Contract

Elements of a Contract Law 531 February 8, 2010 Elements of a Contract There are three main elements to a valid contract; offer, acceptance and consideration. The offer must have the clear intent to enter into a contract. It must include who the parties are, the items or work being exchanged, a clear set price for those services, payment terms, delivery terms, and performance timelines. Acceptance by the offeree is when they sign the offer and return it to the offeror. The means for which the offeree can return the offer signed often determines when the contract is put into place. This method of return is usually stipulated in a letter that is mailed with the offer. Most would use mailing the offer to return it to the offeror, and in that case the offer becomes valid once it is postmarked in the mail, otherwise known as the mailbox rule.

The final element of a contract is consideration on both parties involved. A contract is only valid if both parties are giving up something in order to reach a particular objective for each party. An example is ??? if you sign a contract to buy a 1980 Mercedes for $17, 000, your consideration is the $17, 000 and is given in exchange for the car.??? (Jennings, M. M., 2006) With any contract there are always risks involved from the moment you start the journey to form a contract. The process could go thru many revisions, if each side can?? ™t agree mutually on terms of the agreement.

This could severely delay or even prevent an offer from becoming a contract. Management needs to do their research into the project to ensure that what they deliver to the offeree is valid and satisfies both companies?? ™ interests in the project. Another big management decision when negotiating a contract is to not make the offer sound like they are miss-representing

themselves, or providing fraudulent information in the offer. This is another reason for management to carefully draft an offer that is fair and has the consideration of both parties involved. Another risk to the contract would be any other defenses to a contract formation, from capacity, to undue influence.

There are many types of capacity risks, from age to mental capacity and all are important to look over before sending an offer out. Out of all of them I feel that this simulation had some miss-representation on the part of Spa to be able to meet certain deadlines, but I also feel that if they did their due diligence and understood the offer from the beginning that maybe they would have changed the offer before it got out of hand. In this simulation there was a contract in place between Span Systems and Citizen-Schwarz AG (C-S), where Span is to deliver code to give C-S a java based transaction processing software. C-S has since been unhappy with the deliverables from Span, even stating that the quality of the work has decreased as the project went along. C-S wants to rescind the contract on the basis that Span is not meeting the requirements set forth in the contract they signed eight months ago. The biggest one being the quality of the work, as in the contract there were to be no defective products, and now there are 5 per shipment. As with many contracts for goods and services, many times requirements in the initial contract need to be re-vamped in order to give both parties what they desire.

The best recourse for both companies is to work out some amendments to the current agreement between the two companies to help them achieve the end result. There were five specific clauses in the contract that needed to be

addressed once both parties agreed to change the contract to meet the deadlines. The performance clause was restructured so that at any time when the contract is terminated, C-S gets the code that has been completed as well as Span getting paid for whatever they produced up to termination of the agreement. While no one wants this deal to fall thru, this at least gives both parties closure should things not be able to be worked out. The next clause is the change control clause. This clause was changed to include a provision for a change control board to monitor for any changes to the requirements to the project either from a programmer or system perspective.

There is also a provision where C-S would pay Span for any changes it wanted to make from the original code agreed to when the contract was first set in place. The best composition of the CCB would be a mix of managers from both companies that way each is represented and doesn??™t present the opportunity of bias. Communication and reporting was the real underlying cause for all of the issues that arose from this simulation. If Span had communicated that the deadlines might be too aggressive, they might have come to this stage sooner instead of arguing about breach of contract. This clause was amended to include project status reports that will be available to C-S authorized personnel. There will be a project manager from C-S to oversee these reports get published, as well as participate as the liaison for C-S in the Span meetings. Since this will only benefit C-S by getting regular updates, the cost of this manager will be funded by C-S directly. Product structure was the end result of poor communication by Span.

This was restructured to allow Span to hire ten additional people to help them meet the contract deadlines. These new hires would need to be on board and working within ten days from the date of the signing of the amendments. Span will be required to send the resumes of these people to C-S to ensure that C-S knows who the new members are and to ensure that their qualifications match what will get the job done. Since these will be hires of Span, they will have to absorb the cost of training these new employees. This clause will allow C-S to monitor the Span team, and maybe offer changes to the team to ensure on-time delivery of project objectives.

The final revised provision is the dispute resolution provision. This provision would allow each side the opportunity to salvage this contract before they end up terminating the agreement. For a dispute resolution to this contract I would highlight the options they have to try to salvage this contract before a breach. Those options being negotiation, mediation, arbitration and if all else fails litigation.

It would also have a flow, where they would have to start with negotiation and if they don??™t come to an agreement, then go to mediation and so on. They would not be able to go straight to litigation until all other avenues to resolve a dispute were tried. This would allow each of them to try to salvage this contract before it gets to a costly legal battle in litigation. References Jennings, M. M. (2006). Business: Its legal, ethical, and global environment (7th ed.

). Mason, OH: Thomson.