

Law 421 case scenario: big time toymaker.

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Case Scenario: Big Time Toymaker. The parties did have a contract for exclusive negotiation rights as stated in the case scenario. Big Time Toymaker (BTT) paid Chou \$25, 000 for a 90-day period of exclusivity, thus prohibiting Chou from soliciting or entertaining offers from other parties. The agreement stipulated that unless it was written no distribution contract existed. Prior to the 90-days elapsing, the parties reached an oral agreement and BTT sent Chou an e-mail titled " Strat Deal" covering the key terms of the distribution agreement reaffirming the oral agreement.

This e-mail does not constitute a contract for several reasons. First, this was part of the negotiation process and Chou failed to draft the contract to " memorialize" the deal. Second, the requirement of a signature is in compliance with the statute of frauds. This is the one element uniformly required to compel a court to enforce. Factors that weigh in for Chou are first, the e-mail sent by BTT's manager clearly shows delineates the terms of the distribution agreement. Second, BTT's request for the draft contract even after a month had elapsed.

These actions go to show that BTT intended to continue the deal even after a month. Factors that weigh against are first, Chou failed to send the draft contract as he stated. Second, Chou assumed the e-mail sent by BTT took the place of a written distribution agreement contract. Third, he failed to follow up and get an agreement in writing signed. BTT's e-mail to Chou caused further investigation in the analysis of the first two questions. First, the case scenario states the e-mail was sent by " a BTT manager," not the chief executive officer or the like.

The e-mail on its own is not sufficient to constitute “ signed writings” within the meaning of Statute of Frauds. Last, the e-mail lacked the typed name of the person at BTT authorized to make the deal. BTT could not back out of the contract under the doctrine of mistake. Under this doctrine there has to be a misunderstanding that any of the parties erroneously believe that certain facts is true, or a common mistake shared by both parties (“ Different Types of Lawyer,” 2011). In this case no key misunderstanding existed and common mistake made that was operative.

According to Melvin (2011), consideration is most often when the offeror holds an offer open for a period. For arguments sake, and this e-mail constituted an agreement, the consideration would be the one month from Chou received the e-mail and the fax request from BTT. There are four remedies for breach of contract under UCC Article 2. Categorized as remedies of law; the first is compensatory damages, which cover direct losses and costs. Compensatory damages are an attempt to put the non-breaching party in the same position it would have been had they not suffered the breach.

Second are consequential damages, which are to cover indirect and foreseeable losses not covered by compensatory damages. Third is restitution to prevent the unjust enrichment of one party in the agreement. Fourth, liquidated damages are provisions agreed to by the parties when drawing up the contract in the event of a default or breach of contract by either party (Melvin, 2011). Warranties come in two forms, either expressed or implied. The difference in the two is expressed warranties are stated and

implied warranties are terms not discussed by the parties yet covered by the UCC.

Examples of expressed warranties are often supplied with new automobiles or cell phones sold with lengthy, written, and specific warranties. An example of an implied warranty would be a mason who has become accustomed to the quality of brick his supplier has been providing. A violation of the implied warranty would be the consistency of the bricks changes, and the quality is not as good. Conclusion In conclusion, it is imperative that even if some company is willing to embark on an exclusive negotiation agreement does not signify 100% commitment.

Both parties need to perform as agreed upon or an unpredictable outcome is possible, even litigation. The key to any relationship in business is communication throughout the process of a deal. Amicable negotiations are speedier and preferable to remedies at law. References Different Types of Lawyer. (2011). Retrieved from <http://different-types-of-lawyers.blogspot.com/2011/12/contract-law-doctrine-of-mistake.html> Melvin, S. P. (2011). *The Legal Environment of Business*. New York, New York: McGraw Hill/Irwin.