



commerce
undergraduate
society

COMM 393: COMMERCIAL LAW FINAL REVIEW SOLUTIONS

BY: GABRIEL CHEUNG

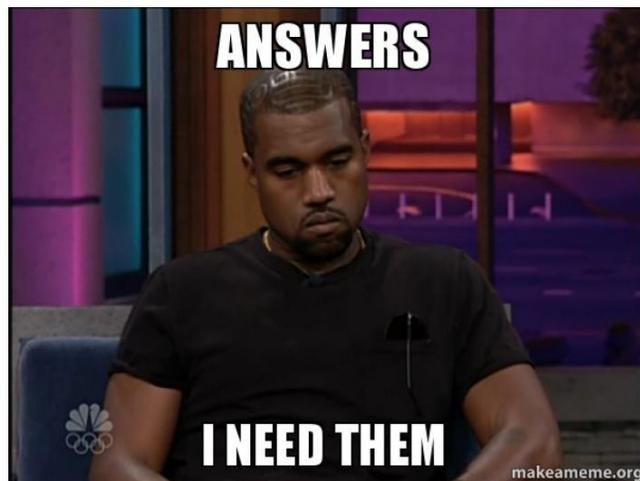


TABLE OF CONTENT

- I. Breach of Contract & Damages
- II. Exclusion Clauses
- III. Sale of Goods
- IV. Privity of Contract
- V. Negligence, Contributory Negligence and Vicarious Liability
- VI. Negligent Misstatement
- VII. Fiduciary Duty
- VIII. Agency
- IX. Sole Proprietorships
- X. Partnerships
- XI. Corporations



BREACH OF CONTRACT & DAMAGES

Solution:

The issue is whether or not Anakin can keep his deposit. Under the law, it states that in order for the party to get their deposit back, the party (Jar-Jar) will have to show it is an unconscionable penalty and not a genuine pre-estimate of liquidated damages. In the Blackcomb case, the court considered the following factors relevant:

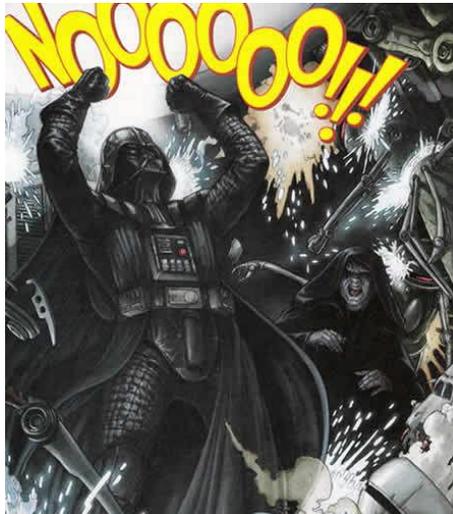
- a) That the contract called the deposit a genuine pre-estimate of liquidated damages - which created a presumption that it is what it is.
- b) Whether the purchaser was taken advantage of – that is unlikely to be the case in this situation.
- c) Was the deposit outrageous in relation to risk: normal deposits would be 5% to 10% of the purchase price – \$15,000/\$200,000 is within this range.
- d) Whether or not actual damages were suffered is totally irrelevant. – No damages were suffered
- e) Public policy should be to enforce what parties have agreed to.

Anakin will likely be entitled to keep the deposit.

EXCLUSION CLAUSES

Solution:

The issue here is whether Darth Vader would succeed in his legal claim despite the exclusion clause. The law states that 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, but not what the conditions are. Dawe points out that you need to show that there are conditions, but it is up to the plaintiff to read them. If the plaintiff is not made aware of these conditions, then exclusion clauses are NOT enforceable. (*Dawe v. Cypress Bowl*). For this particular scenario, the exclusion clause was not prominently displayed as it was written in small print at the entrance. Additionally, the helper who assisted Darth Vader and Luke could have reminded them about the specific safety procedures regarding rock climbing rather than just saying "Remember to be careful and be safe!" So yes, Darth Vader would most likely succeed in his legal claim against Ragnar's Rock Climbing.



SALE OF GOODS

Solution:

a) The issue is whether or not the SGA applies in this situation. The law states that the SGA applies where there is a sale of new or used goods from a dealer to a buyer for money consideration. Section 20 allows the dealer to exclude liability under certain sections of the SGA for new and used goods, however there is no such exclusion clause here. The SGA does apply in this case.

b) The issue is whether or not Obi-Wan is entitled to a refund. Under Section 18 of the SGA, the law states that goods must be fit for their purpose if:

- the buyer communicates the purpose for the goods to the seller so as to show that the buyer is relying on the seller's skill and judgment (the buyer must NOT have asked for goods by trade or patent name)
- and it is in the usual course of the seller's business to supply those goods (Kobelt case)

Section 18 also says that goods must be merchantable and durable and the remedy for breach of this section is either rescission or damages. Here Obi-Wan communicated his purpose for the cloak to be used for active wear. The cloak was already starting to tear on one side after only three days. The cloak was not fit for Obi-Wan's purpose, merchantable or durable.

Obi-Wan will be entitled to the refund of his \$150.



PRIVITY OF CONTRACT

Solution:

The issue here is whether Biden can sue Red Robin's despite Obama ordering the Mike's Hard Lemonade and paying for it.

The law states that 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 (Peacock v. Esquimalt).

Otherwise, the plaintiff can only directly sue the manufacturer in tort for negligence. In this case, since Biden does not personally have a contract with Red Robin's, he is not a party to the contract. Biden would only be able to sue directly against the manufacturer of his bottle of Mike's Hard Lemonade in tort for negligence (similar to Donoghue v. Stevenson). Therefore, Biden is unlikely to succeed in his claim against Red Robin's and should bring his claim against the manufacturer of the Mike's Hard Lemonade.



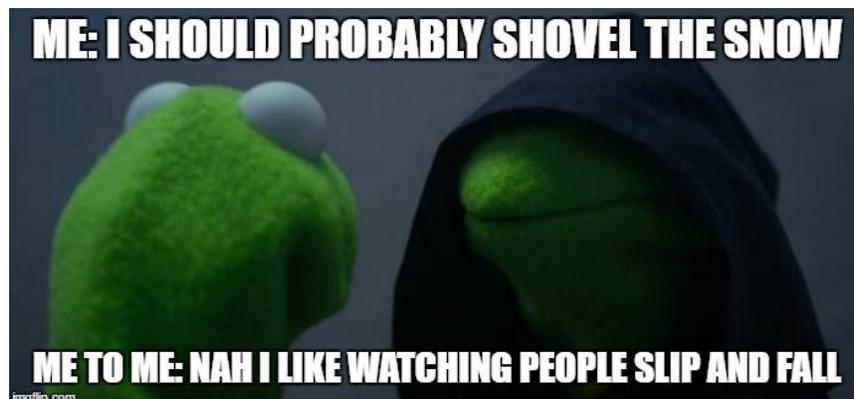
NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, AND VICARIOUS LIABILITY

Solution:

The issue is whether or not Gonzo will be successful in suing Kermit. In the *Waldick v. Malcolm* case, it was outlined that Malcolm does have a duty of care to ensure that persons on his property are reasonably safe by shoveling his walkway. Applying this with the standard of care framework:

- Would a “reasonable person” shovel the snow? Yes, as the conditions are treacherous.
- Would the “reasonable man” see this as dangerous conduct with regards to the probability and seriousness of the harm? Yes, as not shoveling the sidewalk is dangerous conduct which would breach this standard of care.

As Kermit is responsible for the cause of this injury by not shoveling the snow, it is fairly easy to determine that such an injury could have happened such as slipping and getting injured to some extent, so he should be responsible for the full extent of the damages. Putting up a sign is not helpful enough and in accordance with the near perfect conduct of the “reasonable man.” Yes, Gonzo would most likely be successful in suing Kermit for damages.



NEGLIGENT MISSTATEMENT

Solution:

The issue here is will Joey be likely to succeed at suing Steve for negligent misstatement. We can use the negligent misstatement framework and apply it to this situation to find out:

- Duty of care existing due to special relationship and information used for the purpose it was prepared for? - Yes, there is, as Steve is Joey's financial advisor and Joey used Steve's advice to make his financial decisions.
- The representation in question must be untrue, inaccurate, or misleading – Yes, this is correct, as the stock price for ONO was going down in 2016, and not up.
- The representor must have acted negligently in making the misrepresentation - Yes, Steve should have been more careful to look at the stock from 2016 as he is a financial advisor.
- The representee must have relied, in a reasonable manner, on the negligent misrepresentation - As his client, Joey relies on Steve to provide sound, financial advice on which to make decisions on.
- The reliance must have been detrimental to the representee in the sense that damages resulted - Yes, Joey lost all but \$100 of his money.

As we have gone through this checklist, it is clear to see that Steve would be at fault for negligent misstatement. Steve would most likely be responsible for the damages that Joey suffered as a result of this bad investment in ONO.



FIDUCIARY DUTY

Solution:

The issue is whether Andrew has a claim against Stephen in selling Buzz Beer without his permission. The law states that a fiduciary relationship is created when one party puts trust and confidence in another.

There are 3 characteristics of a fiduciary relationship:

1. The fiduciary has scope for the exercise of some discretion or power.
2. The fiduciary can individually exercise that power or discretion so as to affect the beneficiary's legal or practical interests.
3. The beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.
 - Note: a party is vulnerable when the fiduciary CAN abuse the power to the detriment of the other party (Hodgkinson case)

The responsibilities of a fiduciary relationship include (not comprehensive list) acting in good faith, acting with honesty, undivided loyalty to principal, and no conflict of interest. It is clear that these responsibilities were breached when Stephen sold the business behind Andrew's back. As a result, Andrew does have a claim against Steven. The remedy for breach of fiduciary duty is that Steven must give up the profit from the breach to Andrew, which is the \$500,000 profit he gained from selling the business.

AGENCY

Solution:

The issue here is whether the principal, Louis' Lamps, is bound by the acts of their agent, Donald. As their official sales guidelines prohibit such a deal, it is clear that Donald has no actual authority. However, the law states that an agent acting within apparent authority can also bind the third party and the principal in a contract (Pemberton Benchlands). Apparent authority can be indicated by commercial usage as well as holding out. Given that Donald is a sales representative and indicated that his position is Louis' Lights top sales representative, Harambe's Hotels relied on this impression and was induced to enter the contract because of it. This is evidence enough of apparent authority. As a result, Louis' Lights is bound by estoppel to honour the contract that Donald finalized with Harambe's Hotels.



SOLE PROPRIETORSHIPS

Solution:

- 1) A sole proprietorship is an unincorporated business owned by a single individual.
- 2) Under a sole proprietorship, the owner has unlimited personal liability.
- 3) Advantages of being a sole proprietor can include:
 - a. It is easy and inexpensive to register and start up
 - b. You are in direct control of the decision making for your business
 - c. You earn 100% of the profits
 - d. Minimal legal requirements (besides start-up licenses and registration of name if required)



PARTNERSHIPS

Solution:

The issue is whether or not Ben and Jerry's personal assets would be at risk in this situation. The law states that a partnership is where the parties agree to be partners (oral or written) and split profits/losses proportionally. It is clear that a partnership exists under this situation. As the business is not an LLP (does not state it in the business name), it is a general partnership. A general partnership is not a separate legal entity and both partners have unlimited personal liability. The partners are jointly responsible for the negligence/fraud of each other, and the negligence of one partner can cause a client/customer to sue one or all partners AND go after personal assets if the business assets are insufficient. As Taco Jen's has insufficient funds to pay for this lawsuit, both Ben and Jerry's personal assets are at risk in this situation, as they are jointly liable for Jerry's negligence of serving the expired ground beef.



CORPORATIONS

Solution:

The issue is whether Willy Wonka will be held personally liable for the debt. The law states that a corporation is a separate legal entity from its shareholders, directors, and managers. It is protected by a corporate veil and has limited liability (Salomon case). In this case, Charlie wants to pierce the corporate veil so that Wonka is held personally responsible for the debt of \$10,000. However, in order to do so, Charlie will have to prove that Wonka committed fraud or a breach of duty. The only information that we are provided is that the company went bankrupt due to large business losses, which are unavoidable and not the fault of Wonka. As a result, the corporate veil cannot be pierced, and Willy Wonka does not have to pay Charlie the \$10,000.

