

gary kissiah

# light on law

{for yoga studios}

a guide to legal wellness

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{for yoga studios}

Also by Gary Kissiah

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# 1

## The Meeting of the Minds

We discuss why you should enter into written agreements, the importance of the “meeting of the minds,” how to make a simple letter agreement, and the ten issues that should be considered in all agreements.

We learn how to use agreements, how to amend agreements and how to respond if we do not understand an agreement we are asked to sign.

Introduction  
How Do I Make My Own Legally Binding Agreement?  
Do Not Use Oral Agreements  
Amend Your Agreements  
Read and Understand Your Agreements  
The Many Types of Agreements



*When the yogi is firmly established in non-violence, hostility is abandoned in his presence.*

Yoga Sutra 2.35 (Ahimsa)

## INTRODUCTION

Many of us in the yoga and wellness community are reluctant to use formal legal agreements because we feel it suggests a business and money oriented perspective on our relationships. We may feel that negotiating and signing formal agreements violates the true spirit of our community which we trust will act in an ethical, honest and reasonable way. Furthermore, most owners of yoga and wellness businesses are very busy, do not have legal expertise and do not want to spend money on expensive lawyers. This leads to the customary practice of using oral agreements, emails or generic forms to establish the terms of our business relationships.

Yoga and wellness have become a big business and we are subject to the pressures of a complex legal, economic and business world. We are subject to lawsuits, regulation and taxation. We are involved in commercial relationships of all kinds: leases with landlords, bank loans, agreements among co-owners, purchases of merchandise for boutiques, insurance policies, releases

from students, website agreements, retreat agreements and agreements with teachers. To comply with employment and tax laws, we must sign agreements that meet certain legal tests. If we hire a lawyer or an accountant to help us navigate the maze, we must sign an agreement with them!

Legal agreements serve many different purposes. They reflect the mutual obligations of the parties in a business relationship, meet regulatory requirements, establish the ground rules for an event or activity and provide protection from liability. A well-written agreement will lessen the chances of disputes, help maintain healthy business relationships, avoid tax and regulatory liabilities, and protect against lawsuits and personal injury liability.

On the other hand, the use of poorly understood template agreements, agreements found on the Internet, email agreements based upon exchanges of emails and oral agreements often leads to disputes because they fail to reflect a “meeting of the minds” between the parties.

We must change our business practices and begin using formal agreements. The legal and business world in which we live is too complex and the potential for liability and disputes has become too great to continue business as usual.

I am not advocating hiring lawyers to write formal legal contracts for every situation. Rather, we should begin using simple letter agreements that clearly reflect the “meeting of the minds.”

The process of preparing a legal agreement is an important op-

portunity to have a heartfelt “meeting of the minds” in which both parties to the agreement explore and understand their obligations in the relationship. This builds the foundation for a healthy relationship and often opens important creative possibilities. The chances of a dispute or lawsuit are greatly reduced because the parties understand their respective obligations and they are clearly reflected in an agreement.

Through the process of forming our legal agreements, we can create strong business relationships.

During this process, we will learn if we can work together. Can we communicate, compromise and reach resolution in the spirit of fairness and even compassion toward another’s viewpoint?

When both parties have thoughtfully discussed all of the issues, understood each other’s perspective, and reached a fair and reasonable agreement, there is a “meeting of the minds”.

The process of preparing an agreement forces us to consider our business relationships in careful and thoughtful ways.

What are all of the issues that could arise and how can we address them so that we start our relationship in alignment? Through the process of discussing and resolving the issues, important learning opportunities arise. Can we work with each other? Can we communicate, understand each other’s perspective and reach resolution in the spirit of fairness, compromise and even compassion?

If we cannot communicate during the negotiation stage, we may conclude that it is unwise to enter into a relationship. It may be better to walk away from the situation rather than launching into an ill-advised relationship and then becoming involved in a dispute.

Even the most complex and comprehensive contract cannot cover all of the issues that will evolve as circumstances change. In the yoga world, we accept the principle of impermanence. This holds true in the legal and business world as well. Our agreements must be flexible and have room to breathe as things change.

Agreements are only frameworks for our relationships. We must be able to work together in a spirit of reasonableness, fairness and compromise to resolve issues as the world changes and our relationships evolve. If we find that we cannot do this through the negotiation process, then the wisest course may be to not enter into an agreement in the first place.

In order to arrive at a meeting of the minds, we must identify all of the issues that may arise in the proposed relationship and attempt to resolve them in a fair and reasonable manner. This often takes the form of “brainstorming” which is a good way to creatively explore the scope of the relationship. Sometimes this illuminates other ways to expand the relationship. This may lead to a deeper and more fruitful relationship than you originally imagined. It is time well spent!

As you discuss your business relationships, it may be helpful to



write down a list of all of the issues and the proposed resolution to keep the process organized and moving forward in a logical way. This will help you avoid the problem of the parties forgetting what was previously agreed to or attempting to re-trade issues that have already been resolved.

If you have reached a “meeting of the minds” about your proposed relationship, you will have discussed, understood and resolved all of the relevant issues and established that you can communicate and work with each other. You will have built the foundation for a strong and positive business relationship!

**If we reach a meeting of the minds and write them down in an agreement, we lower the chances of a dispute.**

Disputes have many causes. These include not understanding and resolving all of the issues, not using written agreements, and not communicating and compromising as circumstances change. We can avoid planting many of the seeds of a dispute if reach a meeting of the minds and then reflect our understanding in a written agreement.

If you have even been involved in an adversarial situation involving lawyers, you know that there are few experiences that are more expensive, stressful and time consuming. Even if lawyers do not enter the picture, a dispute can still be very upsetting, stressful and damaging to your business. A dispute may create bad publicity which can damage your business reputation.

The time that you spend reaching a meeting of the minds and

writing it down in an agreement is time well spent.

Do not be penny wise and pound foolish!

## HOW DO I MAKE MY OWN LEGALLY BINDING AGREEMENT?

**A legally binding agreement is formed when there has been a meeting of the minds and it has been reduced to an enforceable, written contract.**

**You may use a letter agreement to document your meeting of the minds. Your letter agreement must set forth all of the points of your agreement and should be signed and dated by both parties.**

**Write your letter agreement in plain English. You do not need a contract full of legalese in order to create an enforceable agreement.**

Once you have reached an oral “meeting of the minds,” the next step is to reduce it to writing by putting it into a letter agreement. A letter agreement is just as “legal” and enforceable as the “standard” form of legal contract and is a much easier format for you to work with.

The process of preparing a letter agreement is an important step in reaching clarity about your relationship. There is something about writing down the obligations of each party that forces an understanding and commitment to those obligations. Sometimes this may illuminate other areas of the relationship that should be

# 2

## Protecting Your Studio Against Liability: The Three-Limbed Strategy

We discuss the three - limbed strategy you should use to protect your studio from personal injury and other legal claims.

This strategy is to get a release from liability that covers your studio, make sure that all of your business activities are covered by insurance and use careful teaching strategies.

Introduction  
The Release of Liability  
Effective Insurance Coverage  
Careful Teaching Strategies  
Current Litigation in the Yoga World



*When the yogini is firmly established in truthfulness, she attains the fruits of actions without acting.*

Yoga Sutra 2.36 (Satya)

## INTRODUCTION

The most common source of liability for yoga studios stems from injuries suffered by students in classes and workshops. Although lawsuits remain fairly rare, the probability of lawsuits is increasing for several reasons.

First, yoga has grown into a big business and this inevitably attracts the attention of personal liability lawyers. These lawyers see the stories in the mainstream press regarding yoga injuries and the growth of the industry and become more interested in taking these types of personal injury cases.

Second, there has been a proliferation of new and inexperienced yoga teachers that have been produced by the rapid expansion of yoga teacher training programs sponsored by yoga schools. This development, coupled with an increase in mainstream interest in yoga and the influx of new students, may well increase the chances of injuries. This is aggravated by the rise of new, extreme forms of yoga and hot yoga studios.

It is time for the yoga and wellness world to begin considering risk management strategies to moderate exposure to these types of lawsuits and claims.

Since it is not possible to completely eliminate the risk of harm to students and the potential for lawsuits, our legal goal is to reduce the probability of personal injuries and other types of claims occurring in the first place. If we can reduce the risk of harm to our students, we will have reduced the risk of lawsuits and claims.

You will need to coordinate your strategies with your teachers to reduce these risks.

If a student is harmed and decides to consult with a lawyer to evaluate the possibility of filing a lawsuit, you'll want the facts to show that you have strong defenses so that they will be discouraged from filing a lawsuit. If a lawsuit is filed, with strong defenses you may be able to negotiate a favorable settlement rather than going to trial. If the matter does go to trial, you'll want to be able to present the strongest possible defense and to defeat the claims.

**To protect your studio from liability for personal injury and other types of legal claims, use the three-limbed strategy. This includes obtaining a release from liability that covers both your studio and the teachers, making sure that all of your studio's activities are covered by insurance, and using careful teaching strategies.**

You should use the three-limbed strategy as a way to reduce your exposure to personal injury liability. Yoga studios and teachers should work together to implement this strategy. The three-limbed strategy is:

1. All students must sign a well-drafted form of release that releases both the studio and its teachers from liability. This includes releases for workshops, retreats and teacher training programs. It must specifically release teachers from liability.
2. Your studio must have effective insurance coverage for all of its business activities.
3. You must use appropriate and careful teaching strategies to minimize the risk of harm to the students and the potential for a claim or a lawsuit if they suffer an injury in class.

## THE RELEASE OF LIABILITY

**Make sure you obtain a release of liability from each student at your studio. Make sure that the form of release specifically includes teachers.**

**If your studio sponsors private lessons, workshops, retreats, or teacher training programs make sure that you obtain a release from your students for each one of these offerings.**

All students attending classes at a studio must sign a release of liability. A well-drafted release should describe all of the ser-

vices and activities provided by the studio and teachers; require the student to assume the risk of harm from participating in the activities; waive all claims against the studio, teachers, owners, employees and independent contractors; require the student agree that he or she will not engage in any inappropriate conduct; attest that the student is in good medical condition; and give permission to take photographs and videos.

The release of liability should include teachers within the definition of the parties who are covered by the release. My review of many forms of releases routinely used in the yoga world shows that most of them do not include the teachers within the scope of the release. The studio's release should be amended to cover the teachers. This does not weaken the studio's legal position and provides an important benefit to the teachers.

The release is an important barrier to liability because there could be many situations in where your studio or business may not be protected by your insurance policy. Some examples of this are the claim being excluded from coverage, an accidental failure to pay the premium so coverage has lapsed, the insurance company wrongfully denying a claim, the value of the claim exceeding the limits of the insurance policy, a failure to report the claim within the time limits of the policy, or a bankruptcy of the insurance company.

Even though a release has been signed, it will not prevent someone who has been injured from filing a lawsuit. The release is only a defense to the lawsuit and may or may not prevail in a court of law.

A court may reject the release as a defense, particularly if the behavior of the studio or the teacher was intentional or reckless. A court may reject a release as a defense on public policy grounds. There is a public policy position that people should be compensated if they are harmed as a result of negligent conduct and that signing a non-negotiable form that they did not read or understand should not prevent a recovery.

#### PRIVATE LESSONS

If your studio sponsors private lessons, your students must sign a private student agreement. This agreement should cover such matters as release of liability, general health information, information about the student's practice and problem areas, privacy, cancellation policy and teaching rates. An agreement will establish the rules of your relationship and lessen the chances of a disagreement with your students.

A Private Student Agreement is attached at Appendix E-23.

#### TEACHING AT HOME

If your studio sponsors teaching at home programs, be sure and get a release signed. There may be greater risk of injury to a student due to slip and fall within the home or access to the home. It is a best practice to have your student sign a private student agreement and the release may be contained within that agreement.

A Private Student Input Agreement is attached at Appendix E-23.

#### TEACHING WORKSHOPS

If your studio sponsors workshops, you must obtain a release of claims from each student who attends the workshop. Make sure that your studio's standard form of release includes workshop presenters and workshops. Because many standard forms of release only cover regularly scheduled yoga classes, your form may not cover an extraordinary event such as a workshop. Also be aware that many studios neglect to get releases from people who attend workshops but who are not regular students.

A Workshop Agreement is attached at Appendix E-25.

#### LEADING RETREATS

If your studio is sponsoring retreats, you must get a release from every student who attends the retreat. You should also have your students sign a retreat agreement to cover your studio from the many risks inherent in travel and attending retreats. The release may be included within the retreat agreement.

Obtaining a release is particularly important in the context of international retreats due to the additional risks and uncertainties inherent in foreign travel. These risks may include health, fitness and vaccination requirements, travel arrangements and visa requirements, political, military or weather developments, and obtaining local medical treatment. Your policies around cancellations and changes in schedules or events due to unforeseen circumstances is especially important.

# 3

## Starting and Running Your Yoga Business

We discuss the basics of organizing and running your yoga business.

We explore some sources of entrepreneurial inspiration, writing business and marketing plans, whether you should use a legal entity, how to organize an entity, and the nuts and bolts of local regulations and permits.

We discuss what you should do if someone wants to buy your studio.

Getting Started

Should I Use a Legal Entity for My Business?

What Type of Legal Entity Should I Use?

How Do I Organize My LLC?

What Are The Legal Responsibilities For My LLC?

What Is A Buy-Sell Agreement?

Be Protected By Your Legal Shield!

Independent Contractors and Employees

Nuts and Bolts-Permits, Registration and Taxes

What If Someone Wants To Buy My Yoga Business?



*When the yogini is firmly established in non-stealing, precious jewels come.*

Yoga Sutra 2.37 (Asteya)

## GETTING STARTED

If you are starting your new yoga business or expanding into new areas, I wholeheartedly recommend a new book by Darren Main. Darren is a yoga and meditation teacher who lives in San Francisco, California. He has written several books on yoga including “Yoga and the Path of the Urban Mystic,” “Spiritual Journey along the Yellow Brick Road” and “Inner Tranquility.”

His newest book is entitled “The Yogi Entrepreneur: A Guide to Earning a Mindful Living Through Yoga.” Darren provides us with the benefit of his lifelong experience teaching yoga. He covers such areas as making the initial decision of becoming a yoga teacher and a yoga entrepreneur, professional ethics, accounting, taxes and insurance, leading workshops and marketing your offerings. It is an excellent resource on how to mindfully build a thriving business based upon the authentic principles of yoga. Here is the link to Darren’s website:

<http://darrenmain.com/>

Another very useful book is by Chris Guillebeau. It is called the “\$100 Startup: Reinvent the Way You Make a Living, Do What You Love, and Create A New Future.”

This book is written in a very friendly and approachable style and contains many worksheets to help you focus your ideas and develop a roadmap to success. Here is the link to his website:

<http://chrisguillebeau.com/>

Another muse that I suggest you consider is Danielle LaPorte. Danielle is a life coach who is an innovative creative and marketing expert. Her books “The Desire Map” and “The Fire Starter Sessions” are masterpieces of helping us set right goals, break through roadblocks and find creative pathways to meet our business goals. Here is the link to her website:

<http://www.daniellelaporte.com/>

Finally, for expert advice on marketing and for general inspiration, I recommend Seth Godin. He was an early innovator in the area of permission and content marketing and has written many best selling books on marketing and leadership. His blog and writings are excellent and he gives away lots of high quality content. Here is the link to his website:

<http://www.sethgodin.com/sg/>

## YOUR BUSINESS PLAN

I recommend you prepare a formal business plan. This will help you clarify your goals, and develop a roadmap to help you attain your goals. The process of reducing your business plan to a formal writing is an important step in the process of launching your new business. If you do not know where you are going, you may end up somewhere else!

There are many products available that will help you define the “nuts and bolts” of the business. However, in order to write your business plan, you will need some inspiration and guidance in setting goals you wish to achieve. For a selection of resources on writing business plans and business inspiration, see Appendix E-4.

Although there are many books that seek to guide entrepreneurs in starting new businesses, particularly in the Silicon Valley start-up world, I recommend that Guy Kawasaki’s classic book the “Art of the Start: The Time-Tested, Battle-Hardened Guide for Anyone Starting Anything.” Guy is a former Apple executive and is a venture capitalist in Silicon Valley. He is an experienced, insightful and inspirational entrepreneur that advises many start-up companies on how to succeed.

This book is written in conversational and easy-to-understand language and is designed to help you focus on building a solid framework for starting your new business.

In the Art of the Start, Guy describes his “great ideas for starting things” in five simple principles. For a Silicon Valley executive, they are surprisingly yogic in nature!

His five principles are:

Make Meaning

Make Mantra

Get Going

Define Your Business Model

Weave a Mat (Milestones, Assumptions, and Tasks)

You can get a free copy of his manifesto which summarizes the principles discussed in the Art of the Start here:

<http://changethis.com/manifesto/show/1.ArtOfTheStart>

I also recommend that you subscribe to Guy’s blog which is full of useful information. You can find it here:

[www.guykawasaki.com/](http://www.guykawasaki.com/)

## SOCIAL MEDIA MARKETING

The best book on social media marketing that I know of is by Dave Evans. Dave has spent a lifetime in marketing and has been involved in social media marketing since its genesis. His book is called “Social Media Marketing: An Hour a Day.” Here is the link on Amazon:



# 4

## Legal Agreements

We explore the many different kinds of agreements that you may need in your yoga or wellness business.

Start Using Agreements!  
The Teaching Agreement  
Release Me!  
Membership Agreements  
Workshop Agreements  
Retreat Agreements  
Teacher Training Program Agreements and Immersions  
Coaching Agreements  
Webinars, Telecourses and Online Classes  
Corporate Yoga Agreements



*When the yogini is firmly established in moderation, vitality is gained.*

Yoga Sutra 2.38 (Brahmacarya)

## START USING AGREEMENTS!

**Use agreements for all of your studio's offerings to avoid disputes and to protect you from liability.**

**T**here are many agreements that you should enter into with your students. There are two important reasons why you should use these agreements. The first is to document the terms of your relationships so that you avoid disagreements. Disagreements often leads to stress, unhappy relationships, and potential damage to your reputation. The second is to protect you from liability.

## THE TEACHING AGREEMENT

**Make sure you have a written agreement in place with all teachers who teach at your studio.**

The best practice is for a studio and a new teacher to begin the relationship with a heart-to-heart discussion of the many issues

involved in the teaching position. There are many issues to discuss!

When both sides have reached a “meeting of the minds” on your relationship, the agreement should be reduced to writing and signed.

This agreement is the heart of your yoga business. It should not be viewed as merely a form to be signed but should reflect your actual working relationship with the teachers. Do not use oral agreements. Make sure that you have written agreements in place for all of your teachers and employees.

In view of the changes to the law of independent contractors, the increased enforcement by tax authorities and the serious penalties and fines if the legal relationship is not correctly characterized, if you intend to establish an independent contractor relationship a properly prepared agreement is critical. For a discussion of this area see “Chapter 9”

There are several key issues that should be carefully discussed in all teaching agreements.

The first key issue is compensation. What is the amount of the compensation and when will it be paid? Will the teacher be paid a flat rate per class or will payment be contingent upon the number of students in a class? How will the teacher's performance be evaluated? Can the teacher earn any bonuses or increased compensation based upon performance? Will the teacher have the opportunity to join the studio as a co-owner if certain goals

are met? What are those goals and how would the amount of the ownership interest be determined?

The second key issue is protection from liability. If a teacher is sued, will the studio's insurance policy cover the teacher's potential liability or is the teacher on her or his own? Does the studio provide any employee benefits for the teachers such as health insurance coverage? (Note that providing liability and health insurance for teachers are strong signs that the teacher is being treated as an employee rather than as an independent contractor)

The third key issue is the right of the studio to terminate a teacher. Under what circumstances can the studio fire a teacher? Can the studio fire a teacher "at will" or does the studio need to show "cause" or a good reason to fire the teacher?

The right to terminate a teacher "with cause" means that the studio must have a valid and defensible reason for terminating a teacher, and the reason should be spelled out in the agreement. This may be a breach of the code of conduct, failure to teach a required number of classes, chronic lateness to classes and student complaints, and similar reasons.

The fourth key issue is whether a teacher should be given notice of any termination of the employment relationship. The standard period is 30 days. Should the studio agree to give a teacher advance notice of the termination? From the studio's point of view, it may want the right to terminate without any notice whatsoever.

A teacher may want to receive advance notice of termination to have an opportunity to resolve the problem that may be causing the studio to want to terminate the teacher. A notice period will give the teacher time to find another job. Also note that a notice period is a strong factor in supporting a position that a teacher is an independent contractor rather than an employee (if that is your intent).

Conversely, what notice should the teacher give the studio if he or she wants to leave the studio?

The fifth key issue is the proper characterization of the teacher's legal relationship with the yoga studio. Is the teacher being properly characterized as an independent contractor or as an employee? If you intend to treat teachers as independent contractors, you must ensure that you have an agreement with each of the teachers that builds the strongest case for treating them as independent contractors rather than as employees. If you do not have a well-drafted independent contractor agreement in place and you are audited, the probability that your teachers will be re-characterized as employees is greatly increased. See "Chapter 9" for an in depth discussion of the independent contractor and employee relationship.

If this happens, as a studio owner you will have to pay back taxes and will be subject to penalties and fines. The teachers will lose many of the deductions that they enjoyed as independent contractors. For example, the teachers will no longer be able to deduct their reasonable and necessary business expenses or their travel expenses. Also, if the teachers do not properly

# 7

## Websites and Social Media

We discuss a wide variety of laws that affect your business activities on the Internet.

These include protecting the domain name of your website, protecting your studio from liability resulting from selling products and your privacy obligations.

Clear The Domain Name For Your Website  
How To Conduct A Trademark Search  
Establish Your Common Law Trademark Rights  
Use Your Trademark To Protect Your Domain Name  
Use Copyright To Protect Your Website  
Make Sure Your Website Content Does Not Infringe  
Can I Use Content I Have Downloaded?  
Selling Products Through Your Website  
Website Terms of Use  
Privacy  
The CAN-SPAM Act  
Blogging  
Current Issues in Social Media  
Website Designers and Building Your Website



*Contentment brings supreme happiness.*

Yoga Sutra 2.42 (Samtosad)

## CLEAR THE DOMAIN NAME FOR YOUR WEBSITE

You must conduct a trademark search on your domain name before you invest money in launching a website or branding products.

After you find a domain name that you like, do a free trademark search on the trademark database provided by the Patent and Trademark Office to make sure someone does not own the trademark to your domain name.

If your new domain name does not infringe a trademark, protect your domain name by creating a trademark.

Almost all yoga studios maintain a website. Some of these sites provide basic information about teaching schedules as well as inspirational resources and writings. Other sites provide platforms for the many different business activities that the studio may be pursuing.

Before you launch your website, it is important to determine whether someone else owns a trademark that is identical or

similar to the domain name that you want to use. If your new domain name infringes a trademark, you may be sued for trademark infringement even if you are the owner of the domain name.

To illustrate the idea, let's assume that you have created a new yoga brand called "Bendy Yogini" and you have purchased the "BendyYogini.com" domain name from Go Daddy. If someone else has established trademark rights in the name "Bendy Yogini" before you launch your "BendyYogini.com" website, then your use of your domain name may infringe their trademark.

If the owner of the "Bendy Yogini" trademark decides that your use of the "BendyYogini.com" domain infringes its trademark, you may receive a "cease and desist" letter from their lawyers and be forced to take down your website. Furthermore, if you have used the domain name "Bendy Yogini.com" in your marketing and advertising campaigns, you may be required to stop your campaign and remove the infringing material from the market. The owner may also assert damages against you for trademark infringement.

To prevent these problems, you should run a trademark search on "Bendy Yogini" to determine if anyone has a trademark in that name.

## HOW TO CONDUCT A TRADEMARK SEARCH

After you have found a domain name that you want to use, your first step is to determine if it infringes someone else's trade-

mark. You do this by using the free trademark search database provided by the Patent and Trademark Office (the “PTO”). This database is known as “TESS” which stands for the “Trademark Electronic Search System”. Your search will disclose if anyone has federally registered a trademark with the same or similar name. Here is the link to TESS:

[www.uspto.gov/trademarks/index.jsp](http://www.uspto.gov/trademarks/index.jsp)

Search Go Daddy to see if any companies have domain names that are similar to the one that you want to use.

Use Google to search for your domain name. This will reveal if other companies are using a brand or domain name that is similar to your proposed domain name. For more information about trademark searches see “Chapter 5-Why Should I Do a Trademark Search?”

If you find that a business similar to yours is using the .com domain name of your proposed brand, then you probably cannot use a .net or .org domain name without running the risk of infringing any trademarks that the owner of the .com domain may have. This is because consumers may be confused as to the source of the goods and services being offered for sale. Since the standard for trademark infringement is “likelihood of confusion,” your domain name does not have to be identical to infringe. It only needs to be similar enough to cause consumer confusion. In this case, the use of your use of the name may be infringing.

## ESTABLISH YOUR COMMON LAW TRADEMARK RIGHTS

Finding the right brand and domain name for your business that does not infringe someone else’s trademark can be difficult. However, after you have found this sometimes elusive combination, you should establish your trademark by placing it in the “stream of commerce.” Placing your trademark in the “stream of commerce” means that you have attached the mark to a product or service and have sold that product or service in the marketplace.

This will establish your common law trademark rights and provide you with important protections. Common law trademarks are free and give you important trademark protection!

When you place your name, brand or logo in the stream of commerce, you must attach the proper legend to your trademark. The proper legend is “TM” for a trademark. You should start using the “TM” legend from the moment you decide to claim your rights in a mark. You should place this legend immediately after every place where you use your business or brand name on your website and in your print literature. You should establish your common law trademark rights even if you do not intend to file an application to register the trademark with the PTO. For more information about establishing common law trademark rights see “Chapter 5-How Do I Trademark My Brand or Studio Name?”

The best way to protect your brand name is to register your trademark with the PTO. This is not usually a difficult or expensive process and it will provide you with important protections if

# 9

## Taxation and Regulation

We discuss the many tax and other regulatory laws that affect yoga studios and other wellness businesses.

We take a close look at properly characterizing independent contractors and employees and the liabilities that studios face if they get it wrong.

We discuss work for trade.

We also consider the laws that prohibit practicing medicine and regulating day care centers.

Determining Independent Contractor Status Under Federal Law

What Is a Studio's Liability Under Federal Law If It Misclassifies an Employee?

Determining Independent Contractor Status Under California Law

What Is a Studio's Liability Under California Law If It Misclassifies an Employee?

What Should Studios Do Now to Protect Themselves from Liability?

What Should Yoga Teachers Do About The Independent Contractor Problem?

Workers' Compensation Insurance Compliance

Consider Making Your Teachers Employees

State and Local Tax and Regulatory Issues

Tax Savings for Independent Contractors

Bartering and Work For Trade

Do Not Practice Medicine

Be Aware of Laws Regulating Day Care Centers

Relationships With Interns and Volunteers



*Through Self-study comes union with one's chosen deity.*

Yoga Sutra 2.44 (Svadyaya)

### ARE TEACHERS INDEPENDENT CONTRACTORS OR EMPLOYEES?

Federal and state tax authorities are aggressively auditing businesses and holding them responsible for mischaracterizing their workers as independent contractors rather than as employees. Their goal is to reap additional tax revenues and to stop abuse of independent contractors. If your yoga business is audited and found to have mischaracterized its teachers, it may be subject to severe penalties under both federal and state law.

The agreement between studios and teachers must build a strong legal position that the teachers are independent contractors (if that is your intention). The agreement must contain provisions that satisfy the tests for independent contractor status under both federal and state law. You may need to amend your existing agreements or put agreements in place now if you do not use agreements.

You may need to change the terms of your existing relation-

ships with your teachers and other workers to reduce the degree of behavioral and financial control you have to build your case for an independent contractor relationship.

Most yoga studios run on the independent contractor model because they do not want to carry the burden of tax-compliance and regulation that is involved in employer-employee relationships. For federal income tax purposes, employers generally have to withhold and pay income, Social Security, and Medicare taxes on wages that they pay to common-law employees. Employers withhold part of Social Security and Medicare taxes from their employees' wages and pay a matching amount. For California tax purposes, employers are responsible for reporting wages paid to their employees and paying Unemployment Insurance Tax and Employment Training Tax on those wages, as well as withholding and remitting State Disability Insurance Tax and California Personal Income Tax due on those wages.

In addition, most employers must provide workers compensation insurance for their employees. A business is not responsible for these obligations if it uses independent contractors rather than employees. Accordingly, many businesses desire to characterize their workers as independent contractors rather than employees.

Federal and state governments are stepping up their enforcement efforts to obtain additional revenues based upon the misclassification of workers as independent contractors rather than as employees. Because governments are faced with



large budget deficits, they view pursuing misclassified workers as a source of additional revenues.

The Internal Revenue Service (“IRS”) is currently auditing some 6,000 companies with respect to worker misclassification issues. More than two-dozen other states—including California—are aggressively pursuing claims of misclassification to recover additional tax revenues. All businesses that engage independent contractors now face increased risk of audit and potential liability with respect to misclassification of their employees as independent contractors.

#### DETERMINING INDEPENDENT CONTRACTOR STATUS UNDER FEDERAL LAW

Determining whether a worker should be classified as an employee or independent contractor under federal law is complicated. In auditing businesses, the IRS looks at the following three categories of factors:

**Behavioral Control:** This is the degree of control a yoga business has over its teachers. The more control teachers have over the way they perform their services, the more likely they will be deemed independent contractors. For example, the teachers should have the right to select the style of yoga they wish to teach, the sequencing of the poses, and the music played class.

**Financial Control:** If the teachers bear the cost of providing their services, including paying for business and travel expenses,

training, and licensing, the case for an independent contractor relationship is strengthened. An important factor is whether the teachers are running independent businesses by teaching at other yoga studios and providing goods or services that are not offered by the studio.

**Relationship of the Parties:** This evaluates the relationship between the studio and the teachers. Factors include the length of the relationship, whether the teacher provides services for multiple businesses, the degree that the teacher supports the business, and whether the studio can terminate the relationship “at will” or if a “just cause” is required.

Many states use these IRS factors as well as including additional factors of their own to determine proper classification. The best practice is to satisfy both the federal and state requirements to build your case for an independent contractor relationship. The existence of a well-drafted independent contractor agreement that satisfies the independent contractor tests under federal and state law is an important factor in making the proper determination of the character of the relationship. You must review your state laws and make sure that you satisfy the requirements for independent contractor status.

For additional information about determining independent contractor status under federal law see Appendix A.

## APPENDIX INDEX

Appendix A- Independent Contractors Under Federal Law  
Appendix B-Independent Contractors Under California Law  
Appendix C-Buy-Sell Triggering Events  
Appendix D-Privacy Resources

## APPENDIX E-THE FORMS LIBRARY

Version 2.0-May 15, 2013

This is the second version of our Forms Library. We will be upgrading and expanding these forms to provide you with the very best set of forms to support your yoga business. We would appreciate it if you would give us your feedback as you work with the forms. We would like to know if you have found the forms easy to work with, if you found any “bugs” in the forms, and if the instructions give you enough guidance to prepare the forms yourself. We would also be interested in knowing if there are any forms that you need for your business that are not currently included within the Forms Library.

You can contact me at [lilalabs@gmail.com](mailto:lilalabs@gmail.com)

Gary Kissiah

## LEGAL FORMS

E-1 Artist Consignment Agreement  
E-2 Bartering Agreement  
E-3 Blogging Policy  
E-4 Business Planning and Inspiration  
E-5 Cease and Desist Letter  
E-6 Coaching Agreement  
E-7 Consulting Agreement  
E-8 Content Release  
E-9 Copyright and Trademark Resources  
E-10 Copyright Legends  
E-11 Employment Agreement  
E- 12 Code of Ethics  
E-13 Form of Amendment to Agreement  
E-14 Independent Contractor Agreement for Service Providers  
E-15 Internship and Volunteer Agreement  
E-16 Form of Letter Agreement  
E-17 Documents for Formation of LLC  
E-18 Documents for Governance of LLC and Corporation  
E-19 Membership Agreement  
E-20 Mutual Release  
E-21 Non-Disclosure Agreement  
E-22 Privacy Policy  
E-23 Private Student Input Agreement  
E-24 Strategic Alliance Agreement  
E-25 Student Release of Liability  
E-26 Studio Rental Agreement  
E-27 Independent Contractor Agreement for Teachers

E-28 Teacher Training Program Agreement

E-29 Telecourse and Webinar Agreements

E-30 Terms of Use-Not Selling Products

E-31 Terms of Use-Selling Products

E-32 Terms of Use-Short Form

E-33 Trademark License

E-34 Website Design Agreement

E-35 Workshop Agreement

E-36 Retreat Agreements

E-37 Corporate Yoga Agreement

## THE APPENDICES

### **APPENDIX A- Independent Contractors Under Federal Law**

Set forth below is the text from the IRS Website which sets forth the framework for determining whether workers are employees or independent contractors under federal law. Here is the link to the Website:

<http://tinyurl.com/8rhvkxz>

Another excellent IRS resource is the “Information Guide for Employers Filing Form 941 or Form 944-Frequently Asked Questions about the Reclassification of Workers as Employees.” Here is the link to this publication:

<http://www.irs.gov/pub/irs-pdf/p4341.pdf>

Buy This Book At

<http://garykissiah.com/>