

'Servant, indeed!': Bilbo Baggins, independent contractor

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While, in J. R. R. Tolkien's *The Hobbit*, Bilbo Baggins was hired by Thorin and Company under a contract, this did not mean that he was their employee, or owed any allegiance to Thorin Oakenshield. Rather, he was self-employed, or an independent contractor. After giving some background, I will show that this was a crucial element of the story, giving Bilbo the independence to freely pick the Arkenstone as his reward, then to freely give it away to try and make peace. This independence was reinforced by his wealth and social standing.

An advertisement and a contract:

It all began with an advertisement. Gandalf, at the book's beginning, scratched 'a queer sign' on Bilbo's door. (*The Hobbit* 18) Gloom later explained that this mark was 'Burglar wants a good job, plenty of Excitement and reasonable Reward, that's how it is usually read. You can say *Expert Treasure-hunter* instead of *Burglar* if you like'. (28)

Next was the contract itself. A letter to Bilbo, signed by 'Thorin & Co. [mpany]', contained this most crucial part:

Terms: cash on delivery, up to and not exceeding one fourteenth of total profits (if any); all travelling expenses guaranteed in any event; funeral expenses to be defrayed by us or our representatives, if occasion arises and the matter is not otherwise arranged for. (38)

Much later, when the Lonely Mountain was reached, and the secret entrance found, Thorin pointed out about Bilbo, whom he called 'a good companion on our long road', that 'now is the time for him [Bilbo] to perform the service for which he was included in our Company; now is the time for him to earn his Reward'. Bilbo was a little indignant; because he had, at great risk to himself, already rescued the dwarves from the spiders and the Elvenking's cells, acting as their leader: 'I have got you out of two messes already, which were *hardly in the original bargain*, so that I am, I think, *already owed some reward*'. (203) (My italics)

After Bilbo, using his magic ring, went down alone to the hall, brought a cup back, and listened to the congratulations of the dwarves, all then had to hide from an awake and very angry Smaug. The dwarves 'began to grumble at the hobbit', blaming him for what had happened. Bilbo was angry at this, pointing out that he had done exactly what he had agreed to do: 'I was *not engaged to kill dragons*, that is warrior's work, *but to steal treasure*. I made the best beginning I could. Did you expect me to trot back with the whole hoard of Thror on my back?' (210) (My italics)

After going down alone a second time, talking to Smaug, and getting out alive, Bilbo was made the following promise by Thorin: 'you shall choose your own fourteenth [share], as soon as we have anything to divide'. (219) With this, Thorin added a new term to the agreement, in Bilbo's favour, allowing him to pick *any part of the treasure* as his agreed share.

After Smaug was found to be gone, Bilbo found the Arkenstone and hid it. He justified his decision by saying 'They [the dwarves] did say I could pick and choose my own share; and I think I would choose this, if they took all the rest!' But he did have 'an uncomfortable feeling that the picking and choosing had not been really meant' to include that gem, and that 'trouble would yet come of it'. (225) Later, however, he gave away his share, to resolve the conflict with the Lake-men and Wood-elves. He used the ring to slip into their camp; and he was revealed by his indignant reply to some elves, who called him 'that queer little creature that is said to be their servant'. Bilbo snorted 'Servant, indeed!' in reply, took his ring off, and called himself the 'companion of Thorin'. (253-4) He also later called himself the 'companion of Thorin', after the Battle of Five Armies. (269)

Bilbo, in discussing things with Bard and the Elvenking, in 'his best business manner', pointed out that he had an interest in the matter, taking out of a jacket pocket 'crumpled and much folded, Thorin's letter' to him. He pointed out that it was a fourteenth share 'in the *profits*, mind you', saying that he was 'only too ready to consider all your claims carefully, and deduct what is right from the total before putting in my own claim'. (Bilbo's italics)

Bilbo gave Bard and the Elvenking the Arkenstone, which will 'aid you in your bargaining'. When asked by Bard how it was his to give, Bilbo replied that he was 'willing to let it stand against all my claim, . . . I may be a burglar – or so they say: personally I never really felt like one – but I am an honest one, I hope, more or less'. When the Elvenking advised Bilbo to stay with them, Bilbo refused, on the grounds that he didn't think he 'ought to leave my friends like this, after all we have gone through together'. He had also promised to wake Bombur at midnight! (255-6) When Thorin later found what Bilbo had done, he was going to throw the latter down from a wall, before being dissuaded by Gandalf, and then abused him. Bilbo pointed out that Thorin said 'that I might choose my *own* fourteenth share! . . . Take it that I have disposed of my share as I wished, and let it go at that!' (My italics)

Thorin, after saying that he was 'betrayed', said that to redeem the Arkenstone, 'I will give one fourteenth share of the hoard in silver and gold, setting aside the gems'; but the sting in the tail was that this share 'shall be accounted the



promised share of this traitor [Bilbo], and with that reward he shall depart, and you can divide it as you will'. (259-60)

English law and an interesting New Zealand case:

The legal basis for employment in English law remains the contract of employment between the employer and the employee. This began from the 1870s on, when employer and employee were put on an equal legal footing. But because of the large and growing discrepancy of bargaining power between employer and employee, a large amount of legislative intervention in favour of the latter has taken place up to the present day.

Halsbury's Laws of England points out that while employment law 'originated in what was termed the law of master and servant', the modern terminology is that of 'employer' and 'employee', while 'contract of employment' is used rather than the older 'contract of service'. A person in business on his own is an 'independent contractor' or a 'self employed person', who traditionally works under a 'contract for services'. (*Halsbury* 17)

Because of the intervention in favour of employees, employers have tried to classify many as independent contractors or self employed, in order to lessen their legal obligations. Courts have therefore looked behind the written agreement, to see if what actually happens corresponds to it.

At the time John Rateliff estimated *The Hobbit* was written (1930-33), (Rateliff xi-xx) the main test English courts used to calculate whether a person was an employee or self employed was the 'control' test. (Sargeant and Lewis 20-1) If one party exercised a sufficient degree of control over a second, the relationship of employer and employee existed.

This can be seen in the case of *Walker v. The Crystal Palace Football Club Ltd.* [1910] 1 KB 87, where this test was used to determine that a professional football player was an employee.

Due to the changing nature of employment, the control test has ceased to be the only one used by the courts in England and elsewhere, others being used as well, including the integration, economic reality, multiple factor and mutuality of obligation tests. (21-5)

To jump forward, an interesting example can be seen in the New Zealand Supreme Court case of *James Bryson v. Three Foot Six Ltd.* [2005] NZSC 34. Mr. Bryson did work for that company in its miniatures unit, which was filming special effects for Peter Jackson's *The Lord of the Rings* film project. When made redundant, he took a case for unfair dismissal; but as he could not do so unless he had been an employee, the case centred around whether he was an employee or independent contractor, the latter claimed by the firm. Looking at the facts, and applying a number of tests, including the control one, and taking into account the fact that he was not given a written contract when he began work, the court found that he was an employee.

The Bryson case was used as a reason for the then New Zealand government to bring in a statute, the Employment Relations (Film Production Work) Amendment Act 2010, nicknamed the 'Hobbit Law', which came into force on 30th October 2010. Section 4 of this act amended a major piece of employment legislation, the Employment Relations Act 2000, by having section 6 of the older act's definition of 'employee' not include persons involved in film production work, unless any such person is 'a party to, or covered by, a

written employment agreement that provides that the person is an employee.’

The Minister of Labour introducing the legislation, Kate Wilkinson, claimed in the parliamentary debate about it on 28th October 2010 that it would ‘provide film producers with the confidence they need to make movies in New Zealand’, including the two [later increased to three] *Hobbit* films, by introducing ‘clarity and certainty at the outset’ regarding people employed in film production work. Disputes about the employment status of people ‘creates uncertainty for film producers’, she said. (*Hansard* 14940)

In support of his colleague, the Minister for Economic Development, Gerry Brownlee, said that the *Bryson* judgement ‘proved to be very, very expensive for the production company’, something the bill was designed to deal with, to ‘make it abundantly clear that if someone is employed—or, should I say, contracted—for services on these films, and others, then that person will be treated as a contractor with no right to go and have that status questioned.’ (14944)

Bilbo an independent contractor:

I mention this New Zealand case and the resulting ‘Hobbit Law’, as well as the English law on the test of who is self employed or not; because it is my belief that Bilbo Baggins was an independent contractor. If one looks at the control test used when *The Hobbit* was being written, the dwarves and Thorin did not treat Bilbo as an employee. Indeed, Bilbo on two occasions led the dwarves, first in escaping from the spiders, and second in escaping from the Elvenking’s cells. Thorin later referred to Bilbo as their ‘companion’; and when he went into the Mountain, none of the dwarves accompanied him to confront Smaug, he being seen as sufficiently professional to do the job himself, using his own equipment, a magic ring found by him. Also, when the elves later referred to Bilbo as the ‘servant’ of the dwarves, the old term for ‘employee’, Bilbo indignantly replied, ‘Servant, indeed!’ He also referred to himself twice as the ‘companion’ of Thorin.

As Bilbo is not an employee, and owes no allegiance to Thorin, he is not constrained by any feelings of loyalty felt by some of the dwarves, who might have otherwise been critical of Thorin, but who might feel that such criticism was not proper, when their newly restored kingdom was under threat. Bilbo, however, had no such loyalty; and was free to go to Bard and the Elvenking to give away his reward. When he did this, he was legally free to stay; because, the contract had been completed, he having done the work he was hired to do, and taken his specified reward. He only returned to the dwarves out of a sense of moral obligation.

Bilbo’s wealth and social standing:

Not only did Bilbo have the legal freedom to make his deal, he also had the financial and social freedom to do so. In financial terms, Bilbo did not need any of the treasure. After *The Hobbit* was published, Tolkien wrote a letter to *The Observer*, published by it on 20th February 1938, in which he called Bilbo ‘a prosperous, well-fed young bachelor

of independent means’. (*Letters* 25) This is no surprise to readers of the book; because Bag-End is described in very extensive terms, including having ‘whole rooms devoted to clothes’, which assumes that Bilbo must possess a considerable income to keep up such a premises.

The question then arises about the source of this considerable income, which leads to the matter of Bilbo’s social standing. The Baggins family had, according to the book, ‘lived in the neighbourhood of The Hill for time out of mind’. They were considered ‘very respectable’ not just because most were rich, but ‘also because they never had any adventures or did anything unexpected: you could tell what a Baggins would say on any question without the bother of asking him’. By contrast, Bilbo’s mother’s relatives, the Tooks, while ‘undoubtedly richer’ were ‘not as respectable’, due to the fact that ‘once in a while members of the Took-clan would go and have adventures’. (*The Hobbit* 13-4)

My own view is that the Baggins family are a particular form of ‘gentry’: landowners who live off the rents of tenants of their lands, in English terms a class of people below the nobility, though still part of the upper class. While not as rich as the nobility, though in many cases related to them, many of such gentry would feel so long established and confident of themselves that they do not feel inferior, quite the contrary. The Baggins family is held in higher social regard than the Took family, despite the latter being richer, because the former is respectable, and does not get involved in adventures.

Conclusion:

Bilbo Baggins, I believe, is self employed, not an independent contractor, in business for himself, not an employee of Thorin and Company. This was crucial to the story; because not only did this leave him free to take the Arkenstone as the reward for his services; he was also free to give it away to try and make peace. While he was then free from his contract, having done the work and been paid, he decided to return to the dwarves out of a sense of moral obligation. This legal freedom was, I believe, reinforced by his wealth and social standing in the Shire.

Works cited

- Halsbury’s Laws of England*. Fifth Edition. Vol. 39. London: Lexis Nexis, 2009.
- New Zealand Parliamentary Debates (Hansard), First Session, Forty-ninth Parliament, 2008-10*. Vol. 668. Wellington, New Zealand: House of Representatives, 2010. Rateliff, John D. *The History of the Hobbit*. Vol. 1. London: HarperCollins Publishers, 2007.
- Sargeant, Malcolm and David Lewis, *Employment Law*. Fifth Edition. Harlow, Essex: Pearson Education Ltd., 2010. Tolkien, J. R. R. *The Hobbit*. London: HarperCollins Publishers, 1991.
- Tolkien, J. R. R. *The Letters of J. R. R. Tolkien*. London: HarperCollins Publishers, 1995.

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