commerce
undergraduate
society

COMM 393 Commercial Law
Final Exam Review Session Solutions

By Roy Huang

CMP

Table of Content

Discharge of Contract

Related Cases:

- JEDFRO INVESTMENT LTD. V. JACYK
- SATURLEY V. LUND

Solution:

The issue here is whether the water restriction enforced by government qualifies as frustration. Frustration is a supervening event beyond the control of either party that renders performance impossible or radically different which cannot be self-induced. Hardship is not frustration. In this case, the contract formed in April 2015 and the water restriction is a supervening event that would make the performance by GM impossible and not just more expensive or difficult (unlike in Saturley vs Lund). Therefore, GM can claim frustration of contract to discharge its obligations and the loss would be apportioned equitably.

Breach of Contract

Related Cases:

- BREALTA ENERGY INC V. FIRST CAPITAL MANAGEMENT
- WESTCOAST TRANSMISSION V. CULLEN
- BLACKCOMB SKIING ENTERPRISES V. SCHNEIDER

Solutions:

The issue here is whether the court would consider Ms. Chow's liquidated damages clause to be enforceable under the situation of an anticipatory breach of condition. In determining whether the deposit is a genuine pre-estimate of the loss, the court considers several factors: The wording of the contract and whether it refers the amount as liquidated damages; the relative sophistication of the parties; the industry standards; and the fact whether the plaintiff suffers no loss is irrelevant if other conditions are met (Blackcomb). In this case, Yolanda's contract with Ms. Chow is to be completed on April 15th. When Yolanda notified Ms. Chow that she will no longer be buying the car on April 1st, this would probably be considered as an anticipatory breach of condition. Because it is a serious breach, Ms. Chow can choose to treat the contract as discharged immediately, before the completion date. Ms. Chow treated the contract as discharged on April 1st. Here, the wording of the contract was clear and that both parties seem equally sophisticated, and the deposit is within reasonable standards. Therefore, the clause is a genuine pre-estimate. Yolanda will not succeed and Ms. Chow can keep Yolanda's deposit.

EXCLUSION CLAUSES

Related Cases:

- DAWE V. CYPRESS BOWL
- GREEVEN V. BLACKCOMB
- MALONEY V. DOCKSIDE

Solutions:

The issue here is whether Ms. Puff would succeed in her legal claim despite the exclusion clause. An exclusion clause is a clause used frequently in standard form contracts to transfer risk to the purchaser. In unsigned contracts, the defendant must do what is reasonably sufficient to give the plaintiff notice of the condition. In this case, since the notice was in big block letters shown at the ticket stand and Ms. Puff was likely made aware that there are terms on the back of his ticket, Fun Land has satisfied their legal responsibility as they cannot force Ms. Puff to read them (Similar to Dawe v. Cypress Bowl). Therefore, Ms. Puff is unlikely to succeed.

Sale of Goods Act

Related Cases:

- KOBELT MANUFACTURING CO. V. PACIFIC RIM ENGINEERED PRODUCTS
- KOVACS V. HOLTOM
- PORELLE V. EDDIE'S AUTO SALES
- BEVO FARMS V. VEG GRO INC

Solutions:

a) The issue here is whether CanDucks would succeed if it sued under the Sale of Goods Act (SGA). According to the SGA, there is an implied term as to merchantability where there is a sale of a good by a dealer by description and the defects are not apparent. There is also an implied term as to fitness for purpose where there is a sale of a good by a dealer and the buyer makes the purpose known and shows reliance on the seller's skill and judgement. In this case, dinnerware that is deemed unusable and irreparable after four months would not meet these standards. The clause in the contract limiting the guarantee to three months does not specifically override the implied terms in the SGA and would not protect Hummingbird. Therefore, Can Ducks would be successful in suing Hummingbird Dinnerware.

b) The issue here is whether the clause specifically overrides the implied terms in the Sale of Goods Act (SGA) and protect Hummingbird from liability. According to the S.20 of SGA, parties may contract out of the SGA if it is a sale to a business for business use. In this case, the clause specifically overrides the SGA (similar to Porelle v. Eddie's Auto) and would be upheld. Therefore, Can Ducks would not be protected under the SGA.

PRIVITY OF CONTRACT

Related Cases:

- PEACOCK V. ESQUIMALT & NANAIMO RAILWAY CO.

Solutions:

The issue here is whether Caroline can sue WC despite her friend Jason ordered the chicken curry and paid for it. According to the rule of Privity, to succeed in an action in contract to enforce contractual rights, the plaintiff must be a party to the contract. Otherwise, the plaintiff can only directly sue the manufacturer in tort for negligence. In this case, since Caroline does not personally have a contract with WC, she is not a party to the contract. Caroline would only be able to sue directly against Mandy's Farms, the manufacturer of the problematic chicken, in tort for negligence (similar to Donoghue v. Stevenson). Therefore, Caroline is unlikely to succeed in her claim against WC in contract and WC would not be liable.

NEGLIGENCE, CONTRIBUTORY NEGLIGENCE AND VICARIOUS LIABILITY

Related Cases:

- WALDICK V. MALCOLM
- HOLLIS V. DOW CORNING
- MORSI V. FERMAR PAVING

Solutions:

The issue here is who would Emily sue for her loss and whether Asian Paints can sue for its loss in tort law for negligence. To sue in negligence, a plaintiff must show that the defendant owed her a duty of care, there was a breach of that duty, the breach of this duty caused harm and damages are reasonably foreseeable.

Here, Loudalarms would have a duty of care to people near the area and breached that duty of care by not giving some form of warning to people nearby. Arguably, Loudalarms should have done more such as putting a sign or lowering the volume of the alarms. However, the damage to Emily would probably not be reasonably foreseeable by Loudalarms that the noisy alarms could cause harm to people in the store next door.

Here, Joseph would owe a duty of care to all the people that come into his tent. He breached that duty of care by using an old thin rope that could easily come loose and putting the paintings at a dangerous position. It caused the damage to Emily and the damage was reasonably foreseeable. Joseph would be liable for Emily's loss.

Here, Emily does not owe a duty of care and swerving her body as a response to the sudden noise would probably be found as natural and not unreasonable. Emily would not be found contributorily negligent.

Here, an employer is jointly liable with the employee for torts committed in the scope of employment. If Joseph is found liable to Emily, Asian Paints will be vicariously liable.

NEGLIGENT MISSTATEMENT

Related Cases:

- RANGEN V. DELOITTE & TOUCHE
- HERCULES MANAGEMENT LTD V. ERNST & YOUNG

Solutions:

The issue here is whether Allen would be liable for negligent misstatement (negligent misrepresentation). To sue for negligent misstatement, the plaintiff must show that the defendant owed him or her a duty of care and have breached that standard of care. This duty of care is restrained to a limited group whom the defendant has a special relationship and who has specific use for the statements for the purpose in which they are prepared. In this case, Allen specifically knew the financial statements would be relied on by potential purchasers of the business to make purchasing decisions, he would thus owe a duty of care to the purchaser, Eddie (unlike in Rangen v. Deloitte as well as Hercules v. EY where a duty of care is not owed). He has likely breached this standard of care by omitting the expense. Therefore, Allen would be liable for negligent misstatement if Eddie sued for rescission or damages.

Fiduciary Duty

Related Cases:

- HODGKINSON V. SIMMS
- STROTHER V. 3464920 CANADA LTD.

Solutions:

The issue here is whether Abraham owed and breached his fiduciary duty to Franklin and Barack that would enable them to claim against him for the profit he made on this work. In a partnership which consist of persons engaged in business together with a common view to profit, fiduciary duty is a duty to act in good faith with a view to the best interest of the partnership. A partner cannot compete with the partnership or take for oneself a business opportunity that properly belongs to the partnership without consent of the other partners. In this case, Franklin, Abraham and Barack are partners engaged in a partnership in view of making a profit and owes each other fiduciary duty. In doing work for EastJet, Abraham breached his fiduciary duty as a partner and acted in conflict to the interest of the partnership (Unlike Strother v. 3464920 Canada Inc). Therefore, Franklin and Barack can force Abraham to disgorge the profits he made.

AGENCY

Related Cases:

- PEMBERTON BENCHLANDS HOUSING CORP V. SABRE TRANSPORT

Solutions:

The issue here is whether the principal, PG, is bound by the acts of the agent, Sean, despite the agent not having actual authority. According to agency by estoppel, where if an agent has no real authority but the circumstances convey the impression that the agent has some apparent authority by conduct and the third person was induced into contract based on that impression, then the principal is estopped from denying the agent's authority and would be bound by the acts of the agent. In this case, Sean did not have actual authority. His authority was restricted. However, Sean is PG's regional sales manager and had business cards to leave with clients. The job title and independence that Sean had would create an impression of apparent authority to conclude the contract. (Unlike in Pemberton Benchlands Housing Corp v. Sabre) Therefore, PG would likely be bound to honor the contract with Aaron.

Sole Proprietorships

Solutions:

- A sole proprietorship is an unincorporated business owned by a single individual.

- 3 disadvantages can include:
  1. Unlimited liability
  2. Financing limitations
  3. Lack of continuity

PARTNERSHIPS

Related Cases:

- LANZ V. LANZ
- PEN-BRO HOLDINGS V. DEMCHUK

Solutions:

The issue in this case is whether Flash and Priscilla would be held personally liable for the liabilities faced by their partnership, Flashy Deals. A partnership is not a separate legal entity. The partners in a general partnership face personal unlimited liability. Each partner is jointly liable for the debts of the firm. In this case, Flashy Deals is a general partnership and if the assets of Flashy Deals are insufficient to satisfy the judgement of the suing customer, the customer can claim the assets of Flash and Priscilla by either suing Flash or Priscilla (or both) for the damages suffered. Therefore, they would be personally liable for the damages.

CORPORATIONS

Related Cases:

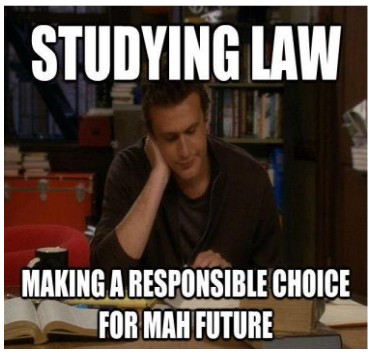
- CHALLENOR V. NUCLEUS FINANCIAL NETWORK INC
- DATA BUSINESS FORMS LTD V. MACINTOSH
- UNIVERSAL PROPERTY MANAGEMENT V. WESTMOUNT

Solutions:

The issue here is who will be found liable in the case that the corporation name was not properly displayed and known to the other party. A corporation is a separate legal entity where the shareholders enjoy limited liability. The most shareholders can lose to creditors is their financial contribution. For a corporation carrying on business, the name of the corporation must be properly displayed to not give the impression that the business owner is carrying on business as a sole proprietorship (Data Business Forms). In this case, Donald will argue that Donald's Lumber Walls Ltd is a corporation and he as the sole shareholder will be limited liability. However, there was no indication in the store, on the windows, or on the receipt that revealed to Hilary that she was doing business with a corporation. Hilary is entitled to treat Donald's Lumber as a sole proprietorship. Therefore, the sole proprietor, Donald, faces unlimited liability to Hilary.

Final Piece of Advice

Studying Phase:



- Don't stress, eat well and rest well while study well for the exam.
- Memorize the definitions of key law concepts and its related requirements.
- Do more practice problems! Try the review problems given by your professor.
- Review the CMP Midterm Session Review Package for the type of problems from pre-midterm material.

Examining Phase:

- Be prepared to read fast and write fast. Bring a few extra pens.
- Underline some key words or phrases in the questions or make a note on the side so that you can trace back easily while answering.
- Try to write neatly so the marker has an easier time reading your paper.
- If running out of time, start writing in point form and putting key words of any case or law concept related to the exam topic. Never leave questions blank.

GOOD LUCK


GOOD LUCK ON THE FINAL
AND MAY THE ODDS BE EVER IN YOUR FAVOR
memegenerator.net
FINALS
HOPE YOU KILL IT
DONT BE CONFUSED
ASK QUESTIONS
THANK YOU FOR COMING
MY PLEASURE
memegenerator.net