting done via text, e-mail, voice mail and even Facebook.

Now you might say, "well, isn't something in writing, like a text, better than nothing in writing?" Not really, because as a general proposition a series of text messages is not going to constitute an enforceable agreement. First is the brevity and sometimes difficult to decipher abbreviations people use. Second, is that if you delete a text or lose your phone, then the text is gone forever (texts are not retrievable from your cell phone carrier). Third, even if you have a way to print out the texts, there is little if no way to "authenticate" that document (i.e. prove that changes weren't made to it) for purposes of a court of law. In other words, the only proof of the text is going to be what is saved on your phone.

But here's the bigger problem –people are flippant about the "commitments" they communicate by text. To them, the text is not intended to communicate a firm commitment. Rather, it is intended to communicate a suggestion. "Let's do dinner, 7pm at The Bistro" translated really means "At this moment I'm thinking that having dinner with you at 7pm at The Bistro might be a good idea, but I could change my mind or some better option could present itself, in which case, I might text you around 8pm to confirm that I'm a no-show."

Or in the horse world, it might be "Will lease eq horse for this wkend".



If you are trying to do business with someone or get some kind of a deal done, DO NOT resort to negotiating via text. Use a more concrete form of communication (like an actual conversation – if in person, even better!) and follow up with something in writing. Just don't put too much store in those texts..... nobody else does.



equestrian
sports law

KRYSIA NELSON ©2019 by Krysia Carmel Nelson, Esq.