Solution and Answer Guide

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Chapter 11: Agreement

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# Critical Thinking Questions in Features

Adapting the Law to the Online Environment

1. How can a company structure e-mail negotiations to avoid “accidentally” forming a contract?

Solution

The company should make sure that all e-mail conversations explicitly indicate that they are subject to any relevant conditions and that they are subject to further review and comment by the senders’ clients or colleagues. All negotiations via e-mail should include appropriate disclaimers such as “This e-mail is not an offer capable of acceptance.” or “This e-mail does not evidence an intention to enter into an agreement.” or “This e-mail has no operative effect until a definitive agreement is signed in writing by both parties.” Another possibility is to indicate that “No party should act in reliance on this e-mail until a definitive contract is signed in writing by both parties.”

# Critical Thinking Questions in Cases

Case 11.1

1. Suppose that after Lucy signed the agreement, he decided that he did not want the farm after all, and that Zehmer sued Lucy to perform the contract. Would this change in the facts alter the court’s de­cision that Lucy and Zehmer had created an enforceable contract? Why or why not?

Solution

No. In fact, this would likely support the court’s determination that there was an enforceable contract between the parties. In this circumstance, un­less Lucy attempted to void the contract on the ground of intoxication, the court might not have addressed the issue at all.

Case 11.2

1. Assume that, instead of exchanging e-mails, the attorneys for both sides had had a phone con­ver­sation that included all of the terms to which they actually agreed in their e-mail exchanges. Would the court have ruled differently? Why or why not?

Solution

Probably not. As the court pointed out, “the issues [were] whether the . . . terms were sufficiently complete and definite to form an agreement and whether Amazon had intended to be bound by them.” Terms expressed orally can be as binding as those expressed in writing. The court also determined that “the essen­tial circumstance of this disputed agreement is that it concluded a trial.” If the trial court had given the same effect to a phone conversation as the court gave to the e-mail exchange, it is unlikely that the appellate court would have interpreted it differently.

Case 11.3

1. The lottery’s rules did not provide for entrants to be notified by e-mail, but contracts generally impose on the parties a duty to do everything necessary to carry them out. Did the lottery breach its contract with Bailey by failing to notify him by e-mail? Explain.

Solution

No. The lottery did not breach its contract with Bailey by failing to notify him by e-mail that his ticket had won the drawing.

Bailey might emphasize the principle stated in the question to argue that the lottery did not do everything “necessary” to contact him after his ticket was drawn as the winner. It would likely have been easy to notify him by e-mail that he had won. Bailey might contend that the lottery did not thereby act in good faith.

Contracts impose on the parties a duty to do everything necessary to carry them out. But this duty does not prevent a party from exercising its contractual rights. The lottery did not breach any duty of good faith by not transmitting notification by e-mail. This was not a prescribed mode of notification under the lottery’s rules. Bailey failed to comply with the requirements of the promotion, and under those requirements, the lottery had a contractual right to disqualify his entry from the drawing.

1. Suppose that Bailey had complied with the lottery’s rules by keeping his address and phone number current, but that the lottery had not tried to notify him before the expiration of the seven-day period. Would the result have been different? Why or why not?

Solution

Most likely, yes, the result in the Bailey case would have been different if Bailey had complied with the lottery’s rules by keeping his address and phone number current. The lottery’s inability to contact him when his ticket was drawn as the winner prompted the lottery to disqualify his entry under the promotion’s rules. The inability was caused by his Bailey’s acts or omissions—he did not keep his phone number current, and he did not provide a valid address. The outcome in Bailey’s rested on these facts.

If Bailey had taken the required steps, however, but the lottery had not tried to notify him before the expiration of the seven-day period, the lottery would have violated its rules. This would have placed the lottery at fault and most likely liable to Bailey for the result.

# Chapter Review

Practice and Review

Shane Durbin wanted to have a recording studio custom-built in his home. He sent invitations to a number of local contractors to submit bids on the project. Rory Amstel submitted the lowest bid, which was $20,000 less than any of the other bids Durbin received. Durbin called Amstel to ascertain the type and quality of the materials that were included in the bid and to find out if he could substitute a superior brand of acoustic tiles for the same bid price. Amstel said he would have to check into the price difference. The parties also discussed a possible start date for construction.

Two weeks later, Durbin changed his mind and decided not to go forward with his plan to build a recording studio. Amstel filed a suit against Durbin for breach of contract. Using the information presented in the chapter, answer the following questions.

1. Did Amstel’s bid meet the requirements of an offer? Explain.

Solution

A bid can be an offer if it contains all of the requisite elements: a serious, objective intent on the part of the offeror and an offer communicated to the offeree in certain, definite terms comprehensible to both parties. Amstel’s bid met the requirements His intent appeared to be that of a serious, reasonable offeree; the terms were sufficiently definite; and the bid was communicated to Durbin. If the price, materials, and start date were left open, these factors might be sufficient to question the status of the bid as an offer.

1. Was there an acceptance of the offer? Why or why not?

Solution

To create a contract, an offer must be accepted unequivocally. Durbin questioned the materials included in the bid and asked about the possibility of substituting different acoustic tiles and discussed a starting date. Although this does not constitute an acceptance of the offer, neither is it a rejection. His questions were inquiries, not a rejection of the bid. Durbin’s later call to say that he had changed his mind, however, was a rejection.

1. Suppose that the court determines that the parties did not reach an agreement. Further suppose that Amstel, in anticipation of building Durbin’s studio, had purchased materials and refused other jobs so that he would have time in his schedule for Durbin’s project. Under what theory discussed in the chapter might Amstel attempt to recover these costs?

Solution

When individuals rely on promises, as Amstel would have done in this scenario, and the reliance is considered to form a basis for contract rights and duties, under the doctrine of promissory estoppel (or detrimental reliance), the party who has reasonably relied on the promise can often obtain some measure of recovery.

1. How is an offer terminated? Assuming that Durbin did not inform Amstel that he was rejecting the offer, was the offer terminated at any time described here? Explain.

Solution

Yes, Durbin asked about better quality tiles; until that issue was settled, because it likely changed the price, a contract was never formed, so Durbin had the right to cancel the deal. The contract was still being negotiated because Amstel wanted information about alternative materials, which affected the price. Failure to settle that matter means the offer was never accepted and either party had the right to walk away.

Practice and Review: Debate This

1. The terms and conditions in click-on agreements are so long and detailed that no one ever reads the agreements. Therefore, the act of clicking “I agree” is not really an acceptance.

Solution

The terms and conditions included in click-on agreements have become so detailed, confusing, and—most importantly—long, that no one would ever take the time to read one. Knowing, though, that one is unable to purchase or license a product or service purchased on the Internet without clicking “yes” means that everyone just clicks “yes.” That is far from what we normally believe is voluntary assent. Indeed, the choice is all or nothing—accept all terms and conditions or do not buy from us.

There appears to be no acceptable alternative to click-on agreements when buying a good or service on the Internet. No company would ever eliminate the click-on agreement from its e-commerce system because it would be exposing itself to even more potential lawsuits. The reason such click-on terms and conditions are so numerous is specifically to avoid frivolous and expensive lawsuits. As a result, ultimately, overall costs are lower for e-commerce, and therefore consumers pay lower prices in general.

Issue Spotters

1. Fidelity Corporation offers to hire Ron to replace Monica, who has given Fidelity a month’s notice of her intent to leave the company. Fidelity gives Ron a week to decide whether to accept. Two days later, Monica decides not to leave and signs an employ­ment contract with Fidelity for an­other year. The next day, Monica tells Ron of the new contract. Ron immediately e-mails a formal letter of acceptance to Fidelity. Do Fidelity and Ron have a contract? Why or why not?

Solution

No. Revocation of an of­fer may be implied by conduct inconsistent with the offer. When the corporation hired someone else, and the offeree learned of the hiring, the offer was revoked. The acceptance was too late.

1. Applied Products, Inc., does business with Beltway Distributors, Inc., online. Under the Uniform Electronic Transactions Act (UETA), what determines the effect of the electronic documents evidencing the parties’ deal? Is a party’s “signature” necessary? Explain.

Solution

First, it might be noted that the UETA does not apply unless the parties to a contract agree to use e-commerce in their transaction. In this deal, of course, the parties used e-commerce. The UETA removes barriers to e-commerce by giving the same legal effect to e-records and e-signatures as to paper documents and signatures. The UETA it does not include rules for those transactions, however.

Business Scenarios and Case Problems

1. **Offer.** Ball writes to Sullivan and inquires how much Sullivan is asking for a specific forty-acre tract of land Sullivan owns. Ball then receives a letter from Sullivan stating, “I will not take less than $60,000 for the forty-acre tract as specified.” Ball immediately sends Sullivan a fax stating, “I accept your offer for $60,000 for the forty-acre tract as specified.” Discuss whether Ball can hold Sullivan to a contract for sale of the land. (See *Offer*.)

Solution

For an offer to exist, the offeror must show a definite intention to make and be bound by the offer. Invitations to trade or negotiate or mere statements of inten­tions to enter into a contract upon further bargaining do not constitute offers but are instead preliminary ne­gotiations. Thus, any attempted acceptance would not bind the parties to a contract as there is no offer in existence to be accepted. Sullivan stated only a price from which to bargain further, not an intention of a definite commitment to sell at $60,000. There is no contract between Sullivan and Ball.

1. **Shrink-Wrap Agreements.** TracFone Wireless, Inc., sells phones and wireless service. The phones are sold for less than their cost, and TracFone recoups this loss by selling prepaid airtime for their use on its network. Software in the phones prohibits their use on other networks. The phones are sold subject to the condition that the buyer agrees “not to tamper with or alter the software.” This condition is printed on the packaging. Bequator Corp. bought at least 18,616 of the phones, disabled the software so that they could be used on other networks, and resold them. Is Bequator liable for breach of contract? Explain. [*TracFone Wireless, Inc. v. Bequator Corp., Ltd*., 2011 WL 1427635 (S.D.Fla. 2011)] (See *E-Contracts*.)

Solution

Yes. A shrink-wrap agreement is an agreement whose terms are expressed inside the box in which the goods are packaged. Parties who open such boxes may be in­formed that they agree to the terms by keeping whatever is in the box. In many cases, the courts have enforced the terms of shrink-wrap agreements just as they enforce the terms of other contracts. Sometimes, the courts reason that by including the terms with the product, the seller proposed a contract that the buyer accepted by using the product after having an opportunity to read the terms.

The packaging of TracFone's phones contained language that restricted the use of the phones to TracFonse’s network and prohibited tampering or altering the software in the phone. The phones were sold subject to the condition that the buyer agreed to this term, which was printed on the shrink-wrap packaging. Thus, an enforceable contract existed between TracFone and Bequator (the buyer) with respect to Bequator’s use of the 18,216 phones that it bought. Bequator breached this contract by altering the software in the phones.

In the actual case on which this problem is based, the court held that Bequator was liable for breach on the reasoning stated above.

1. **Online Acceptances.** Heather Reasonover opted to try Internet service from Clearwire Corp. Clearwire sent her a confirmation e-mail that included a link to its website. Clearwire also sent her a modem. In the enclosed written materials, at the bottom of a page, in small type was the website URL. When Reasonover plugged in the modem, an “I accept terms” box appeared. Without clicking on the box, Reasonover quit the page. A clause in Clearwire’s “Terms of Service,” accessible only through its website, required its subscribers to submit any dispute to arbitration. Is Reasonover bound to this clause? Why or why not? [*Kwan v. Clearwire Corp.*, 2012 WL 32380 (W.D.Wash. 2012)] (See *E-Contracts*.)

Solution

No. A shrink-wrap agreement is an agreement whose terms are expressed inside the box in which the goods are packaged. Parties who open such boxes may be in­formed that they agree to the terms by keeping whatever is in the box. In many cases, the courts have enforced the terms of shrink-wrap agreements just as they enforce the terms of other contracts.

But not all of the terms presented in shrink-wrap agreements have been enforced by the courts. One important consid­eration is whether the buyer had adequate notice of the terms. A click-on agree­ment is formed when a buyer, completing a transaction on a computer, is required to indicate assent to be bound by the terms of an offer by clicking on a button that says, for example, “I agree.”

In Reasonover’s situation, the confirmation e-mail sent by Clearwire was not adequate notice of its “Terms of Service” (TOS). The e-mail did not contain a direct link to the terms—accessing them required clicks on further links through the firm’s homepage. The written, shrink-wrap materials accompanying the mo­dem did not provide adequate notice of the TOS. There was only a reference to Clearwire’s website in small print at the bottom of one page. Similarly, Reasonover’s access to an “I accept terms” box did not establish notice of the terms. She did not click on the box but quit the page. Even if any of these refer­ences were sufficient notice, Reasonover kept the modem only because Clearwire told her that she could not return it.

In the actual case on which this problem is based, the court refused to com­pel arbitration on the basis of the clause in Clearwire’s TOS.

1. **Acceptance.** Judy Olsen, Kristy Johnston, and their mother, Joyce Johnston, owned seventy-eight acres of real property on Eagle Creek in Meagher County, Montana. When Joyce died, she left her interest in the property to Kristy. Kristy wrote to Judy, offering to buy Judy’s interest or to sell her own interest to Judy. She requested that Judy “please respond to Bruce Townsend.” In a letter to Kristy—not to Bruce—Judy accepted the offer to buy Kristy’s interest in the property. By that time, however, Kristy had offered to sell her interest to their brother, Dave, and he had accepted. Did Judy and Kristy have an enforceable binding contract, entitling Judy to specific performance? Or did Kristy’s offer so limit its acceptance to one exclusive mode that Judy’s reply was not effective? Discuss. [*Olsen v. Johnston*, 368 Mont. 347, 301 P.3d 791 (2013)] (See Acceptance.)

Solution

Judy’s reply was effective, and Judy and Kristy had an enforceable binding contract—Kristy’s offer did not limit its acceptance to one exclusive mode. Thus, Judy was entitled to an order of specific performance.

Acceptance is a voluntary act by the offeree that shows assent (agreement) to the terms of an offer. The offeree’s act may consist of words or conduct. The acceptance must be unequivocal and must be communicated to the offeror. A means of communicating acceptance can be expressly authorized by the offeror or impliedly authorized by the facts and circumstances surrounding the situation. When an offeror specifies how acceptance should be made, express authorization exists, and the contract is not formed unless the offeree uses that specified mode of acceptance. If the offeror does not expressly authorize a certain mode of acceptance, then acceptance can be made by any reasonable means.

In this problem, Kristy’s offer did not limit Judy’s mode of acceptance. Kristy could have used language like “You must reply to Bruce Townsend to accept this offer,” or “You can accept this offer, if at all, only by responding to Bruce Townsend.” This language would have made clear that Judy could accept the offer only by replying to Townsend. But Kristy’s offer only requested that Judy “please respond to Bruce Townsend”—the offer did not include words of limitation. And Kristy did not otherwise make clear through her words and associated conduct that a reply to Townsend represented the exclusive mode of acceptance.

In the actual case on which this problem is based, Judy filed a suit in a Montana state court against Kristy and obtained an order of specific performance. On Kristy’s appeal, the Montana Supreme Court affirmed, according to the reasoning stated above.

1. **Acceptance.** Amy Kemper was seriously injured when her motorcycle was struck by a vehicle driven by Christopher Brown. Kemper’s attorney wrote to Statewide Claims Services, the administrator for Brown’s insurer, asking for “all the insurance money that Mr. Brown had under his insurance policy.” In exchange, the letter indicated that Kemper would sign a “limited release” on Brown’s liability, provided that it did not include any language requiring her to reimburse Brown or his insurance company for any of their incurred costs. Statewide then sent a check and release form to Kemper, but the release demanded that Kemper “place money in an escrow account in regards to any and all liens pending.” Kemper refused the demand, claiming that Statewide’s response was a counteroffer rather than an unequivocal acceptance of the settlement offer. Did Statewide and Kemper have an enforceable agreement? Discuss. [*Kemper v. Brown*, 325 Ga.App. 806, 754 S.E.2d 141 (2014)] (See *Acceptance*.)

Solution

No, Statewide and Kemper did not have an enforceable agreement. Under the mirror image rule, the offeree’s acceptance must match the offeror’s offer exactly. If the acceptance changes or adds to the terms of the original offer, it will be considered a counteroffer. A counteroffer is a rejection of the original offer and the simultaneous making of a new offer. If an offer is rejected, it is terminated.

Here, the purported settlement agreement was not enforceable because Statewide’s response to Kemper’s offer was not unconditional or identical to her terms. In response, Statewide demanded that Kemper place settlement funds into an escrow account. This change or addition to the terms of the original offer constituted a counteroffer—a rejection of Kemper’s original offer and the simultaneous making of a new offer. And Kemper refused the new demand.

In the actual case on which this problem is based, a court enforced the settlement. On Kemper’s appeal, a state intermediate appellate court reversed, holding that Statewide’s response to Kemper’s offer constituted a counteroffer, which she rejected.

1. **Business Case Problem with Sample Answer—Requirements of the Offer.** Technical Consumer Products, Inc. (TCP), makes and distributes energy-efficient lighting products. Emily Bahr was TCP’s district sales manager in Minnesota, North Dakota, and South Dakota when the company announced the details of a bonus plan. District sales managers who achieved 100 percent yearover-year sales growth and a 42 percent gross margin would earn 200 percent of their base salaries as a bonus. TCP retained absolute discretion to modify the plan. Bahr’s base salary was $42,500. Her final sales results for the year showed 113 percent year-over-year sales growth and a 42 percent gross margin. She anticipated a bonus of $85,945, but TCP could not afford to pay the bonuses as planned, and Bahr received only $34,229. In response to Bahr’s claim for breach of contract, TCP argued that the bonus plan was too indefinite to be an offer. Is TCP correct? Explain. [*Bahr v. Technical Consumer Products, Inc*., 601 Fed. Appx. 359 (6th Cir. 2015)] (See *Offer*.)

Solution

No, TCP is not correct—the bonus plan was not too indefinite to be an offer. One of the requirements for an effective offer is that its terms must be reasonably definite. This is so a court can determine whether a breach has occurred and award an appropriate remedy. Generally, these terms include an identification of the parties and the object or subject of the contract, the consideration to be paid, and the time of performance.

In this problem, TCP provided its employees, including Bahr, with the details of a bonus plan. A district sales manager such as Bahr who achieved 100 percent year-over-year sales growth and a 42 percent gross margin would earn 200 percent of their base salary. TCP added that it retained absolute discretion to modify the plan. Bahr exceeded the goal and expected a bonus commensurate with her performance. TCP paid her less than half what its plan promised, however. In the ensuing litigation, TCP claimed that the bonus plan was too indefinite to constitute an offer, but this was not in fact the case. Clear criteria applied to determine an employee’s eligibility for a certain amount within a specific deadline. A court asked to apply the plan would have little or no doubt as to the amount an employee would be entitled to. The term that reserved discretion to TCP to modify the plan did not sufficiently undercut the clarity of the offer to prevent the formation of a contract.

In the actual case on which this problem is based, the court concluded that the reservation of discretion to revoke a plan makes an offer too indefinite and issued a judgment in TCP’s favor. A state intermediate appellate court reversed this judgment, holding that TCP’s plan was a sufficiently definite offer.

1. **Acceptance.** Altisource Portfolio Solutions, Inc., is a global corporation that provides real property owners with services that include property preservation—repairs, debris removal, and so on. Lucas Contracting, Inc., is a small trade contractor in Carrollton, Ohio. On behalf of Altisource, Berghorst Enterprises, LLC, hired Lucas to perform preservation work on certain foreclosed properties in eastern Ohio. When Berghorst did not pay for the work, Lucas filed a suit in an Ohio state court against Altisource. Before the trial, Lucas e-mailed the terms of a settlement. The same day, Altisource e-mailed a response that did not challenge or contradict Lucas’s proposal and indicated agreement to it. Two days later, however, Altisource forwarded a settlement document that contained additional terms. Which proposal most likely satisfies the element of agreement to establish a contract? Explain. [*Lucas Contracting, Inc. v. Altisource Portfolio Solutions, Inc.*, 2016 -Ohio- 474 (2016)] (See *Acceptance*.)

Solution

The terms for a settlement that Lucas originally e-mailed to Altisource are most likely to be considered by a court to satisfy the element of agreement to establish a contract. One of the elements for the formation of a valid contract is agreement—mutual assent to the terms of a bargain. Agreement is evidenced by an offer and an acceptance. An offeree’s acceptance of an offer leads to the creation of an enforceable contract. Acceptance is a voluntary act that shows assent. The act may consist of words or conduct. The acceptance must be unequivocal—it must mirror the terms of the offer.

In this problem, Lucas was not paid for work for which it had been hired and which it had performed. The contractor filed a suit against Altisource to recover. Before the trial, Lucas e-mailed the terms of a settlement to the defendant. Altisource e-mailed a response that did not challenge or contradict the proposal and indicated agreement to it. Two days later, however, Altisource forwarded a different settlement document that contained additional terms. But because Lucas clearly set out the terms of a settlement in its e-mail and Altisource responded without contradiction or challenge, it is most likely that the original proposal would be held to meet the requirement of agreement to establish a valid contract.

In the actual case on which this problem is based, on Lucas’s motion to enforce the original settlement without the additional terms, the court issued a judgment to enforce it. A state intermediate appellate court affirmed the lower court’s judgment for the reasons stated above.

1. **Online Acceptances.** Airbnb, Inc., maintains a website that lists, advertises, and takes fees or commissions for property rentals posted on the site. To offer or book accommodations on the site, a party must register and create an account. The sign-up screen states, “By clicking ‘Sign Up’ . . . you confirm that you accept the Terms of Service” (TOS). The TOS, which are hyperlinked, include a mandatory arbitration provision. Francesco Plazza registered with Airbnb and created an account but did not read the TOS. Later, Plazza filed a suit in a federal district court against Airbnb, alleging that the defendant was acting as an unlicensed real estate broker and committing deceptive trade practices in violation of New York state law. Airbnb filed a motion to compel arbitration, pursuant to the TOS. Can Plazza avoid arbitration? Explain. [*Plazza v. Airbnb, Inc.*, 289 F.Supp.3d 537 (S.D.N.Y. 2018)] (See *E-Contracts*.)

Solution

Plazza can avoid arbitration only if Airbnb agrees. Otherwise, the court can compel Plazza to engage in arbitration according to Airbnb’s TOS, in response to the defendant’s motion.

Parties can agree to a contract by any means, including action. In the language of the UCC, a contract “may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.” Thus, for example, online, clicking on an “I agree” box can indicate acceptance. This is enough to bind a party to the terms, which online may be accessible via a hyperlink. A party does not need to have read all of the terms for them to be effective.

Here, Airbnb operates a website that features property rentals. To offer or accept a rental posted on the site, a user must register and create an account. The sign-up screen states, “By clicking ‘Sign Up’ . . . . you confirm that you accept the Terms of Service” (TOS). The TOS are hyperlinked, and include a mandatory arbitration provision. Francesco Plazza registered with Airbnb and created an account, but did not read the TOS. Later, in response to Plazza’s suit against Airbnb, alleging deceptive trade practices and other violations of New York state law, Airbnb filed a motion to compel arbitration. When Plazza created an account, he agreed to the TOS, whether or not he actually read them.

In the actual case on which this problem is based, the court granted Airbnb’s motion. With respect to “the terms of the arbitration provision . . . Plazza’s actions in signing up . . . manifested assent.” The court further stayed the suit, pending the outcome of the arbitration.

1. **A Question of Ethics—The IDDR Approach and Intention.** The Prince Hall Grand Lodge of Washington is a fraternal association incorporated in the state of Washington. The Grand Lodge Constitution provides that the Grand Master “shall decide all questions of . . . Masonic law.” Grand Master Gregory Wraggs suspended the membership of Lonnie Traylor for “un-Masonic conduct.” Traylor asked Wraggs to revoke the suspension and prepared a “Memo of Understanding.” Wraggs agreed to talk but declined to revoke the suspension and did not sign the memo. Traylor filed a suit in a Washington state court against the Grand Lodge and Wraggs, alleging that the Grand Master’s failure to revoke Traylor’s suspension was a breach of contract. [*Traylor v. Most Worshipful Prince Hall Grand Lodge*, 197 Wash.App. 1026 (Div. 2 2017)] (See *Offer*.)
2. Was it ethical of Wraggs to agree to talk to Traylor but decline to revoke his suspension? Use the IDDR approach to decide.

Solution

Yes. Wraggs acted ethically in agreeing to talk to Traylor but declining to revoke his suspension.

The constitution of the Prince Hall Grand Lodge of Washington provides that the Grand Master “shall decide all questions of . . . Masonic law.” Grand Master Wraggs suspended Traylor’s membership for “un-Masonic conduct.” Traylor asked Wraggs to revoke the suspension and presented a “Memo of Understanding.” Wraggs agreed to talk but declined to revoke the suspension and did not sign the memo.

The IDDR approach begins with an *Inquiry* to identify the ethical dilemma, the stakeholders, and the relevant standards in a set of facts. In the *Traylor* case, Wraggs’s dilemma was whether to talk to Traylor and decide what to do with regard to his suspension. Besides the principal parties to the case, the stakeholders included the other Masons. The applicable standards included Wraggs’s charge as Grand Master to decide all questions of Masonic law.

The next step in the IDDR approach is a *Discussion* of actions to address the issue, the actions’ strengths and weaknesses, and their consequences and effects. Here, Wraggs could refuse or consent to meet with Traylor. If he refused, he would be setting a precedent for other Grand Masters to ignore entreaties by other Masons in similar circumstances. At times, this could constitute an abuse of authority. If Wraggs consented to meet, however, the precedent would be one of due process, deliberation, and magnanimity.

After the *Discussion*, the IDDR approach encourages a *Decision* on the actions and a statement of the reasons. The clear decision in this case would be to meet with Traylor. The reasons include the positive effects of this action indicated in the previous paragraph.

The final step of the IDDR approach is a *Review* of the success or failure of the action to resolve the issue, and satisfy the stakeholders. As clear as the choice to meet with Traylor is the likelihood of its success to satisfy the stakeholders. Traylor would get his meeting, Wraggs would fulfill his duty as Grand Master, and the other Masons would gain confidence in the fairness of their organization, and its policies and procedures.

1. On what basis would the court likely hold that there was no contract between Wraggs and Traylor? Is it unethical of Traylor to assert otherwise? Discuss, using the IDDR approach.

Solution

The court is most likely to hold that Traylor and the Grand Master did not enter into a contract. The court could base this conclusion on the ground that their conversation was only a preliminary negotiation. For a contract to exist, there must be mutual assent to the agreement’s essential terms. Mutual assent generally takes the form of an offer and an acceptance. An offer consists of a promise to perform in exchange for a return promise. A request or invitation to negotiate performance is not an offer. Agreeing to negotiate is not a promise to contract to perform. It is only an expression of a willingness to discuss the possibility of entering into a contract.

Here, the constitution of the Prince Hall Grand Lodge of Washington provides that the Grand Master “shall decide all questions of . . . Masonic law.” Grand Master Gregory Wraggs suspended Lonnie Traylor’s membership for “un-Masonic conduct.” Traylor asked Wraggs to revoke the suspension, and presented a “Memo of Understanding.” Wraggs agreed to talk but declined to revoke the suspension and did not sign the memo. Traylor alleged breach of contract. But according to the principles stated above, there was no contract. Hence, there was no breach.

This should have been obvious to Traylor. His refusal to accept the situation, and his choice to file a suit against the Grand Lodge in the face of circumstances that did not support his claim, indicates a lack of ethics. Zealous assertion of an arguably sustainable position can be ethical—in fact, not to take a stand on such a position may be unethical. But to act on a patently false claim, at least in the context of this case, betrays a lack of ethics.

In the actual case on which this problem is based, the court granted Grand Lodge’s motion for summary judgment. On Traylor’s appeal, a state intermediate appellate court affirmed the judgment.

Critical Thinking and Writing Assignments

1. **Time-Limited Group Assignment—E-Contracts.** To download a specific app to your smartphone or tablet device, you usually have to check a box indicating that you agree to the company’s terms and conditions. Most individuals do so without ever reading those terms and conditions. Print out a specific set of terms and conditions from a downloaded app to use in this assignment. All group members should print out the same set of terms and conditions. (See *E-Contracts*.)
2. One group will determine which of these terms and conditions are favorable to the company.

Solution

Terms that most likely favor the business that created them include forum-selection, dispute-resolution, limited liability, disclaimer, and remedies provisions. Other favorable terms might include agreements to receive notices, ads, and “member” e-mail electronically. The details of the object or subject matter of the contract, including performance and payment provisions, might also favor the party that drafted the terms.

1. Another group will determine which of these terms and conditions could conceivably be favorable to the individual.

Solution

A privacy statement of terms most likely benefits the individual user or consumer. Other terms can also favor the individual—a provided remedy might be more suitable, for example, or a selected forum might be more convenient, than other, unspecified options.

1. A third group will determine which terms and conditions, on net, favor the company too much.

Solution

Any terms that are onerous, burdensome, or unconscionable from the individual user’s point of view would favor the company too much. A disclaimer of liability for any injury or damage, whatever its cause, would most likely be unconscionable, for example.