

# yourLAW

SPRING 2007

## JECK, HARRIS & JONES, LLP

Attorneys and Counselors at Law

PHILIPPE C. JECK  
AUDREY HARRIS  
GEOFFREY L. JONES

SUITE 400, REYNOLDS PLAZA  
1061 EAST INDIANTOWN ROAD  
JUPITER, FLORIDA 33477-5143  
(561) 746-1002  
(772) 283-5004 (MARTIN COUNTY)  
FAX: (561) 747-4113

BRUCE KRATZ  
RICHARD D. PERCIC  
ANDREW SPERANZINI  
MICHELE LEWIS  
SHARON JACOBY\*

\*ADMITTED IN NY ONLY  
APPLICATION PENDING IN FL

## Rental Cars

Spring break puts many families in mind of a vacation, and rental cars are often a part of that happy picture. Still, it pays to remember that the contract the rental company asks you to sign at the counter is a legal contract. Make sure that you read and understand the terms. The contract should clearly list the base rate for the rental car, any extra fees, and the length of the rental period.

Are you guaranteed a car if you have confirmed reservations? Not necessarily. First, you must have a valid driver's license. In several states, major car rental companies have electronic links to government computers where they can quickly obtain driver records (motor vehicle reports) when someone wants to rent a car. They may refuse a rental contract if the applicant has too many violations on his or her record. Some major rental and leasing companies also require that customers have a major credit card and be at least 18 years old; some consider only credit card holders aged 25 or older. The

continued on the back page

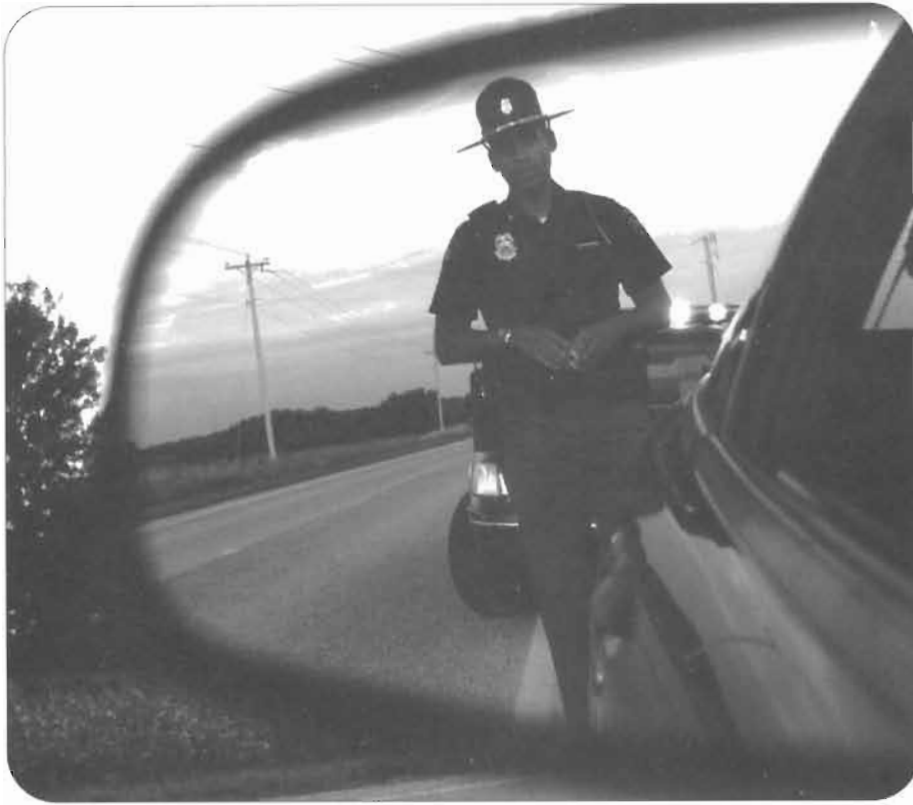


## Premarital Agreements

Weddings have always been about family and ceremony and celebration. To keep it that way, many couples are taking steps to clarify their money matters before their big day.

Sometimes one (or both) partners who want to get married also want to avoid the risk of losing assets, income, or a family business in the event of a divorce. Others, who may be marrying for a second or third time, might wish to make sure that most of their assets or personal belongings will be passed on to the children or grand-

continued on page 3



## If You're Stopped by the Police

It can happen at any time—a police car appears in your rearview mirror, red lights flashing. What now?

The first order of business is to pull over to the side of the road as soon as it is safe to do so. The police officer will pull in behind your vehicle and park.

Although there is no specific etiquette for police stops, generally you should remain in your car and wait for the officer to approach. You will be asked to show your driver's license, and possibly your vehicle registration and proof of insurance, so while you're waiting, you might take these items out of your wallet. Avoid making sudden movements and try to keep your hands in plain sight.

The officer may question you about your identity if the picture or physical description on your license doesn't seem to match you.

If an officer starts to write a ticket, there is usually nothing you can do to stop it. Sometimes, however, you may be able to point out helpful circumstances beforehand: "But officer, that 'No Left Turn' sign is facing the wrong way."

**What if the officer wants to search your car?** If you don't object to the intrusion and are certain you have absolutely nothing to hide, you can always give the officer permission to search. If you don't want the search to proceed, however, you should state clearly and politely that you do not consent.

The law governing which area of your car the police may search in which circumstances is constantly changing. Moreover, state laws sometimes offer motorists greater protections against traffic stops and searches than federal laws do. If you have a question about a search the police have conducted of your vehicle, it is best to consult a lawyer in your state.

Generally, however, it is safe to say that if the officer has lawfully stopped your vehicle and has probable cause to arrest you, he or she has the right to search you, the passenger compartment and any containers in the passenger compartment. And if the officer has probable cause to believe that evidence of a crime like drugs is present in your vehicle, he or she can search anywhere that evidence might be located, including the trunk, without a search warrant.

And the officer may be allowed to "stop and frisk" you even if you are not under arrest if the officer has a reasonable suspicion that you are involved in an illegal activity or are carrying a concealed weapon.

The law governing which parts of your car the police can search in which circumstances is constantly changing. If you have a question about a search the police have conducted of your vehicle, it is best to consult a lawyer in your state.

**What if you've had a few drinks?** Driving under the influence is a serious offense that under some circumstances can be charged as a felony with a possible prison sentence.

A police officer will stop you anytime he or she has reason to believe you are driving under the influence of drugs or alcohol. Among the driving behaviors that will cause an officer to become suspicious: driving erratically by repeatedly slowing down and then putting on a burst of speed; weaving from lane to lane; driving too slow; straddling the center lane; driving in the wrong lane.

If after approaching your car the officer smells an odor of alcohol, the officer will ask you to get out of your car and to stand beside it. After you obey the officer and get out of your car, you probably will be asked to perform a series of "field tests" or to take a "preliminary breath test."

Different police departments employ different field tests. You may be asked to touch your index finger to your nose while closing your eyes and holding your head back, or to stand for 30 seconds on one foot, or to walk an imaginary straight line, or to allow the officer to shine a flashlight into your eyes to evaluate the reaction of your pupils.

Depending on the results of the field or preliminary breath tests, you may be asked to give a blood sample, give a urine sample, or take a Breathalyzer test. Can you refuse to perform the tests? Yes. But should you? There is no categorical answer to this question.

On the one hand, unless you are positive you've only had one or two alcoholic beverages, common wisdom holds that it may be harder to convict a driver if no tests were taken. On the other hand, if you refuse to take a test, your driving license will probably be suspended automatically for a long period of time. In some states, your refusal can be used against you in court.

Clearly you are in serious trouble either way—and in serious need of a lawyer. ✎

Owners should be alert to their dogs' temperament and take appropriate precautions to protect others from harm.

## Dog Law

Spring is puppy-shopping season for many dog lovers. But it pays to remember that although dogs may be a person's best friend, they are potentially dangerous property in the eyes of the law.

Following widely publicized maulings by American Pit Bull Terriers, many communities and states that had not already done so began considering legislation that would make it easier to hold dog owners liable for their pets' first unprovoked attack on humans. Dog bite laws vary greatly from state to state, but in many states landlords can also sometimes be held liable for injuries caused by their tenants' dogs.

But isn't "every dog entitled to one bite?" In a word, no. That saying is an imprecise paraphrase of old English laws under which dog owners generally would not be held accountable for their pet's "first bite" unless the owner knew or should have known that the dog had a propensity to bite. After the first bite, the owner would be deemed to have been put on notice and could be held liable for any subsequent incidents.

Even under that rule, which may still be in effect in some states, a dog may not actually have to bite someone for the owner to be put on notice that it is *likely* to bite someone. A dog's habit of snarling and lunging at passers-by, for example, might be enough to alert the owner of the dog's dangerous nature.

And although there is considerable debate over whether an entire breed can be viewed as



"vicious," some juries may view a pit bull owner's explanations with the sort of skepticism auto insurers accord drivers of high-performance sport cars.

Well, if state laws are rendering owners liable for their dogs' first bite, what good is a guard dog? The answer is that if you would be entitled to shoot an intruder because you reasonably believed you were in imminent danger of serious harm, your dog would also be entitled to attack. On the other hand, you would not be entitled to shoot a small child who wandered onto your property; nor would you be allowed to permit your dog to attack him or her.

For situations falling between those two extremes, some states permit dog owners to defend a lawsuit by showing that their pet was provoked, that the victim was a trespasser, or that the property was posted with warning signs.

Of course, owners who "sic" their dogs on someone run the risk of being charged with assault or even murder, just as if they had deliberately shot that person.

In sum, then, owners should be alert to their dogs' temperament and take appropriate precautions to protect others from harm. In many states, simply saying "He never bit anyone before" may be akin to saying "I didn't know the gun was loaded"—a less than perfect defense to a negligence suit. ✕

### Premarital Agreements continued from page 1

A lawyer can help you make sure that the agreement is drafted properly and that both parties are making informed decisions.

children of their prior marriages rather than to their new spouse.

The law has developed a legal instrument to address these concerns—the premarital agreement. Also known as a prenuptial or antenuptial agreement, premarital agreements are usually in

the news only when a celebrity has or (as in the case of ex-Beatle Paul McCartney) fails to have one. But premarital agreements aren't just for the rich and famous. They are for anyone who would like to clarify his or her expectations and avoid uncertainties about how a divorce court might divide their property or decide spousal support if their new marriage fails.

In signing a premarital agreement, a spouse agrees to have his or her property rights and support obligations determined by the agreement rather than by the usual rules of law that a court otherwise would apply upon a divorce or death. The agreement can give the spouse more or less than state law would otherwise provide. In most states, courts divide property as the court

considers fair, and the result is less predictable: the split could be fifty-fifty or something else. If one spouse dies, courts normally follow the instructions of that person's will, but in most states the surviving spouse is entitled to one-third to one-half of the estate regardless of what the deceased spouse's will says.

If the husband and wife have signed a valid premarital agreement, that agreement will supercede the usual laws for dividing property and income upon divorce or death. In many cases, the less wealthy spouse will receive less under the premarital agreement than he or she would receive under the usual laws of divorce or wills.

continued on page 4

You should be aware that discounts are available through so many bodies—professional organizations, unions, frequent-flier clubs, etc.—that many people seldom pay the full price for their rental cars.

company might waive the age requirement if you have an account number in your name through a motor club or other association or if you have a rental account through your business.

You also should be aware that discounts are available through so many bodies—professional organizations, unions, frequent-flier clubs, etc.—that many people seldom pay the full price for their rental cars. When you pick up your car, it may be possible to negotiate for an upgrade to a better car.

But what the rental agency can give, it also can take away by charging for “extras.” Additional fees might include drop-off fees that will apply if you pick up and return the car in different locations. There may also be fuel charges, extra mileage fees, and fees for renting equipment such as child safety seats or ski racks.

The company is almost certain to offer you the Collision Damage Waiver (CDW) option. If you agree to an extra charge, the rental company will cover damage to your rental car. However, that coverage usually does not include



personal injuries or personal property damage. Before accepting this option, make sure your own automobile, medical, and homeowner's insurance policies would not already protect you in an accident involving a rented car. (Hint: If those policies don't protect you, talk to your insurance broker because this is standard coverage, although your own policy's deductible may be higher than that offered by the CDW.) Coverage outside the United States is not standard, but your credit card nevertheless may offer insurance that does apply outside the country. Finally, check with your credit card company to see if using your card to rent a car comes with any insurance benefits and find out what they are.

When you accept your rental car, carefully check it for damage and note any damage on the rental agreement before you drive off the lot. And, enjoy your vacation! ✎

In general, the premarital agreement must be in writing and signed by the parties. In most states, the parties must fully and clearly disclose in writing their income and assets to each other. This way the parties will know more about what they might be giving up. In some states, it may be possible to waive a full disclosure of income and assets, but the waiver should be done knowingly, and it is still best if each party has a general idea of the other's net worth.

Many states do not set a specific time at which a premarital agreement must be signed. Generally, however, it is better to negotiate and sign the agreement well before the wedding to show that each person has considered it thoroughly and signed it voluntarily. If the wealthier person shows the agreement to the prospective spouse only one day before the wedding, a court may later find that agreement invalid because of duress. While a last-minute premarital agreement is not automatically invalid, timing may be a significant factor in determining whether the agreement is valid.

Of course, the premarital agreement must not be the result of fraud or duress. An agreement is likely to be invalid on the basis of fraud if one person (particularly the wealthier one) deliberately misstates his or her financial condition. For example, if a man hides assets from his future wife so that she will agree to a low level of support in case of divorce, a court probably would declare the agreement invalid. Similarly, if one person exerts excessive emotional pressure on the other to sign the agreement, a court might declare the agreement to be invalid because of duress.

A lawyer can help you make sure that the agreement is drafted properly and that both parties are making informed decisions. The lawyer for the wealthier party usually prepares the initial draft of the agreement, but the less wealthy party should also ask his or her own lawyer to review the agreement. Although you do not need to have a lawyer in order to have a valid agreement, the agreement is more likely to be enforceable if each person's interests are represented and significant back-and-forth negotiations have taken place. The agreement is more likely to be challenged if one of the parties does not have an independently chosen lawyer.

In addition to ensuring that a premarital agreement is legally valid and appropriate to your goals, your attorney can also help you assess whether other instruments such as a trust might help you carry out your wishes before your wedding day. ✎