

Creation of a contract



Contract Risk and Opportunities David Ortiz University of Phoenix LAW531 Tuesday, May 8, 2012 Prof. Lirio Bernal-Sanchez Contract Risk and Opportunities This report will serve as a review of the legal risks and opportunities that are present at the moment of a business formalize contracts.

The report is based in a contract simulation of Info Build a software company and Majestic Hotels to establish an electronic reservation system. A contract is an agreement that is enforceable by a court of law or equity . A simple and widely recognized definition of contract is provided by the Restatement (Second) of Contracts: ??? A contract is a promise or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes a duty.??? 3 An express contract is stated in oral or written words. Most personal and business contracts are express contracts. A contract that is oral or written is an express contract. Implied-in-fact contracts are implied from the conduct of the parties. A contract is a promise between two or more parties to do or refrain from doing an act, it creates obligations which are enforceable in a court of law.

(Wikipedia) It is very important to read and understand a contract before agreeing to its term. During the negotiation process one can make changes or add but once the contract is signed and agreed upon the deal is sealed. The Contract Creation and Management simulation serves to highlight the importance of reviewing on existing or new business contract in order to avoid misunderstanding. It is best to review and study the contract before reaching an agreement to make sure the contract is beneficial for both parties and for the success of the contract.

A contract is a promise between two or more parties creating obligations enforceable by law (Jennings 2006). Span Systems has a one year contract with Citizen-Schwartz AG, a German bank to develop transaction software for the banking giant. AG has become dissatisfied the quality and expresses concerns regarding the late delivery schedule. AG's most influential negotiator has threatened to rescind the contract on the basis of performance breaches. The contract between AG and Span contained clauses under performance, change control, communication, and reporting project structure. Within each section legal issues with corresponding legal principles arose. Identifying risks, how to avoid such risks, minimize liability and create opportunities are essential elements for businesses to be aware and for managers to operationalize.

PerformanceThe principle of standard performance within a contract details requirements for complete performance. Considering reasonable acceptable levels determines performance (Jennings 2006). A contract between Span and AG contains concurrent conditions and contemporaneous conditions. AG provides changing information to Span to develop software for their particular requirements, but Span is experiencing difficulty meeting the timelines and quality due to constant changes. After eight months AG contends Span's deliverables are behind schedule and quality issues have arisen.

The contract states Span will incorporate ordinary changes, but qualifying information is not present. As with many long term projects involving developing or building, complex execution can result in errors that creates performance issues. Many of the legal risks identified in the scenario are a

result of reduced clarity in words and phrasing. Failure in performance may, in fact, result from a contract is an exchange of promises between two or more parties to do or refrain from doing an act, which is enforceable in a court of law. (Wikipedia) It is very important to read and understand a contract before agreeing to its term. During the negotiation process one can make changes or add but once the contract is signed and agreed upon the deal is sealed. The Contract Creation and Management simulation serves to highlight the importance of reviewing on existing or new business contract in order to avoid misunderstanding.

It is best to review and study the contract before reaching an agreement to make sure the contract is beneficial for both parties and for the success of the contract. Citizen-Schwarz AG (C-S) and Span System signed and agreed to a one year contract worth six million dollars; however, the contract agreement has not been going as expected. Span System has not been delivering as scheduled and their quality is poor.

Leon Ther, Citizen-Schwarz AG biggest influential negotiator threatened the rescission of our contract based on what he considered to be unacceptable quality of deliverables and schedule slips. Thankfully, after much negotiating Span System was able to amend some of the contract clauses and come to terms of agreement. Neither Span nor Citizen-Schwarz AG wanted to see rescission of the contract nor did they want to settle the issue in court. Both organizations wanted to avoid the high cost of settling the dispute in court. Therefore, Span??™'s manager decided to write this memo to Citizen-Schwarz AG in order to discuss the risks that arose from this issue and

address ways the issue can be resolved and avoid or minimize liabilities in the future.

The most critical part of a contract is the part where one party makes an offer for an arrangement and the other accepts, under the terms. This agreement is called a concurrence of wills. Span and Citizen-Schwarz AG came to this agreement by ambiguities still present in the contract. In the future all contract negotiators must review and revise the contract wording in order to avoid ambiguous language, like the one found on the current contract. Due to the current issue, both organizations have realized the importance of having a clear contract and understanding it. It is essential to clearly understand the contract in order for it to be successful. The original contract had several clauses that laid out what would constitute a breach.

The first breach of contract was under substantial performance of contract. Basically, neither Span nor Citizen-Schwarz AG could cancel the contract after 50% of the work was done. Therefore, when Ther threatened rescission Span had already completed over 50% of the programming, the threat was invalid.

However, Span realized that the focus should be to help Citizen-Schwarz AG achieve its target; therefore, improvement will be provided. The second breach of contract was under Internal Escalation Procedure for disputes. Ther agreed to not following the escalation provisions and apologized. But Span still needs to improve their schedule and quality issues. Span agreed, and they will work on a plan to better schedules and delivery quality. Lastly, a

Breach of Contract under Communication and Reporting. However, They do not agree on the breach.

Span agreed to concentrate on addressing the schedule slips and delivery quality in becoming effective. In order to minimize liability Span and Citizen-Schwarz AG agreed to take the following measures. Citizen-Schwarz AG Project Manager will be appointed to manage quality control. The Project Manager will monitor defect and participate in determine remedies.

Secondly, Span will upload daily project update for authorized Citizen-Schwarz AG personnel to view. This will maintain Citizen-Schwarz AG in the loop and Span's progress. Lastly, in order to improve communication Span will invite Citizen-Schwarz AG Project Manager to serve a quality control capacity; this will expedite the flow of communication. Direct client contact will improve the communication and help both organizations. At the end the contract clause changes were as followed. In the performance area Citizen-Schwarz AG may terminate this agreement in whole or in part, for any reason upon 7 days prior to written notice, Span System shall be entitled to payment for the percent of services satisfactorily completed as of the date of termination or cancellation, Citizen-Schwarz AG shall be entitled to receive all work products in progress or completed as of the date of termination or cancellation, subject to clearance of all payments due to Span Systems, the acceptance testing period shall be 30 calendar days starting from the day after the Software is installed and Span Systems certifies that the Software is ready for acceptance testing. Citizen-Schwarz AG will review all pertinent data and shall maintain appropriate daily records to ascertain whether the standard of performance has been met, and Citizen-Schwarz AG will closely

monitor the defect removal efficiency of Span System in a month from the date of renegotiation. In addition, a change control board comprised of managers from both C-S and Span will determine the impact of change.

Furthermore, in order to maintain communication and updated reporting Citizen-Schwarz AG will pay a Project Manager to track all projects. Finally, in order to meet software delivery schedule Span System will scale up the team size by at least 10 programmers within ten days of the effective date of this contract. All of the above changes should help resolve the problem and maintain both organization at peace and working successfully.

In conclusion, reviewing and understanding a contract prior to making an agreement is critical for the success of the contract. Luckily, Citizen-Schwarz AG and Span System were able to settle their dispute without going to court, had they not come to an agreement much time and money would have been wasted on this issue. Contracts are essential and make things easy and clear; however, if you are not careful you can cause a lot of damage to the organization.

Not the paper youre looking for Order A Custom EssayIdentify present Legal Issues and note the legal principles(from readings)contract cleaninnesInterpretation of ContractsClarity of purposeReview before completing the contractContract phases to avoid disputesDevelop negotiation positionPerformance of the contractAmend an existing contractMake and write specifics about changes * Identify specific risks and opportunities a Puerto Rican company in a similar situation may face when doing business. Evaluate measures a manager may take to avoid those risks,

minimize liabilities, and benefit from the opportunities found in the simulation. * Identify specific legal principles each risk or opportunity is governed by and relate the specific measures managers may take to minimize legal risk or realize legal opportunities to these principles. * Evaluate the alternatives that were presented to resolve the problems in the simulation.

Explain which approach is best for Puerto Rican businesses and why.

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Self-correction mechanisms in the regulatory system. Harvard Journal of Law & Public Policy, 19(3), 661. TITULO DIEZ Comercio Subtitulo 3

Reglamentacion de los Negocios Capitulo 312. Ley de Transacciones Electronicas 10 L. P.

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