

COM6655 Professional Issues Autumn 2021

Tutorial for week 5 (25th October): Software contracts

The objectives of this tutorial are to (i) provide a scenario for testing your knowledge of contract law (ii) to give you experience in negotiating a contract.

Question 1

A company is expanding and needs some software to calculate wages and print pay slips. The company has quite an old computer system, for which there is no existing software to do the task. Therefore, the company decides to contract a software house to develop some bespoke code. Currently, the company has about 300 employees, but this is likely to increase in the next year or so.

Divide your breakout group into two teams, one representing the software house and the other representing the customer. Negotiate a contract. You do not have to write each clause in detail, but you should identify the clauses that are required and note any points in the clause of particular importance.

Make sure that your contract terms cover each of the following questions:

Questions for the customer:

- What if the software contains bugs and miscalculates the pay?
- What if the computer breaks down in the middle of a wages run?
- What if the programs run too slowly to be of any practical use?
- What if the software developer goes into liquidation?
- How is the software developer trying to exclude their liability? Can they do this?

Questions for the software developer:

- Is there an adequate specification?
- What if the client copies and distributes the software?
- Should you insist on an exclusive or non-exclusive licence?
- What should be your obligation to maintain the software?
- How can you protect the confidentiality of special coding techniques used in the software?

Question 2

Smith Trading has asked MicroGrot Software to develop and deliver a new accounting application. A contract was made, which contained a detailed specification. When the software was delivered, it was found to be slightly slower than allowed by the benchmark tests stated in the specification. Also, one important feature is missing, in that the software will not produce annual VAT summary reports as detailed in the specification. The total price is £85,000, 10% of which was payable upon commencement of the work. The time for delivery is six months.

Smith refuses to accept the program and has withheld the final payment of £76,500. MicroGrot presses for more time to add the VAT report and argues that the speed of the software is so close to that specified as to be of no consequence.

Finally, MicroGrot sues Smith for wrongful repudiation of the contract, and seeks damages equivalent to the outstanding sum plus interest and other direct costs. Smith submits a defence and counterclaim based on the shortcomings of the program, and also claims the return of the £8,500 already paid plus £12,500 in wasted management time.

At the court action, the judge holds that MicroGrot is guilty of a breach of condition and that Smith's repudiation was lawful. He awards Smith £21,000 plus costs, leaving MicroGrot to pick up the bill of £31,000 for their own legal costs.

Q. Is this a satisfactory result from the point of view of each party?

The contract between Smith and MicroGrot contains a term providing for alternative dispute resolution, and you are appointed as an independent mediator.

Q. What do you suggest as a solution to this problem?

Q. Your fee is £2500. Who will pay it?