

DRAFTING EXERCISE NO. 3

Entertainment Law

Eric E. Johnson

“The Harassers” Series Distribution Agreement (Part 1)

Words of Obligation

- Be consistent in the words you use to express obligation, right, and future contingencies.
- “Shall” is the standard word for expressing legal obligation.
- “Will” is the standard word for denoting a future occurrence.
- You can use “will” instead of “shall” to express legal obligation, but if you do so, be consistent throughout the document.
- “Must” can also be used to express legal obligation, but its more straightforward use is as a factual, expository statement of a necessary condition.
- “May” is the standard word for expressing a legal right.
- “Might” expresses the possibility of a future event, the occurrence of which will be dictated by chance, rather than by the elective exercise of a legal right.
- “Can” could be used to express a legal right, but its ordinary use is to make a factual, expository statement of ability. If you use “can” in lieu of “may” to express legal right, be consistent.

You are a lawyer for XTV, cable television company. The following is an excerpt from a draft agreement for the distribution of a television series. The parties are XTV and Enormo Entertainment, a production company.

Enormo shall deliver 13 episodes of *The Harassers*. The episodes must be delivered in accordance with the production specifications listed in Exhibit P, including, but not limited to, specifications relating to the timing of commercial breaks. XTV shall reject episodes not complying with these production specifications. XTV shall accommodate reasonable requests for deviations from the production specifications as needed. If Enormo needs to make such a deviation for any given episode, Enormo shall make a request to XTV’s master control operations coordinator, which cannot be made less than three days before delivery is due, detailing how the episode may deviate from the production specifications.