

Week 5 Tutorial Solution

Question 1

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?

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

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.

What if the software developer goes into liquidation?

- Make an Escrow arrangement, e.g. with the National Computing Centre.
- 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?

How is the software developer trying to exclude his liability? Can he 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:

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

What if the client copies and distributes the software?

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

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.

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.

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

- Source code only available through Escrow
- 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

Question 2

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

Neither.

Smith does not have the program it wanted. It must now commission another software house, and wait another six months. This could seriously handicap their business.

MicroGrot is equally unhappy that six months work has been wasted, and it has a bill for £52,000.

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

MicroGrot should be given a month to complete the software so it is capable of producing VAT reports.

Smith will retain 5% of the total price, which it will put towards additional memory and faster disks for its computers, which will bring the speed of the application up to the stated benchmark.

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

They should share the cost.