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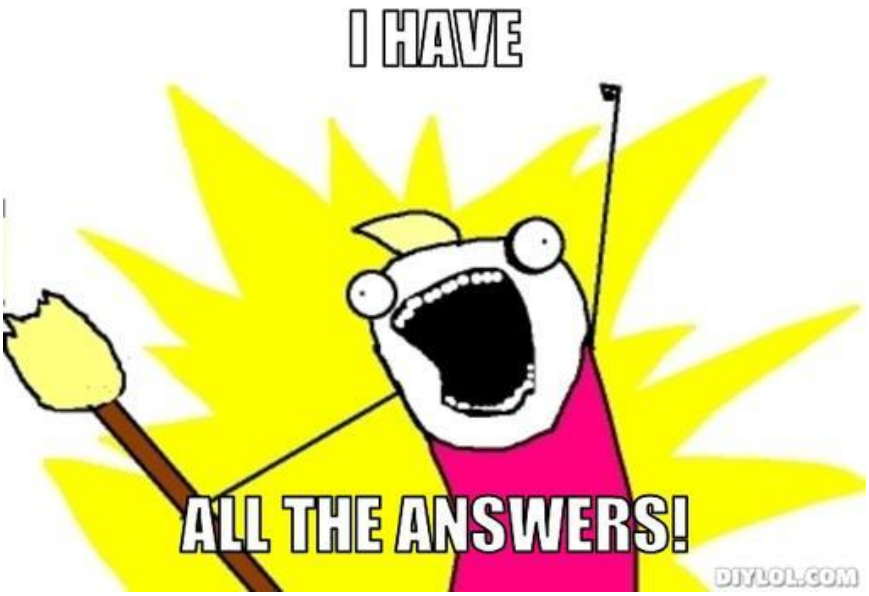
COMM 393 Commercial Law
Final Exam Review Session Solutions

By Roy Huang



CMP

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Exclusion Clauses

Related Cases:

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

Solutions:

The issue here is whether Mr. Jones would succeed in his 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 Mr. Jones was likely made aware that there are terms on the back of his ticket, Game Land has satisfied their legal responsibility as they cannot force Mr. Jones to read them (Similar to Dawe v. Cypress Bowl). Therefore, Mr. Jones is unlikely to succeed.

The issue here is whether the argument is a correct statement of 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, as long as the plaintiff is made aware that there are terms, the defendant has satisfied their legal responsibility as they cannot force the purchaser to read them. Therefore, the argument is not a correct statement of the law.

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 Toilette 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, computers requiring repairs that cost half of the purchase price after two years would not meet these standards. The clause in the contract limiting the guarantee to one year does not specifically override the implied terms in the SGA and would not protect Better Buy. Therefore, Toilette would be successful in suing Better Buy.

b) The issue here is whether the clause specifically overrides the implied terms in the Sale of Goods Act (SGA) and protect Better Buy 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, Toilette would not be protected under the SGA.

The second issue is whether Toilette may sue under fundamental breach. Fundamental breach is a very serious breach of contract the goes to its root that one would not expect the seller to be protected from. Since the breach was likely not serious enough (according to the criteria outlined in Maloney), Toilette would not be successful in relying on fundamental breach.

c) The issue here is whether risk and title already passed when the computers were lost at sea. According to the Sale of Goods Act (SGA), for a sale of future goods, when the contract calls for delivery by carrier, risk and title pass when the goods are delivered to the carrier. In this case, since the computers have already been delivered to the carrier in deliverable condition, risk and title already passed to Toilette. (Similar to Bevo Farms v. Veg Gro). Therefore, Toilette does not have legal grounds to sue CheapPC.

d) The issue here is whether risk and title already passed when the computers were lost at sea. According to the Sale of Goods Act (SGA), if there is contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until that thing is done and the buyer has notice. In this case, the computers are not yet in deliverable state when lost at sea. Risk and title still belongs to CheapPC (similar to Kovacs v. Holtom). Therefore, risk and title have not passed to Toilette and Toilette can sue CheapPC for damages for breach of contract.

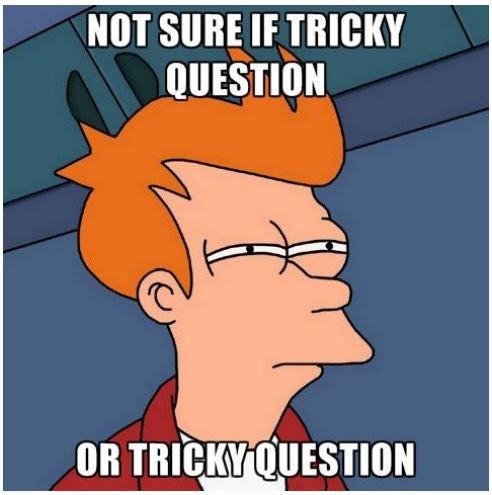
PRIVITY OF CONTRACT

Related Cases:

- PEACOCK V. ESQUIMALT & NANAIMO RAILWAY CO.

Solutions:

The issue here is whether Claudia can sue Me Cool despite her friend George ordered the Ginkessho Ginjo 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 Claudia does not personally have a contract with Me Cool, she is not a party to the contract. Claudia would only be able to sue directly against the manufacturer of her bottle of Ginjo in tort for negligence (similar to Donoghue v. Stevenson). Therefore, Claudia is unlikely to succeed in her claim against Me Cool and should bring her claim against the manufacturer of the Ginjo.



Negligence, Contributory Negligence and Vicarious Liability

Related Cases:

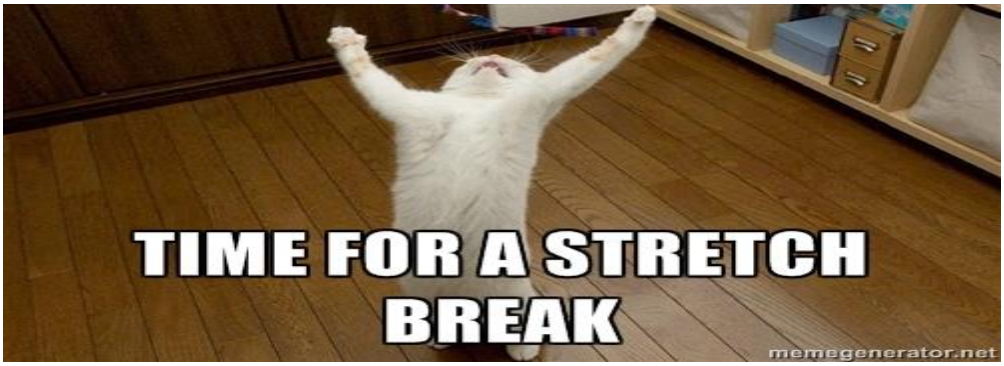
- WALDICK V. MALCOLM
- HOLLIS V. DOW CORNING
- MORSI V. FERMAR PAVING

Solutions:

The first issue here is whether the waiver signed by Derek Miller would prevent Tim from recovering. If Tim is 16 when the contract was made, he would be an infant under B.C Law. According to the Infant Act, a contract made with an infant is unenforceable against the infant and parents cannot waive the infant's rights (RE: Collins). In this case, Tim is an infant and the waiver Derek Miller signed cannot waive Tim's rights and would not prevent Tim from recovering.

The second issue here is whether the two guides and Skyler Adventures were negligent. To sue under negligence for reasonably foreseeable damages, the plaintiff must demonstrate a loss, a duty of care owed by the defendant and a breach of that duty which directly caused the loss. Where torts are committed by employees, the employer is vicariously liable. In this case, Tim suffered injuries that are reasonable foreseeable in a zip-lining accident. The two guides owed all

zip line riders a duty of care. The guides have breached that duty of care by launching Tim on the zip line too early due to their miscommunication which directly caused Tim's injuries. Tim does not appear to be contributorily negligent because it appears that Tim could not have done anything to prevent what happened. Therefore, since the negligence were committed by the two employees of Skyler Adventures at work, Skyler Adventures will be held vicariously liable.



Negligent Misstatement

Related Cases:

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

Solutions:

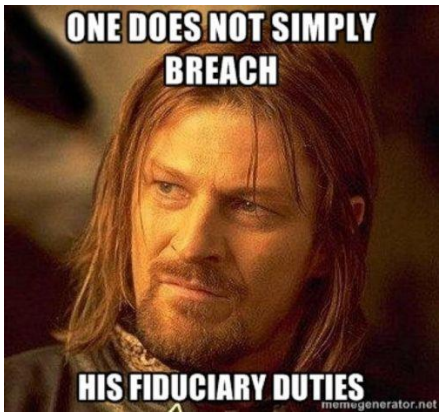
The issue here is whether Josh would be liable for negligent misstatement (negligent misrepresentation). To sue for negligent misstatement, the plaintiff must show that the defendant owed him or her a duty of care and have breached that standard of care. This duty of care is restrained to a limited group 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, Josh 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, Liam (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, Josh would be liable for negligent misstatement if Liam sued for rescission or damages.

Fiduciary Duty

Related Cases:

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

Solutions:



The issue here is whether Victoria owed and breached her fiduciary duty to Anne and Elizabeth that would enable them to claim against her for the profit she 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, Anne, Victoria and Elizabeth are partners engaged in a partnership in view of making a profit and owes each other fiduciary duty. In doing work for the fashion brand, Victoria breached her fiduciary duty as a partner and acted in conflict to the interest of the partnership (Unlike Strother v. 3464920 Canada Inc). Therefore, Anne and Elizabeth can force Victoria to disgorge the profits she made.

AGENCY

Related Cases:

- PEMBERTON BENCHLANDS HOUSING CORP V. SABRE TRANSPORT

Solutions:

The issue here is whether the principal, BHD, is bound by the acts of the agent, James Bond, 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, Bond did not have actual authority. His authority was restricted. However, Bond is BHD's regional sales manager and had business cards to leave with clients. The job title and independence that Bond had would create an impression of apparent authority to conclude the contract. (Unlike in Pemberton Benchlands Housing Corp v. Sabre) Therefore, BHD would likely be bound to honor the contract with Mr. Spectre.

Sole Proprietorships

Solutions:

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

- Any 4 advantages can include:
    1. Ease of formation and determination
    2. Low Start-up Costs
    3. No legal requirements other than any licenses required to do business and registration of name if required
    4. All profits belong to owner
    5. Pay taxes as an individual
    6. Own boss, flexible ownership

PARTNERSHIPS

Related Cases:

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

Solutions:

a) The issue in this case is whether Aramis would be liable for the acts of another partner that bounds the partnership in dealing with third parties. A partnership consist of persons engaged in an unincorporated business together with a common view to profit. In a partnership, each partner acts as an agent and can bind the firm in dealing with third parties as long as the partner appears to be acting in ordinary course of business. If the partnership is liable, each partner have unlimited personal liability for the debt. In this case, Green Apple Consulting is a partnership. Athos is an agent who can bind Green Apple Consulting to contract. The restraint of authority in the partnership agreement would not affect the dealership since it would not be aware. Therefore, the partnership is likely liable for the debt and Aramis would have 100% personal liability.

b) The issue here is how the assets would be divided between the partners. According to the Partnership Act, there is an implied term that assets will be divided equally if there is no formal agreement between the partners that refute that decision. However, the debts of the partnership must be paid first, then debts owed to any partner, then the remainder will be divided amongst the partners evenly. The contributions each partner made in the beginning is irrelevant. In this case, of the $50,000 left remaining, the $38,000 outstanding debt will be paid first. Then, $3,000 owing to Aramis will be paid, leaving $9,000 remaining. This amount remaining will be shared equally to each partner as there is no formal partnership agreement. Therefore, each partner is entitled to $3,000.

CORPORATIONS

Related Cases:

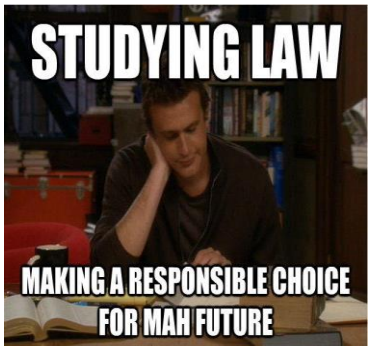
- CHALLENOR V. NUCLEUS FINANCIAL NETWORK INC
- DATA BUSINESS FORMS LTD V. MACINTOSH
- UNIVERSAL PROPERTY MANAGEMENT V. WESTMOUNT

Solutions:

The issue here is whether the shareholders of an incorporated company would be personally liable for the debt of the corporation. A corporation is a separate legal entity where the owners can enjoy the benefit of limited liability. The company alone would be liable for the debt unless the corporate veil can be pierced for fraud. In this case, H2O is a corporation and Henry, Heather and Olivia can enjoy the benefit of limited liability. It is unlikely that the Henry, Heather and Olivia engaged in fraud (Challenor v. Nucleus Case). Therefore, the corporate veil would likely not be pierced and Henry would not be liable for $30,000 of the debt owing to Debby's Trucks.

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
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