LEGAL CORNER

by Judy Gedge, Esq.

(Information provided in this column is general in nature and is not intended as a substitute for legal advice. If you have a legal problem, it is important to obtain the assistance of an experienced professional.)

Businessman X: I own and operate a small computer business and entered into a lease of retail space in January of 1994. My lease expires in 1996. My business has expanded and we have outgrown our current space. My landlord is unable to provide larger quarters for my business and I have found larger (and more desirable) space across the street. I still have eight months to go under my current lease. I don't want to limit my business growth by staying in too small quarters for another eight months and I can't afford to pay rent on both business facilities. My landlord says "a contract is a contract" and that I am bound to pay rent for the entire term no matter what happens. I am an honest businessman and am not looking to escape any liabilities that I rightfully owe but isn't there anything I can legally do in this situation?

Attorney Gedge: Your question is a very good one and one which is answered by the application of basic legal principles of contract law. Your landlord is right, a lease is a contract and "a contract is a contract." However, you landlord is wrong in saying that you are required to pay rent for the entire term no matter what happens.

By entering into a contract, such as a lease, each party is agreeing to fulfill his obligations as defined in the contract. In this instance, your landlord has agreed to allow you to occupy the leased premises throughout the lease term (and may also have agreed to provide other services like heat, utilities, parking, etc). You as the tenant are agreeing to pay the rent throughout the lease term (and probably to comply with certain operating covenants to ensure that you do not create a nuisance to the other tenants).

What happens if either of you fails to perform his obligations under the lease? The answer is simple, the breaching party is liable for damages sustained by the non breaching party. But does this mean that if you move out of the leased premises with eight months left on the lease that the landlord can sit back passively and require you to pay the rent for this entire period? No!! The landlord is obligated by law to mitigate his damages by seeking to re-rent the premises. If he can immediately re-rent the premises for a higher rent than you were paying then he has no damages and you do not owe him anything as a result of your breach of the lease. (In fact, you did him a favor and should have tried to get an early termination fee from him!) If he re-rents the premises for less than you were paying then you are liable only for the difference.

The law of contracts consists of a set of rational rules. In general, parties to a contract are obligated to fulfill the obligations undertaken in that contract. If one party fails to fulfill his obligations (i.e. "breaches" the contract) he is liable to the other party for damages resulting from that breach. The other party (the non-breaching party) is under a duty to mitigate his damages resulting from the breach.

The best approach if you decide to move out of your premises before the lease expires, is to give your landlord as much prior notice as possible so that he can re-rent the premises. You might even try to help him find a new tenant to take over the premises. In any event, you should consult with an attorney who can assist you in making an informed and rational business decision.

(Send your business-related legal questions to AOB News and we will consider them for inclusion in Attorney Judy Gedge's Legal Corner column.)

AOB News Announces Ad Rates

Beverly, MA - *AOB News* recently completed ad rate sheet is now available. To obtain a copy contact AOB at E-mail: clgaob@aol.com or phone: (508) 922-4381 or fax: (508) 922-4810 or write to: AOB, PO Box 370, Beverly, MA 01915.

Ripken's Summer Reading . .
Atlas Shrugged & The Fountainhead

Baltimore, Maryland - Baseball great Cal Ripken Jr. of the Baltimore Orioles recently finished reading *Atlas Shrugged* and is currently reading *The Fountainhead* according to a story in the August 7th issue of *Sports Illustrated.* Ripken, who is due to break Lou Gehig's record of 2,130 consecutive baseball games, demands concentration after games and when travelling on planes as he reads Ayn Rand's masterpieces.

Microsoft's New Competitor

by Mark Coppock

Microsoft is not the perfect company. This is an appropriate place to begin, because in exploring the current anti-Microsoft fervor it is important to avoid the trap of glorifying Microsoft and making the company into something it is not. Microsoft has certainly made mistakes, both in business and in ethics, and though Microsoft is not alone in the software industry in making these particular mistakes they render the company something less than perfect.

At the same time, it is equally important to recognize that although Microsoft is not the perfect company, it comes as close as perhaps any company can in today's mixed economy and philosophical environment. That Microsoft has achieved what it has is reason enough to defend it, and given the depth of the attacks against it there is plenty to defend it from.

In considering the attacks on Microsoft, therefore, both in the industry press and as orchestrated by various Microsoft competitors and government agencies, it is important to first consider Microsoft as a company. In considering Microsoft as a company, however, it is important to first consider Bill Gates, Microsoft Chairman and majority shareholder. Without considering Bill Gates, one might fail to understand how a such a young company could so quickly dominate one of the fastest growing and most important industries, and how a company with a mere $5 billion in annual sales (albeit one with over $1 billion in gross profits) could be considered such a threat to vastly larger competitors such as IBM and indeed to the personal computer industry as a whole.

The most important aspect of Bill Gates in understanding Microsoft's success is not his talent, although he certainly is an extremely talented individual, nor is it his remarkable intelligence. It is also not his philosophy, because he is in many (likely unintentional) ways a pragmatist and an apologist--two traits that thus far have rendered Microsoft unable to completely defend itself from the attacks. Rather, one must first consider Bill Gates' drive, his motivation, his dedication and his long-term approach to accomplishing goals that would be overwhelming to many of today's business people. **It is this drive that pushed Microsoft to the forefront of the software industry and that, not coincidentally, has brought against Microsoft the most vehement attacks.**

Gates appears as a man driven from a young age by a love for technology and a more powerful desire to translate this love into real products. In this productive spirit, Bill Gates differed the most from Paul Allen, who cofounded Microsoft and since has gone on to delve into more abstract and less profitable pursuits. In his **complete dedication to work**, which includes time for only a handful of short vacations that are themselves learning experiences, Gates differs the most from other professionals in the software industry. Despite their own varying levels of intelligence, most in the software industry simply have not worked 80 hour weeks for over 20 years in pursuit of such a singular achievement.

Furthermore, Microsoft's corporate culture reflects Gates' motivation and dedication to work, with young programmers seeking to emulate Gates in working long hours without break, in literally living on the Microsoft campus until the job is done--and sometimes thereafter. No other major software manufacturer can boast of the kind of company-wide dedication to a company's success as can Microsoft. **In its early days, Microsoft succeeded because Bill Gates invested everything he had in the company. Today, it continues to succeed because every employee does so.** Herein, of course, lies the rub.

Many who attack Microsoft fail to recognize the powerful entrepreneurial spirit that has driven the company from the beginning. Others, in even more despicable fashion, do recognize it, and for whatever reasons of jealousy or altruistic fervor consider it a threat to other companies that cannot muster the same kind of drive. The attacks therefore ignore or even play upon the profound difference between Microsoft and other software companies, hiding **an ignorance of or a disdain for the most productive elements of the rational human being.**

Bill Gates and Microsoft are therefore attacked as either "monopolistic"-- today's **economic voodoo** word for simply too successful--or predatory--today's subjectivist word for that Reardenesque dedication to productive effort that Ayn Rand described so clearly in *Atlas Shrugged*. **Those who fail to recognize the**