

A study on the contract laws and business overview of acme fireworks

[Law](#), [Contract Law](#)



The business world is complex and multifaceted. As globalization takes place and modern technology revolutionizes the way that organizations communicate and conduct operations, new issues arise in the governing of these companies. (Bainbridge, 2014) This is where business law steps in. While capitalism in the United States has fostered this idea of a free, largely laissez-faire market, the truth is that some guiding law is needed to protect businesses, their employees, and the consumers that patronize these businesses. With this in mind, lawmakers have had to balance two very competing needs, the need to regulate businesses to behave ethically in all business relationships (business-to-business, business-to-consumer, etc.), and the need to allow these businesses to operate in a competitive, innovation-driven, and largely free market. (Orts, 2013) While some say the current business law climate has struck that perfect balance, there are critics on both sides who say that the law is either too restrictive, or not strict enough. (Orts, 2013) The following essay will examine a scenario that the company ACME fireworks has encountered recently. The paper will examine what law governs ACME's contract, whether an enforceable contract is in existence, the potential liability ACME faces in the event of a disaster, the various employment types ACME could use, and finally what type of entity ACME should operate as for their situation.

Contract Law

Contracts in the United States can be governed either by common law or the Uniform Commercial Code (or UCC). (Field and Smith, 2014) Determining which law governs a contract largely depends on the contract's subject matter itself. If the contract applies to the sale of goods and/or securities, the

UCC will govern its specific guidelines. (Field and Smith, 2014) However, for contracts which concern things like services, intangible assets, insurance, and employment, common law is the applicable governing authority. (Field and Smith, 2014)

The situation at hand becomes somewhat confusing, then, because the contract between ACME and the businesses concerns a fireworks display. This not only deals with tangible goods, such as the fireworks themselves, but also the service of setting up and detonating of the fireworks, not to mention the skilled labor and insurance required for the display. This means that there are elements which could apply to either a UCC-governed or a common law-governed contract. As such, it is necessary to take a closer look at the circumstances themselves to determine what the contract falls under.

When a contract applies to both goods and services, such as this one, the dominant element in the contract determines whether the UCC or common law applies. (Field and Smith, 2014) While it is true that some of the cost is for the fireworks themselves, the majority of the cost concerns the skilled labor, insurance, and service of setting off the fireworks. Thus, these dominant elements mean that common law is what governs the contract.

While the UCC and common law are in certain ways very similar in their treatment of contracts, there are also differences between the two. For instance, common law employs a “mirror image rule” during acceptance, whereby acceptance is only present if the acceptance follows the exact terms of the initial offer. (Field and Smith, 2014) The UCC allows for minor

changes in acceptance which don't change the nature of the contract materially. Furthermore, common law requires that for modification to take place in the contract, there must be additional consideration, whereas the UCC does not. (Field and Smith, 2014)

Existence of a Contract

Given the facts of this case, it is also important to determine whether or not the owner has an enforceable contract with the businesses. To determine this, the five elements of an enforceable contract must be examined. The five elements are offer, acceptance, consideration, capacity, and legality. (Rogers, 2012)

The first element of an enforceable contract is an offer. This occurs when one party offers another party some set of specific terms for a good or service. The offer should be specific in nature and clear in intent, otherwise there is no offer formed. (Rogers, 2012)

The acceptance occurs when the party being offered something by the opposite party accepts the offer. This is a straightforward element of a contract and involves both parties agreeing to set terms of a contract. (Field and Smith, 2014)

Consideration is what is being exchanged in the contract. Both parties must have consideration in the contract, otherwise it is a one-sided contract. Consideration can be generally thought as the price that each party pays for entering into the contract. (Fiend and Smith, 2014) For instance when two

parties trade one apple for one orange, one party's consideration is the apple, and the other party's consideration is the orange.

Capacity refers to the legal capacity of the parties to enter into a contract. This prevents children or those not of sound mind from being bound by the terms of a contract. (Field and Smith, 2014)

Finally, legality simply means that the terms of a contract refer to things that are legal in nature. (Rogers, 2012) A contract which governs the sale of cocaine and heroin, for instance, does not fulfill the legality requirement.

It is important to note that all five of these elements must be present for an enforceable contract. Even if only one element is not fulfilled, the contract is void and not enforceable. (Field and Smith, 2014) Applying these five elements to the ACME fireworks case, it seems that some of these elements are fulfilled, but there might be an issue proving certain others.

It can be assumed that the fireworks displays are legal, and also that both parties have legal capacity as sound minded adults. Also, consideration is clear in the fact that one party is offering the fireworks display in exchange for money. However, when examining the facts of the case, the elements of offer and acceptance get muddy.

There were several businesses which made inquiries as to whether or not ACME could fulfill regular fireworks displays. ACME stated that it could and then a price per display was agreed upon, explaining what the price would cover. However, the prompt states that no other details were discussed,

such as how many fireworks displays were needed, when they were needed, and if the regularity of the displays constituted an ongoing contract.

Furthermore, it is unclear whether or not ACME made price agreements with individual businesses or simply worked out a price per display with the group of businesses that could apply to any business should they choose to accept.

That being said, the perceived ambiguity in the prompt might be interpreted as a group of several businesses making an inquiry about a fireworks display, to which ACME responds to each business negotiating that for a price of x amount of dollars, ACME will provide a fireworks display. This constitutes an offer.

In terms of the acceptance, if the company accepts this agreed upon price in exchange for the display, this constitutes acceptance. However, if the given price is simply stated and none of the businesses accept the price, there is no acceptance and thus no enforceable contract. The circumstances of the case are somewhat unclear, but it can be assumed that the individual businesses agreeing to the price means they are accepting the agreed upon price offer, and thus an enforceable contract is present.

Liability

All companies, especially those which deal with potentially dangerous product or services, must consider the concept of liability. (Orts, 2013)

Because ACME Fireworks deals heavily with a product and service that has a great potential to injure others, liability is an extremely relevant consideration. This is likely why a great deal of the cost of the fireworks displays is dedicated to purchasing insurance, should anything go wrong.

While many areas of business dealings are governed by law, the area of personal injury is founded mostly in case law precedent. (Orts, 2013) Various court decisions over the years have created a base of determining when a company can and should be found liable for injuring another. (Orts, 2013)

While ACME has purchased insurance for their display, if an individual gets injured because of ACME's gross negligence while handling the fireworks, the insurance may not even apply. Insurance is not a catch-all for any type of thing that goes wrong, and depending on how negligent or misguided ACME was when the accident occurred, the insurance might only help minimally or not at all. (Orts, 2013) Insurance is largely there to protect the business in the off-chance that despite the company's best efforts and due diligence, there is still injury or destruction. (Orts, 2013)

If a spectator is injured by a stray firework from a fireworks display, ACME Fireworks can certainly be held liable. Because the ACME company is a sole proprietorship, the owner of ACME Fireworks and the entity ACME Fireworks are largely treated as the same individual. (Klein, 2014) Thus, when ACME is liable for personal injury resulting from the company's negligence, so is the owner. While insurance may lessen the burden, it will often not entirely remove potential penalties that the owner will face. (Orts, 2013)

Agency Law

Agency law helps define the relationships between agents and principals. Agents perform business functions on behalf of the principal. (Bainbridge, 2014) Most agencies are compensated, meaning they are paid for the work that they do. Gratuitous agencies also exist, and they encompass less tort

liability for the principal, but they are rare in business relationships.

(Bainbridge, 2014)

Compensated agents can either be employees or independent contractors. They are much the same in terms of completing tasks for payment for the principal, however there are some key differences related to tort liability.

(Bainbridge, 2014) Principals are often liable for torts that employees commit while acting as an agent for the principal. However, principals do not have this same liability for torts committed by independent contractors.

(Bainbridge, 2014) The reason for this contrasting treatment of tort liability lies in the difference between how the law sees employees and independent contractors. While an employee is seen as an agent of the company which the principal has control over, an independent contractor is seen as an agent which does a specific job or task, but is not controlled or directed by the principal. (Bainbridge, 2014)

For ACME Fireworks, if an employee of the entity commits a tort, such as negligence which results in the harm of a spectator, ACME Fireworks (and its owner, because it is a sole proprietorship) can be held liable for the employees action. (Klein, 2014) However, because of the employee-employer relationship, ACME has more control over how this individual does their job and thus can help ensure that proper care is taken in the carrying out of these duties. If ACME Fireworks had an independent contractor whom they hired to set off the fireworks, they would not have much control over how the independent contractor completed the task. However, they would also face far less potential liability should the independent contractor be

negligent and cause a personal injury. Furthermore, a short-term independent contractor hiring might be a wise decision for ACME since the owner doesn't know if the number of orders will continue to be so high as to warrant hiring fulltime employees. That being said, however, beyond purely ethical reasons ACME should still be concerned with how much care is exercised by the independent contractor, as the independent contractor is still acting as an agent for ACME Fireworks, and any ill-advised action can reflect poorly on ACME to the general public.

In the principal-agent relationship of agency law, the principal owes certain duties to the agent, and the agent also owes certain duties to the principal. (Rogers, 2012) These duties are based on trust and ensure open and fair working relationships. The agent owes the principal loyalty, putting the principal's interests ahead of their own; obedience, following the wishes and instructions of the principal; performance, carrying out their duties; notification, communicating relevant information and knowledge to the principal in a timely manner; and accounting, keeping records of financial transactions. (Rogers, 2012) The principal owes the agent cooperation, assisting the agent in performing their duties; compensation, payment for their work (unless they are a gratuitous agent); indemnification, reimbursement for any losses suffered because of the agent's prescribed duties; and reimbursements, payment for any expenses incurred in carrying out their duties. (Rogers, 2012)

ACME as a Sole Proprietorship

ACME's existence as a sole proprietorship may have been wise in its burgeoning stages, but with the recent influx of new order and the growth of the company as a whole, it is time to adopt a new business structure. As ACME grows larger, the owner will be held responsible for the actions and decisions of more and more employees, increasing their own liability and decision-making burden as a sole proprietor. (Klein, 2014)

The wise decision for ACME is to incorporate. Small businesses which incorporate generally pursue either an S Corporation or a Limited Liability Corporation (or LLC). (Klein, 2014) For ACME, it is recommended that the entity change to an LLC. An LLC is similar to a sole proprietorship in many ways. For instance, all the profits pass through to the owner and the owner pays taxes on their own tax forms. As the sole owner, the owner of ACME would still even be filing the same tax form, the 1040 Schedule C. (Klein, 2014) Furthermore, compared to an S Corporation, there is far less recordkeeping and paper work to worry about in incorporating and running the business. (Klein, 2014)

Perhaps the greatest advantage of changing from a sole proprietorship to an LLC for ACME is the limited liability aspect. As a fireworks company, ACME has a very large potential for lawsuits should something go wrong. Accidents do happen, and even if ACME takes every proper precaution, there is still a probability that someone, either an agent or a spectator, could get injured from a fireworks display. The owner of a sole proprietorship, as stated before, has unlimited liability, meaning that if someone were to sue ACME,

the owner's personal assets would be at risk. (Klein, 2014) However, an LLC limits the owner's liability, making the corporation itself liable but protecting the personal assets of the owner. For this reason, due to the nature of the business and the interests of the owner, an LLC is the best option moving forward.

Conclusion

ACME Fireworks is a growing business with increasing demands. While it cannot be surmised how long this volume of orders will last, it is important that the owner looks to the future in choosing a different business structure. While business law can be viewed as restrictive and difficult, it also serves as a helpful set of a guidelines which encourage a healthy competitive environment and give a clear path for individuals wanting to enter into business. ACME Fireworks is an entity which must be very aware of laws and business structures as the nature of their business is very risky and prone to lawsuits. Hopefully, the owner incorporates the company into an LLC and will be on a path for success.