

**Exercise 31-4****Amendment to the Aircraft Purchase Agreement**

Follow the instructions in the memorandum that follows:

To: D. Fender  
From: H. Flighty  
Re: Purchase of the I-800

Thanks for that last draft. It was very helpful in moving things along. The parties executed the APA on October 30th. But, of course, we thought of some more points that we want incorporated into the agreement. Please draft an amendment to the APA incorporating the following points that Sam and I just negotiated:

1. Sam mentioned that he had spoken to Wright Aviation LLC, aircraft brokers, but had never hired the company to sell the I-800 on his behalf. I told Sam that I wanted that in the contract. He agreed. It would also be good to know that he didn't speak with anyone else. He mentioned something about mutuality.
2. Sam also told me that he had heard that I had tried to assign my rights under the Purchase Offer to Rob Robertson, his longtime business adversary. He was not happy. He has insisted on an anti-assignment and an anti-delegation provision in the Aircraft Purchase Agreement. He wants the contract to be clear that if I try to assign my rights, the assignment is unenforceable. Do we need to amend the Purchase Offer?
3. I had my mechanic thoroughly inspect the I-800. He reported that one of the engines (Serial No. 72725) is not working properly. Sam promised to get it fixed before closing. He also promised that my mechanic could re-inspect it and that I would only have to purchase the Aircraft if the mechanic determines that the engine is in good working order, ordinary wear and tear excepted. Keep out of the contract the details of when and how the re-inspection will occur. Also, don't worry about the serial number. I know that's correct even though Sam got the model number wrong in the last draft.
4. Please research whether Wings is required to obtain its stockholders' approval to sell the I-800. According to Sam, its board of directors has already authorized the transaction. What about my company? Is any authorization required to purchase? (As you know, the board of directors has already authorized the transaction.) If stockholder approval is required in either instance, please assume that it won't be obtained until after the agreement is signed. If approval of the Seller's stockholders is required, the Seller must be obligated to use its commercially reasonable efforts to get it. That way, the Seller can't get out of the deal by sloughing off its responsibilities and then claiming it couldn't get the approval. Essentially, that would give the Seller an option. By the way, do we need a separate section obligating the Seller to use its commercially reasonable efforts to obtain the stockholder consent (if required), or does another contract provision already address this point? Please think carefully about this point and address it in your memo to me. Finally, if any approval is required, please decide for whom receipt of the approval should be a condition to closing. Please explain in your memo to me how you decide to address each of these issues in the agreement.

H.F.

### Exercise 31-5

#### Shoeless Joe Jackson Exercise<sup>2</sup>

Below is an excerpt from the 1919 standard form American League Player's Contract between Shoeless Joe Jackson and Charles Comiskey, owner of the Chicago White Sox. For those of you who are not baseball historians, Shoeless Joe Jackson is a legendary baseball figure. He is remembered for his performance on the field and for his association with the Black Sox Scandal, when members of the 1919 Chicago White Sox participated in a conspiracy to "fix" the World Series. As a result of Jackson's association with the scandal, Kenesaw Mountain Landis, Major League Baseball's first commissioner, banned Jackson from playing after the 1920 season.

Please redraft this excerpt from the contract, including its organization and format. Remember that subject matter is the most common way of organizing a contract. Look again at the Website Development Agreement (Chapter 32, Document 2) and note how it uses both subject matter and contract concepts for organization.

You may add a stand-alone definitions article. In addition, you may amplify the provision to address business points that the provision raises but does not answer. Stated differently, you may add additional material and facts so long as they deal with the specific issues raised by the information that you have. Mr. Comiskey is your client, so provisions should be drafted with his interests in mind. The provisions should not be so one-sided that Shoeless Joe would reject them out of hand.

Do **not** draft a complete contract—just the provisions necessary to address the points raised in the provision that you have been given. In addition, please draft a one-page cover memorandum to Mr. Comiskey explaining the basis for any drafting or business decisions you make. This is a memorandum to the client, not to your professor.

#### Paragraph 3 of the 1919 American League Player's Contract

The player agrees to render for the club owner, at such times and places during the term of this contract as the club shall designate, his best services as a ball player; and he agrees to keep himself in the best possible physical condition from the date hereof until the termination of the contract; and a violation of either of the foregoing provisions of this paragraph shall be such a breach of contract as shall entitle the club owner either to terminate this contract forthwith, by written notice, or to suspend the player, by written notice, without pay until the club owner is satisfied that the player is ready, able and willing to resume his services in the manner in this paragraph provided. The player further agrees that, during the term of this contract, he will not, except with the consent of the American League, engage, either during the American League season or at any other time, in any game or exhibition of baseball, football, basketball, or other athletic sport, except as herein provided.

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2. I thank Richard Neumann for suggesting this contract excerpt as an exercise.