

LOCK & MARLBOROUGH

OUTLINE OF LECTURE TO DRIVERS, ON DRIVER CONTRACTS AND
DRIVER MANAGEMENT CONTRACTS, GIVEN BY EDWARD LOCK
AT A SEMINAR ORGANISED BY THE ARBUTHNOT LATHAM
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A. INTRODUCTION

1. In the days of Juan Manuel Fangio and Stirling Moss, written contracts played a very small role in the business of motor racing. Indeed Moss himself is said to have relied on a note on a packet of cigarettes for his contracts with his manager, Ken Gregory, and his last team owner, Rob Walker. Even in the early 1960's, Jim Clark's contract with Colin Chapman of Team Lotus – arguably the greatest partnership the sport has known – was confined to just one sheet of paper. In those days there was no advertising on the cars and very little sponsorship. The key issue to be agreed between a driver and his team was how much (if anything) was to be paid by the driver for the drive and what salary was paid to the driver and perhaps how the prize money was to be shared out.
2. How times have changed! Nowadays many believe, with justification, that motor sport generally – and grand prix racing in particular – has become more of a business and less of a sport, and attribute this in no small measure to one Bernie Ecclestone. Typically a contract between a driver and a Formula One team will run to some 50 pages, and even in the lower formulae driver contracts have become the norm. Additionally both driver and team will have contracts with their sponsors and merchandisers, while the teams will also have contracts for their supply of tyres, fuel and parts, not to mention the Concorde Agreement between the aforesaid Ecclestone and the Formula One teams.
3. Today, however, I intend to concentrate on the two contracts that are likely to affect you as young drivers, namely driver contracts and driver management contracts.
4. Those of you who drive for teams will certainly have contracts with your teams, which are known as “driver contracts”. It is highly likely that



these will be in writing, although you may be interested to note that an oral contract in fact carries as much weight legally as does a written contract. The reason why most teams prefer a written contract is that it reduces the scope for argument as to what the terms of the contract are. But as Jenson Button and Sir Frank Williams, to take but one example, are aware the existence of a written contract does not exclude the possibility of a time consuming and costly excursion to the Contracts Recognitions Board or, worse still, the High Court.

5. You will not all, however, have driver management contracts. Indeed you may wonder why any driver should have a driver management contract, since it will contain a clause entitling the manager to receive a more or less hefty payment which will, however it may be dressed up, ultimately be paid out of money which would otherwise be yours. Nevertheless, all the top drivers do have driver management contracts, and the driver manager is becoming an increasingly common character in the lower formulae too. Why?
6. As young drivers, you all know that you are full of self belief, exceptionally talented, have raw speed and technical excellence and are, in short, the next Michael Schumacher or Fernando Alonso, the principal difference between them and yourself being that they are in Formula One and you are not --- yet.
7. And that is where the driver manager comes in. A good – and I emphasise good – driver manager will know all the key people in the formulae in which you aspire to race, and will make sure that you are brought to their attention in the most favourable circumstances possible – for example just after you have won a couple of races, not just after you have been responsible for causing a multiple shunt. He should also negotiate contracts on your behalf or assist you to do so yourself and should also generally help out on more mundane matters, leaving you free to do what you want to do – racing and winning. And even if the



manager does take a substantial slice of your income, you should always bear in mind that 70% of something is better than 100% of nothing.

But let me first talk about driver contracts.

B. DRIVER CONTRACTS:

8 Before you are given a contract, you will probably have been told in general terms what the team are offering you – eg what car you will be driving, what you will be paid or required to pay. But although these may seem to be the key issues, nowhere is the maxim “the devil is in the detail” more apposite than in relationship to driver contracts. An apparently mean offer can be improved, through careful negotiation over the detail, to become a valuable contract.

WHAT YOU SHOULD ASK OF THE TEAM

9. Acting for a driver, and depending upon the level at which the driver is racing, I would want to see in a driver contract obligations on the part of the team along the following lines:
- (a) what car(s) the driver is to drive and in what championship(s) and test sessions
 - (b) What monies are to pass between the driver and the team (including, bonuses, expenses and prize money) the date of such payments, the consequences of default in payment and the procedure for the preparation of accounts to show the amount of payments due.



- (c) the tax status of the driver and his liability for tax. Generally, it will be in your interests to be self-employed.
- (d) to provide and maintain the car in a raceworthy condition, together with necessary spares and replacement parts, and to make it available for the driver to drive at the races and test sessions
- (e) to enter the car for all the specified races and, subject to the driver's medical fitness, nominate the driver to drive the car, and pay the requisite fees..
- (f) to provide such personnel, equipment, lubricants tyres and tools as are necessary to enable the car to perform, properly at races and test sessions.
- (g) to provide the driver with a specified number of passes for each race. These should not be treated merely as freebies for friends and family, but a valuable opportunity to entertain sponsors and potential sponsors and to allow them to see you in action.
- (h) to provide the driver with a race suit, gloves and racing underwear.
- (i) to provide the driver with casual clothing for the use of the driver while attending races, test sessions and all other functions and promotions attended by the driver on behalf of the team.
- (i) not to express any opinion in public particularly to the media, which is likely to injure the driver's reputation.
- (j) be responsible, possibly with insurance, for cost of all accidents.



- (k) procure use of road car for driver

YOUR OBLIGATIONS

10. But, as a driver, you must obviously expect to be required to undertake obligations to the team. These are the sort of matters which your team is likely to want to cover:
 - (a) an absolute obligation to participate, to the best of your ability, in all races and test sessions. This may be qualified to enable a driver to accept, say an offer of a drive in one or more Formula One races, but this would normally subject to the driver paying the team a substantial sum of money.
 - (b) participation in promotional and advertising sessions on behalf of the team. You cannot object to this, but it would be prudent to limit it to a certain number of days per year.
 - (c) keep yourself in first class physical and mental health, and to submit to medical examination by the team's doctor so that the team is satisfied as to your health.
 - (d) not to undertake any hazardous pursuits. I normally find Prohibitions against parachuting, rock climbing and hang gliding are usual but perhaps, in the light of McLaren's experience with Juan Pablo Montoya last season, teams should be considering adding playing tennis!
 - (e) maintain all necessary medical certificates and competition licenses, to enable you to take part in all the tests and races., and pay all fines imposed by the FIA for breach of their regulations.



- (f) comply with all FIA and other regulatory requirements and attend press conferences and on the podium as required.
- (g) pay all financial penalties imposed on you, as a result of a breach of a regulations, save insofar as the breach is attributable to the fault of the team rather than the driver.
- (h) not to enter any agreement which is inconsistent with the driver's contract.
- (i) do nothing to injure the reputation of the team and attend all functions required by the team during a race weekend.
- (j) to take out third party insurance, although this is usually in the joint name of the driver and the team, both contributing towards the cost.

JURISDICTION

Assuming that you are based in this country, it would be prudent to have a provision whereby the driver contract be governed by English law, and any dispute referred to the English courts. Otherwise, you will either spend time and money finding out what a the contract means, under a law and legal system with which you are unfamiliar, or will sign a contract without full knowledge of its potential meaning and implications. Furthermore, although it may be the prejudice of an English lawyer showing through, I do not think that all courts show the impartiality of the English courts. Certainly, I would prefer to be suing Ferrari in London than in an Italian court. That said, if you are driving for a Japanese team in, say, Formula Nippon, you are likely to find it difficult to agree anything other than a Japanese jurisdiction clause.

SPONSORS



11. There is then likely to be a section dealing with sponsors – the sponsors of the driver and the sponsors of the team. Matters to be discussed are likely to include the following:
- (a) Generally, the team will want to know at the outset who your sponsors are and will then require you to obtain their approval if you wish to enter in to any other sponsorship agreements. A team is likely to refuse to allow you to obtain sponsorship from a company which is in competition with one of the team's sponsors, or where there is any conflict between the team's sponsors and your sponsors.
 - (b) which parts of the car are to be available for advertising by which sponsor.
 - (c) which sponsor's uniform you wear and when.

THE OTHER DRIVER

12. There may well be disadvantages in joining a one car team, but one advantage is that you will certainly be the number one driver. Assuming, however, that you are joining a team with more than one driver, it is important that the relationship between you and that other driver is established from the beginning. This is especially important where you are bringing significant money to your team, and there may be a temptation for the team simply to take the money and then offer you the minimum amount of racing and testing. The driver's contract should therefore address the following:
- (a) Will you receive at least equal status with the other driver?



- (b) Will you receive at least equal equipment and support from mechanics and other support staff
- (c) Will the car made available to you be built and maintained to no less a standard than the car made available to the other driver.?
- (d) Will you be entitled to carry out (if it be a two car team) at least 50% of the total testing?
- (e) Will use of the spare car be allocated on an equal basis?

If the answer to any of these questions is negative, then you need to ask further questions in order to establish the extent to which you are to be subordinate to the other driver and whether this is acceptable to you. If the team reserves the right to order you to give up places, in order to assist the other driver, you should try to ensure that your remuneration (including bonuses and share of prize money) is based on the assumption that you finished in whatever position you were lying, immediately before team orders were applied.

THE TERMINATION OF THE CONTRACT

13. You will then have to agree the term of the contract and the circumstances in which the driver's contract can and may be terminated prematurely. The following points should be considered:
 - (a) Most contracts are for a period ending either at the end the same calendar year or on the day of (or the day after) the last race of the season. In Formula One contracts for longer periods of time are common, as are options, in favour of teams, to sign



up drivers for the following season provided that the option is exercised by a particular date and, in some circumstances, the driver and/or the team has achieved certain targets (usually championship points) by a specified date. If the driver contract will or may not be renewed, you should make sure that you are free to carry out a test drive for another team, at least after the date of the last race.

- (b) The agreement will contain provision for either party to terminate the driver's contract if the other party commits a substantial breach of the driver's contract. You should consider very carefully the circumstances which would entitle the team to terminate.
- (c) The Team will probably seek to impose on you restrictions that will apply for a limited period even after the end of the contract. The terms are likely to cover confidential information and your right to employ or entice away employees or drivers of the team. Suffice it to say that the starting point is that such restrictions are void, and will only be enforceable by the Court to the extent that the Team can demonstrate that the restrictions are reasonably required for the protection of the goodwill of the team.

C. DRIVER MANAGEMENT CONTRACTS

- 14. Assuming that you have considered the points which I raised at the beginning, and have found someone who you think could manage you, the next step will be to enter into a driver management with him. (I say "him", and will continue to do so, although I see no reason why the manager should not be female.) As in the case of driver contracts, the relationship is likely to be smoother in the long term if you and he are



absolutely clear as to what you expect of each other. Any uncertainty or ambiguity is likely to lead to frustration which can threaten the all important relationship between driver and manager. So what should you require of a manager?

WHAT YOU SHOULD ASK OF THE MANAGER

15. In general terms, you should expect him to use his expertise, knowledge and connections to advise and assist you in the management and development of your career. Although no manager can guarantee to secure you a contract in Formula One, if your objective is to get into, say, Formula One, and especially if that is behind your decision to appoint a manager, it makes sense to record the fact that that is the ultimate objective. If the manager says that this is unrealistic, it is better to find that out now than some years down the line.
16. More specifically, I suggest that the manager should be responsible for the following:
 - (a) negotiating the best possible terms for you in all agreements for drives, sponsorship and endorsements.
 - (b) procuring and obtaining suitable and proper drives for you.
 - (c) procuring and obtaining sponsorship for you.
 - (d) promoting you throughout the motor sport industry, including through the media.
 - (e) developing and managing your professional career



LENGTH OF AGREEMENT

17. A key issue in negotiating a driver management contract is the duration of the Agreement. In most cases, it will be assumed that, although the income of the driver is currently modest or non-existent, that income will increase significantly and, if a contract in Formula One is obtained, hugely. Therefore, a manager will not want to enter an agreement for so short a term that, even if he gets you into Formula One or Champ Cars, he will not stand to benefit. On the other hand you must not allow the manager to insist on so long a term that it effectively “ties” you to the manager for the remainder of your driving career – indeed it may be that the Court would not uphold such a term, on the grounds that it constituted an unreasonable restraint of trade, but it would be unwise to rely on this. In deciding what an appropriate term would be, it is necessary to look at the individual circumstances, which would include your age, current earnings, current career history and prospects, and the remuneration and terms as to commission and expenses – to which I shall now turn.

REMUNERATION OF MANAGER

18. I should start by saying that, in recent years, more drivers have been paying their managers on the basis of a daily or hourly rate. The advantage of this, on both sides, is that the driver knows exactly how much he has to pay the Manager and the Manager knows what he is earning, it not being dependant on the driver’s success or lack of it. The disadvantage, from your point of view, is that the manager has no direct financial interest in helping you succeed and, crucially, you will be required to pay his fees at a time when you have no earnings. The disadvantage from the manager’s point of view is, of course, that should you indeed turn out to be the next Senna, Schumacher or Alonso, he will not stand to make mega-bucks. If you pay your



manager as and when you use him, the length of the agreement is obviously of less importance than if he receives commission, provided that the manager does not reserve to himself the exclusive right to be your manager.

19. If you want a deeper and more committed arrangement with a manager, you will probably need to enter into an agreement to pay him commission. Furthermore, the rate of commission is likely to be high, to reflect the fact that the manager's ability to earn anything is dependent upon your achieving a specified target – normally earning some, or a certain amount of, money.

20. I cannot tell you what the “going rate” for commission is. As I indicated in relation to the term of the agreement, it will depend on your particular circumstances, and upon the length of the driver management contract – the longer the term, the lower rate of commission you should be able to negotiate. Another relevant factor will be the basis on which commission will be calculated. For example, will it be based upon all monies received by you (save in respect of expenses) or will it be based also on the cash value of benefits in kind? The advantage of the latter is that it removes the suspicion of your arranging matters so that you receive an undue amount of benefits in kind, and should therefore assist you in negotiating a lower rate of commission.

CONFLICT OF INTEREST

21. You will need to check that the manager does not have a conflict of interest which would, or could, prevent him from looking after your best interests. An obvious example would be if the manager was already managing a driver, who was looking to get into the same category of racing as you were. If a drive came up, which driver's case would he put forward?. That is not to say, however, that you should avoid any



manager who already manages one or more drivers. On the contrary it could work to your advantage if he was managing a driver who was slightly more further forward in his career than you are in yours, since it could mean that as your career progressed he would have the appropriate contacts. In any event, you should insist on a clause preventing the manager taking on any other drivers, without your consent. If that is unacceptable to the team, you could, perhaps, concede that your consent could not be unreasonably withheld.

EXPENSES

22. In performing his part of the driver management contract, the manager will also incur expenses, and the question will arise as to who should bear those expenses and when. If you pay your manager on a daily or hourly rate, then you will probably have to pay his expenses (other than overhead expenses) as you go along. But if you are paying commission, I would suggest that even if you do agree to pay the manager's expenses in addition, you do not agree to do so to the extent that they exceed your earnings in the year in question. Otherwise you will be losing one of the main advantages of a commission agreement, namely that you only pay out of money which you have earned.

WHAT IF IT ALL GOES WRONG

23. You may find after a greater or lesser period of time that you wish to get out of your driver management, possibly because of personality differences with your manager, possibly because you do not think he is doing a good job for you, possibly because you feel your career would prosper better if you were under different management, possibly because you think that he is making too much money out of you and



probably for a combination of two or more of these factors. What do you do?

24. In the first place, you should consider whether your manager has failed to carry out his duties under the contract, in which case you can argue that he has himself repudiated – or terminated – the contract, thus entitling you to accept the termination and go your own way. You may even be able to claim damages against him on the basis that he has damaged your career and that you have suffered loss. As to what the damages you might expect to recover, that would have to be the subject of another talk.

25. More likely, the manager will say that you have unlawfully breached or terminated the contract and will seek to exercise his remedies against you. The good news is that, at least if English Law applies, the manager will not obtain an injunction or order requiring you to abide by the agreement. The reason for this is that the English courts will not enforce a contract for personal services, however serious or obvious the breach. The bad news, however, is that, if you are found to have terminated the agreement unlawfully, then the manager will be entitled to recover damages from you. I have already said that the subject of damages is for another day, but there are a couple points that can be usefully be made here:
 - (a) In assessing damages, a judge has to gaze at a crystal ball, and decide what your earnings (and your manager's commission) might have been, had you not terminated the agreement. When the damages are so speculative, it is the practice of the English courts to discount the figure very substantially indeed.

 - (b) If, on the other hand, by the time the matter comes before a Judge, you have indeed become the next Ayrton Senna and



amassed huge earnings, then the judge's exercise is far less speculative, and the damages figure is likely to be much higher. That said, it would be open to you to argue that, had you not changed your management, you would never have achieved such success, but there is no certainty that a lay judge will accept this.

- (c) Accordingly, a wily manager, faced with an unlawful termination by a driver, whom he believes will earn good money in the future, may decide to sit back and wait for you to be successful before making a claim against you – under English law he has 6 years from the breach in which to do so. It follows, therefore, that if you are in this position, you should do what you can to bring everything to a head as soon as you can.

- (d) But, strange as it may seem coming from a lawyer, it is my general advice that you do all you can to keep disputes of this kind away from the courts. The outcome of court proceedings is always uncertain. However, it is especially so where, as in the case of most motor sport cases, the subject matter is technical and unfamiliar to the judge whose knowledge of motor sport may well amount to having watched a couple of grand prix many years ago– perhaps one of Murray Walker's commentaries on black and white television! It is much better – more certain, cheaper, less time consuming and less damaging to relationships in what remains a very small community – to settle a dispute wherever practicable, possibly by mediation, which is greatly encouraged in this country.

LAST WORD



26. Indeed this could be said to be the message underlying this lecture – do all that you can to avoid protracted disputes and litigation. A very good first step towards this – though not a guarantee – is to ensure that you have properly drawn up agreements with your team and your manager.

27. In concluding, I should emphasise that I do not purport to have given you a comprehensive guide either to driver contracts or to driver management contracts – for that you will need to take formal legal advice – but I hope that I have provided you with some useful pointers.

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