**Law Assignment**

**Name of Student**

**Course Name and Number**

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**Date**

**Introduction**

The business arena is full of various opportunities to be taken up by the businesses. These opportunities have various pros and cons associated with them. In this study, we will see the pros and cons of various aspects related to a fireworks company. The aims of this study are to identify the differences between the common law and the uniform commercial code. The existence or otherwise of the valid contract between the fireworks company and the potential customers. The difference between the permanent employee and the contractor. The existence or otherwise of the liability for the injuries to the spectators. The best mode of the business for the set up.

**Answer 1**

The case study is about the company named Acme Fireworks which has been inquired by the owners of many large businesses. The owner of the fireworks firm wants that there are regular displays of fire works for these new customers. The problem is that the prices have not been negotiated between the parties and the owner has told the potential customers that the orders will be fulfilled only when there is an agreement on price and the price has been decided. A major part of the price associated with the fireworks consists of the skilled labor required for making and launching the fireworks. The other important aspect is related to the insurance expense to cover any unpleasant loss. The owner is doubtful whether the arrangement will actually happen or not because he needs some extra workers to make sure that these orders are fulfilled properly. If the owner hires the employees and the orders are not placed, he will have to pay them anyway. The owner also wants to alter the formation of the business, in this regard we will consider the following points

The sole trader has unlimited liability which means that any loss incurred during the business can be covered by taking up the personal assets of the owner. This option is particularly dangerous in the business of fireworks which can cause various types of losses to the customers and general public. The company format offers the limited liability option which means that the loss incurred will be limited to the amount of money invested by the person in the business.

The amount of money available to the sole trader to invest in the business is much lower as compared to the amount of money collected in case of a company. The sole trader has lesser options to look for if he wants some money for his business. The company can also manage to accumulate the funds for any expansion by issuing further shares to the general public. The legal identity of the company is separate from that of the owners. This also makes the owners safe as the company can sue and can be sued if required. The owners will not have to bear any sentence if the company ahs done something wrong.

The owners may also opt for the private limited company as it provides the option for keeping the ownership within the family. This is done with the help of provision that the owners of private limited company can issue shares within their family only.

In the light of the above points, I will recommend that the best option for the business will be to from a public limited company.

**Common Law vs. Uniform Commercial code**

The contract law is applied to almost all parts of the USA in a similar fashion. The contract law is applicable both to the common law and uniform commercial code. If the contract involves the provision of some services, sale of intangible assets, real estate or some employment related issues, then common law will be applied. If the transactions involve the delivery of some goods or some of the tangible assets, then the uniform commercial code will be applied. The uniform commercial code has been extracted from the common law and is applied only in the situation where the goods exchanged are moveable in nature. The main purpose of making the uniform commercial code is to align the laws guiding the business all across the country. The case in consideration provides the goods int eh form of the firework display which will be conducted by the company. The fireworks alone cannot be considered the goods as they are not sold as an independent product. The display of the product will change its nature and this display will mean that the product will no longer be moveable. Thus, the scenario relates to the common law as the goods are not moveable. This situation provides a combination of goods and services which allows us to implement the common law practices to it. The courts have also applied the principles of common law to such hybrid cases. Thus, in this scenario, we will apply the common law principles.

After all the discussion, the matters of the fireworks company should be dealt under the common law. This is because it involves the provision of service by one company to the people.

**Question 2**

**Essentials of a valid contract**

The contracts can be implied or express based on the terms and conditions. The contract in which the terms and conditions are expressed as being written, is an express contract. In the implied contract, the persons act such that the other party implies that there is some contract in place. Example is the buying of groceries from the store. The mere action of the buyers show that they want to buy certain items and there will be an implied contract.

Following are the essentials of a valid contract:

**Offer**

This is a promise made by one party to undertake some particular work or to keep themselves away from some other work. The other party is also ready to give something in exchange of the promise made. The offer is the first and foremost requirement of a valid contract without which the contract does not exist. In the given scenario, the offer has been made to the owner of the fireworks business by the parties who have inquired from him. The offer must be an unambiguous promise intended to enter a contract. The offer must be very clear as to specify the goods that will be a part of the offer (Rogers, 2012).

**Acceptance**

After the offer is accepted, the acceptance stage of the contract is started. This means that the offeror and offeree are in agreement on the terms and conditions of the contract. The acceptance also means that a legal contract has been formed between the parties.

**Consideration**

This part shows the things that are to be exchanged in the agreement. This part is the real reason why both the parties have entered into an agreement. The valid contract must have valid consideration. Absence of the valid consideration will result in a void contract. The current case shows that the price that has been agreed upon is the consideration.

**Obligation**

There should be a mutual obligation for both the parties for a valid contract to take place. There are two scenarios in this part, either both the parties are liable to perform their obligations or the law will consider that none of the parties are bound to liable to perform the obligations. There should be no arbitration by any of the parties rather they should act in such a way that is clear and absolute. In the case under consideration, the mutuality of obligation is present which makes the contract fair and just.

**Competency**

Any person who has entered in a contract is liable to perform certain tasks. If the person does not perform these tasks, he can be held responsible unless he is a minor, a person of unsound mind or someone addicted. The minor has an age between 18 to 21 years. In the United States, the contract involving a minor can be broken at the will of the minor. A person who is not able to comprehend the genuine consequences of entering the contract is considered a person of unsound mind by the law. In the case under consideration, the parties have the legal authority and competency to make a valid contract.

There is no contract formed between the company and the people who wanted the firework shows.
The reason is that the prices have not been settled. There is no clear offer and acceptance.

**Question 3**

**Fireworks injuries**

The fireworks display is an entertainment for the people who come to see them. However, if the company making them is negligent in keeping their quality high, they may result in some injury to the audience. There is a rare chance that audience may get injured by the fireworks but their misuse or mishandling of the same may cause certain injuries to the people. The audience have the right to be compensated if they are injured while watching the fireworks display. The fireworks company can be held liable for the damages that are brought to the spectators. The spectators can sue the owner of the fireworks company under tort law. A tort is a situation in which the person does not take enough care while performing certain duties. This includes the injury caused to the person either intentionally or by mistake. The damage can be physical, emotional or to the property of the person involved. Torts can be considered as being one of the following types

**Intentional torts**

These are the damages that result out of some intentional act. These acts are voluntarily done and there are no particular incentives to do them for the actor. Negligence torts are the ones in which due care has not been taken and that has caused some harm to the person. An example would be a case where some person has slipped and injured himself because the homeowner did not clear the path after a snow storm. In this case, the home owner failed to complete the duty on their part but had no intention to injure the person who fell down. Strict liability torts arise when there is some injury to the person out of some act that includes dangerous materials. These materials may include the fireworks and other related items. In the case under consideration, the spectator can file a case against the owner of the fireworks company for negligence under the tort law. Another party that can be held liable for the happening is the organizer of the event. The people who use the fireworks without taking the due care can also be held liable if some damage is caused to the people around them.

There is an implied contract between the company and the people who come to see the firework shows. This implies that the company must take sufficient care in displaying the firework shows so that there is no injury to any of the spectators.

**Question 4**

**Different Types of Employment and relevance with Agency Law**

The employees can be full time, part time or temporary in nature. The fireworks company has 15 employees that are working for the company. There is no clarity about their status in the company and there are no working conditions specified for the employees. There are either hourly wages paid to the employees or annual salary. These employees will have the benefits of social and federal security whether they work on hourly or yearly income. All the deductions will be made from their salaries including the federal and state taxes. The employees will be offered the medical insurance facility if the company offers the same. These basic employment benefits may differ from employee to employee and from one type of employment to other. The terms and conditions of the employment are agreed upon between the employee and the employer. The employee should adhere to the conditions in the job agreement failing which will result in the dismissal from the job.

**Independent contractor**

An independent contractor is different from a full-time employee in the following ways.

* He is neither controlled nor directed by some other person. He is generally hired to provide some particular service and the other party does not care who actually provides the service. The independent contractor can assign time to some other job as well. An employee is given clear instructions about the job and the other related matters.
* He is answerable to the customers for the outcomes of any action and not the ways to complete some action. He uses his own methods and procedures to work. He is usually hired for the existence of some special kind of expertise and generally receives no training from the other party. The employee is guided by the employer or the senior members at the office about the way to go about the job.
* The way the work is done is decided and controlled by the person himself. He is asked to deliver the goods or services but he is not directed a great deal about the way the delivery is to be done. The independent contractor himself defines the way in which the services will be provided. The way or the path through which the services are to be provided to the customers is properly defined by the employer and employee cannot stray away from that.
* The cost needed to execute the service or deliver the product is borne by the contractor himself. The independent contractor is paid as per job basis and other than those specified by the other party, he has to manage the expenses. This also includes the cost of the tools needed to perform the work in the proper way. The employee does not have to spend any amount from his pocket while providing the services to the customers. All the equipment and related costs are borne by the company.
* The independent contractor is alone generally and his services are not considered a part of the business itself. An employee on the other hand is a full-time part of the organization for which he is working.
* An independent contractor has a restricted and defined relationship that ends as soon as the services have been provided. The relationship between the employee and the employer is a long term one and has legal implications as well.
* An independent contractor has to deliver the service, whether he does it on the premises of the other party or not, it is on his discretion. The employee has to work in the specified premises of the office.
* An independent contractor will provide the desired report to the other party in the prescribed manner and it is not necessarily provided at regular intervals. The employee on job has to report to the higher officials on regular and specified intervals. Unlike the independent contractor, the employee will be answerable to the top management for these reports.
* The amount paid to the independent contractor will generally be in the form of commission or a lump sum one-time amount. The employees receive salaries or wages as the remuneration of their services.
* An independent contract has put some significant amount of money in the place from where he is providing the services. Generally, the employees do not have any of their amounts invested in the businesses.
* The results produced by the independent contractor should measure up to the specifications laid down in the contract. The results produced by the employees should result in an increase of the company value.
* The independent contractor can earn some profit or suffer some loss as a result of the services provided to the client. The employee will not have to bear any loss neither he will be getting any profit as a result of the provision of service to the customers.
* An independent contractor can work for more than one party at the same time. The employee cannot work for more than one employer at the same time.
* An independent contractor usually completes a specific job within a specified time failing which the contractor has to pay damages to the other party.
* Taxes are independently paid by the contractor himself. The employee and employer both pay their shares of tax and other payments.
* The contractor will receive no benefits in case he is terminated. An employee will get the specified benefits in case he is terminated.
* The contractor is not entitled to any overtime payment. The employee is entitled to the overtime payment as per the employment contract.

The company should go for the permanent employees rather than the independent contractor. The reason behind this is that the business of the company has certain ups and downs. The permanent employee option is better in this case because they will stay in the good and bad times with the company. This will make them loyal to the company. The independent contractor is suitable where the company has a long stream of business coming in continuously.

**Question 5**

The business should be run as a limited liability company in which the liability of the owners is only to the extent of their part of ownership. They are not liable for the acts of the company. This aspect will benefit the owners because they are running a risky business. If someone is injured, he or she will sue the company not the owners. This type of organization can be run as either a corporation or partnership. A partnership will help the owners to divide the responsibilities between them. In case of a company, the ownership and control is separated by forming a board of directors who oversee the managerial functions of the company. The ownership remains with the shareholders but control is in the hands of the board. This division is important to control any frauds in the company unless the board and the owners join hands to commit some frauds. The LLC can hold regular meetings to discuss the various matters related to the operations of the company. The biggest advantage of the company over a sole proprietor business is that there is limited liability in the company and unlimited liability in the sole proprietorship (University of Richmond).

**Conclusion**

The company is trying to take on new opportunities by expanding the business. In this regard, the company should decide the best way to manage expansion and accumulate the funds required for the expansion. The formation of the company will help the company to accumulate the funds necessary for the expansion. The business also needs to bring in new employees. The business is considering the independent contractor or to keep some permanent employees. The overall operations of the company are guided by the common law practices.

# References

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