

COM6655 Professional Issues

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Week 5 Tutorial

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Tutorial: contracts

- Work through the sheet.
- We will follow up on concepts introduced here in the following lecture.

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SLIDE 2

Questions for the customer (1/4)

What if the software contains bugs and miscalculates the pay?

What if the computer breaks down in the middle of a wages run?

- Breach of warranty
- They will want to claim for loss and inconvenience
- Software company might want indemnity insurance to cover them for this

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SLIDE 3

Questions for the customer (2/4)

What if the programs run too slowly to be of any practical use?

- Need to state in the contract how quickly the software will perform tasks concerned
- Not just what it will do, but how quickly it will do it
- Old computer system – important to benchmark since the developer could argue they just need to upgrade their system.

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SLIDE 4

Questions for the customer (3/4)

What if the software developer goes into liquidation?

- Make an Escrow arrangement
- Ensure that Escrow organisation receives software updates
- A clear statement of what conditions must be met in order for the customer to gain access to the source code
- Liability of the Escrow organisation – what if it loses the source code?

Questions for the customer (4/4)

How is the software developer trying to exclude liability? Can they do this?

- The software developer will probably try to limit or exclude liability
- Will probably try to limit to the cost of the software
- Very strong exclusion clauses look bad in a contract!
- Better solution might be for software developer to take out indemnity insurance and to use this as the basis for limiting their liability
- Note that Unfair Contract Terms Act places constraints on what can be excluded
- Liability for death or personal injury cannot be excluded at all

Questions for the software developer (1/5)

Is there an adequate specification?

- This is a fast-moving company, likely to expand – we can expect specification to change
- Danger of being over-optimistic about what can be delivered in the time
- Developer cannot know all the ins and outs of the client's business

Questions for the software developer (2/5)

What if the client copies and distributes the software?

- Copyright law applies anyway – but good to have a contract term about distribution of the software
- This will be in the licence agreement

Questions for the software developer (3/5)

Should you insist on an exclusive or non-exclusive licence?

- Depends on the fee and future plans
- If the software is very dedicated to the client then it may not be much use to sell it on
- Expect fee for an exclusive licence to be higher
- Wages and pay slips is quite general – I would be hoping for non-exclusive licence so that something similar can be sold to others.

Questions for the software developer (4/5)

What should be your obligation to maintain the software?

- You'll want to limit that. Bug fixes for a set period of time and then a separate maintenance contract.

Questions for the software developer (5/5)

How can you protect the confidentiality of special coding techniques used in the software?

- Include a term that strengthens the common law duty of confidence
- The client may also want to prevent details of their business being divulged
- So a two-way duty in respect of confidentiality is therefore appropriate