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COMM 393: COMMERCIAL LAW FINAL REVIEW SOLUTIONS

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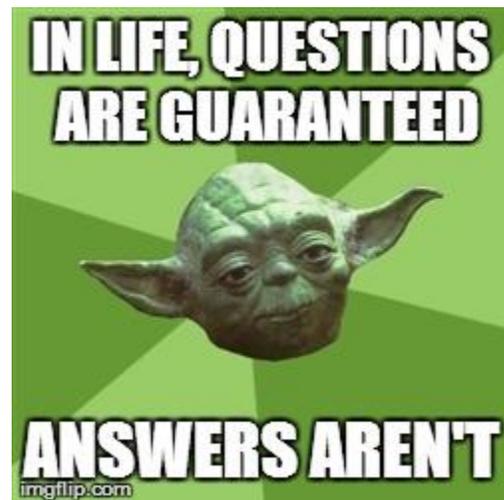


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CORPORATIONS

Related Cases:

- CANADIAN SPORTS SPECIALISTS INC. V. PHILLIPPON
- CHALLENGOR V. NUCLEUS FINANCIAL NETWORK INC
- DATA BUSINESS FORMS LTD V. MACINTOSH
- UNIVERSAL PROPERTY MANAGEMENT V. WESTMOUNT

Answer:

Issue: If Stephanie chooses to pursue a lawsuit, who is liable to pay for the money owed to Stephanie, Meryl's Merchandise Inc., or Meryl?

Law: Corporations are separate legal persons protected by a corporate veil and have limited liability. The name of the corporation must end in Corp. Inc., Ltd. etc. In the (Data Business Forms) case, contracts made when companies are sole proprietorships are still treated as such regardless of whether a business has since incorporated or not.

Application: As the contract was formed between Stephanie and Meryl when Meryl's Merchandise was a sole proprietorship, Meryl is liable for the payment to Stephanie and there is unlimited personal liability. What she should have done to avoid the personal liability is let Stephanie know that she incorporated her business and drafted up a new contract, or simply paid back the money that she owed to avoid having her personal assets at risk.

Conclusion:

Meryl can be held liable for the money that is owed to Stephanie due to unlimited personal liability as the contract was initially created when her business was a sole proprietorship.



NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, AND VICARIOUS LIABILITY

Related Cases:

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

Answer:

Issue: Will Danielle be likely to succeed in her claim?

Law: The law that applies here is negligence. [For certain categories, e.g. doctors and patients and for lawyers and clients, the duty of care is a given, which would be the case here.] In general, plaintiffs have to prove the negligence framework: 1) Duty of Care 2) Breach of Standard of Care 3) Damages; and 4) Causation. Duty of care generally deals with whether the responsibility or legal obligation of a person to avoid foreseen acts or omissions would likely cause harm to others. Standard of care deals with the specific duty of care owed (e.g. the skills or expertise that would be expected to be administered), Damages requires that actual damages must be suffered (they must be capable of being evidenced). Causation is whether or not the actions/conduct resulted in the direct damages suffered by the plaintiff.

Application:

Assessing the negligence framework for Dr.Phil: 1) Doctors do

owe a duty of care to patients to serve them and properly diagnose their ailments. 2) Did Dr.Phil perform his duties such that his conduct was up to the standard of a person of reasonable competence practicing the same field? Yes, as Dr.Phil did perform a normal medical examination and did not do anything irregular to show otherwise. 3) Danielle would claim her suffering from a worse cold as damages. 4) While Danielle might have suffered a worse cold as a result of Dr.Phil's misdiagnosis, the cold would not really be seen as reasonably foreseeable damages as Danielle's symptoms suggested that she really did have a normal tension headache as Dr.Phil originally diagnosed.

Conclusion:

An error of judgment is not necessarily negligence as similar doctors in similar practice would most likely agree that Dr.Phil did his medical examination correctly. He still provided the proper standard of care so he would not be considered negligent in this situation.

Roses are red
My heart is fat
Be my Valentine
Or cash me outside howbow dah



SALE OF GOODS

Related Cases:

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

Answer:

1) Issue: Will Bill be able to refund the speaker due to it not being suited for his purpose?

Law: The SGA applies here as this is a sale of a "good" and not a service. Under the Sale of Goods Act, there are three requirements that must be met for the implied condition as to fitness for purpose. 1) Buyer conveys purpose to seller, 2) Buyer relies on seller's skill or judgment, 3) Goods are in the seller's business to supply.

Application: 1) Bill did convey the purpose of the speaker to the seller; he wanted to play music in his house with it. 2) Bill did ask the seller which speaker would best be suited for him, HOWEVER, Bill instead chose a different speaker than what the seller recommended him, so this requirement is not met. 3) Speakers are likely to be in an electronic store's business to supply.

Conclusion: No, Bill will not be entitled to a refund.

2) Issue: Will Bill be able to refund the speaker due to it not being durable?

Law: Under the Sale of Goods Act, S.18c deals with implied condition to durability, and states that goods will be durable for a reasonable period of time under normal



use.

Application: As there was no indication that Bill used the product for any irregular use, and that the speaker dented rather easily despite being described as super durable, Bill has a case here that he received a faulty product.

Conclusion: Bill would likely be able to get a refund for his “not so durable” speaker.

3) Issue: If Bill sues Best Buy for damages, what is the likely outcome of this situation?

Law: The law that applies here are the title of transfer rules. As was the case in Bevo Farms, this is the sale of unascertained goods (there are many different speakers of the same type in stock), as soon as they are delivered to the carrier, they have been appropriated and title shifts to the buyer.

Application: Applying this, Best Buy is not responsible for the speaker while it is in transit, and Bill actually had title of the product while the speaker was being delivered. The contract was made in the store when Bill ordered the new speaker.

Conclusion: No, Bill is unlikely to get a replacement speaker or refund, as the owner of title is responsible for insuring goods and is responsible for any losses.

 Kyle Ryan
@RynoOstar

"Bill Nye the Science Guy!"

The whole classroom: BILL BILL BILL BILL
BILL



PARTNERSHIPS

Related Cases:

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

Answer:

Issue: What type of partnership are Nick and Dan conducting and who will be held liable for the damages?

Law: General partnerships are not considered to be separate legal entities from individuals and both partners have unlimited personal liability. There is no evidence that indicates the business is an LP or LLP. In a general partnership, partners are each personally liable for any tortious liability.

Application: Being a general partner in a business offers poor asset protection. Lit Sushi will be held liable for the damages, and the seafood supplier can choose to go after either partner's personal assets if Lit Sushi's business assets are insufficient.

Conclusion: Nick and Dan are conducting a general partnership, and all parties can be held liable for the damages, Lit Sushi, Nick, and Dan.



EXCLUSION CLAUSES

Related Cases:

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

Answer:

Issue: Will Homer be likely to succeed in his claim?

Law: The law that applies to this case is exclusion clauses.

We can use the test from the Maloney case to apply to this situation, which is: 1) As a matter of interpretation, does the exclusion clause apply to the circumstances and 2) Is the clause unconscionable (is there evidence of fraudulent misrepresentation?) Additionally, exclusion clauses are only valid when the seller does what is reasonable to bring the terms to the buyer's attention (example: clear wording, bold print, highlight, colour, etc.). (Dawe v. Cypress Bowl)

Application: It is clear that the exclusion clause applies in this particular case as Milhouse informed Homer of the waiver, and the terms were clearly highlighted (bolding, red font, etc.).

Homer might claim that he was not aware there would be any potential objects that would injure him and that Milhouse informed him that he would not be likely to suffer any injuries, however, Homer did sign the exclusion clause, and Milhouse might only be guilty of negligent misrepresentation (as a new employee who did not have much knowledge of the different escape rooms), which is not fraudulent misrepresentation and nullifies the exclusion clause.

Conclusion: Therefore, Homer is not likely to succeed in his legal claim due to the reasons listed above.



PRIVITY OF CONTRACT

Related Cases:

- PEACOCK V. ESQUIMALT & NANAIMO RAILWAY CO.

Answer:

Issue: What is Trump and Pence's defense in this situation, and how much will they likely have to pay?

Law: According to the law of privity of contract, only the contracting parties to the contract are "privity", and a "stranger" (someone that is not a party to the contract) cannot sue to enforce a contract under contract law.

However, employers that are strangers to a contract can benefit from a limited liability clause in their employer's contract if (London Drugs Ltd.):

- 1) The limitation of liability clause must, either expressly or impliedly, extend its benefit to the employee(s) seeking to rely on it
- 2) The employees must have been acting in the course of their employment and must have been performing the very services provided for in the contract between their employer and the other party when the loss occurred.

Application: The initial contract with the limitation of liability clause is between HWS and CG, so Trump and Pence would be considered as strangers to the contract. However, we should

apply the limited liability clause rules to see if this applies to Trump and Pence:

1) The two employees, Trump and Pence thought that they were covered by the limited liability clause that their employer signed as they are considered “warehousemen,” they did not expect to be found liable when this clause stated that they were excluded from liability for up to \$50.

2) Yes, the two employees were acting in the course of their employment and were providing services for CG when the loss occurred.

Conclusion: Trump and Pence’s defense is that they should be covered by the limited liability clause of their employer, which overrides the privity of contract. As they are covered by the limited liability clause, they should only have to pay the \$50.

FIDUCIARY DUTY

Related Cases:

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

Answer:

Issue: Explain the responsibilities of Andrew's role in this situation and how he infringed upon them.

Law/Application: The law that applies here is fiduciary duty. A fiduciary relationship is created when one party puts trust and confidence in another.

There are 3 characteristics of a fiduciary relationship (Strother)

1. The fiduciary has undertaken to act in the best interest of the beneficiary;
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)

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.

Andrew owes a fiduciary duty to Stephen and Ying, since:

1. As their agent, he should be trying to procure the best price for them.
2. As their agent, he does have power and/or discretion when it comes to setting the listing price.

In this case, Steven and Ying are placing trust in Andrew's judgment and skills as their realtor.

Andrew breached his fiduciary duty:

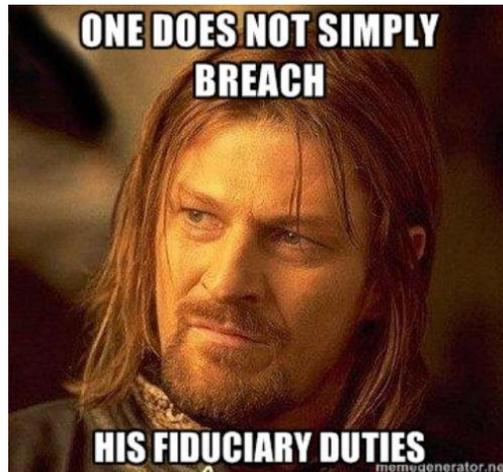
Acting in the best interest of the client would require that he disclose to the client any information he receives that may benefit the client's position in a negotiation. – Andrew should have disclosed his knowledge about how the house is actually worth \$1.75 million instead of hiding this information.

No conflict of interest or loyalty: The agent owes undivided loyalty to the client and puts the client's interests above her own. They cannot have personal interests that place them in a position of conflict. – Obviously, Andrew did not put the client's interests above his own as he took advantage of their position and lack of knowledge about the housing market to make a profit for himself.

Conclusion:

It is clear that Andrew breached his duties as a fiduciary in this situation. The remedy of breach of fiduciary duty is that Andrew must give up the profit from the breach to Steven and

Ying, which is the \$250,000 profit he gained from flipping the house (Hodgkinson).



SOLE PROPRIETORSHIPS

Answer:

Issue: Who is liable if Gonzo wishes to sue Kermit's Fishing Equipment?

Law: Corporations are separate legal persons and are protected by a corporate veil and have limited liability. Corporation names must end with Corp, Inc., Ltd., etc. Under sole proprietorships, there is no division between personal and business assets when sued; there is unlimited distinction of liability.

Application:

In the (Data Business Forms) case, we learnt that the name of the corporation must properly be displayed, otherwise the business is considered as a sole proprietorship. There is no indication at all that the business really is a corporation as the company name on the awning and receipt does not display Ltd., Corp., Inc., etc.

Conclusion:

If Gonzo sues Kermit, he could be held liable for fraudulent misrepresentation and any other tortious conduct and he would face personal unlimited liability as a court would determine that he is actually conducting his business as a sole proprietorship and not a corporation.



NEGLIGENT MISSTATEMENT

Related Cases:

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

Solution:

Issue: Will Gabriel be likely to succeed in suing Tai for damages?

Law/Application: The negligent misstatement framework applies in this situation:

Duty of care: exists in this situation as there must be a 1) special relationship, that is, the professional must have known who would be relying on their information (Rangen) and 2) the information must be used for the purpose which it was prepared for? (Hercules)

Both are present here, as Tai is Gabriel's financial consultant and he used the advice for the purpose it was prepared for, to invest funds.

Breach of the Standard of Care: a breach exists here if Tai did not 1) use the standard of skill and care of a competent member of his profession and 2) used the skill and care commensurate (appropriate) for the task. On the facts it is not certain if Tai has met the standard required. It does say he later checked the historical performance of the stock, and this would indicate that since the stock has gone down in price over the



years that Tai was not acting as a competent member of his profession.

Causation: For causation, with professional negligence, the key is that there was reliance on the advice, although it does not need to be the sole reason for the decision made.

Here the reliance caused the loss, which was probably caused by a breach of the standard of care, to somebody owed a duty of care, so Tai is liable for negligent misstatement.

Tai should be responsible for the damages that Gabriel suffered and compensate him as a result of this bad investment in Lamborghini.

Issue: Will Steve be likely to succeed in suing Tai for damages?

Law: The same negligent misstatement laws apply in this situation; HOWEVER, professionals only owe a duty of care to the parties that are reasonably “foreseeable” (Rangen) and to those that use the information given by the professionals for the purpose actually “foreseen”. (Herculese v. EY)

Application: Tai could not have reasonably foreseen that Gabriel’s friend Steve would also rely on his financial advice as he has no knowledge of Steve’s existence, despite the fact that his advice to invest in Lamborghini was followed through (Tai did not examine Steve’s stock portfolio at all either).

Conclusion: Professionals are not held liable for negligent

misstatements that they make top any person, they only owe a duty of care to the parties that are reasonably “foreseeable”, and thus, Steve will likely not succeed in his claim in suing Tai for damages.



AGENCY

Related Cases:

- PEMBERTON BENCHLANDS HOUSING CORP V. SABRE TRANSPORT

Solution:

Issue: Is BBB correct that they have no liability?

Law: An agent is a person that receives authority and agrees to act on behalf of the principal in a business transaction.

There are two types of authority, actual authority and apparent authority.

1) Actual Authority: is expressed or implied.

2) Apparent authority is agency by conduct or estoppel.

If an agent acts within actual or apparent authority, the Principal and Third party are held liable in the contract.

Application:

To test for Apparent Authority, the plaintiff must prove:

1. Principal created an impression or made a representation to the Customer that the Agent has SOME authority – BBB made no representations that Vince had the authority to grant loans.
2. The Customer relies on that representation – Vince made a loan in his own name on a napkin. It should have been clear to the customer that Vince did not have authority as an agent to do this.
3. The Customer is induced to enter the K – The clients were induced to enter into contracts with Vince for the loan.
4. The Customer must be aware of any restrictions on the



agent's authority – See above for question 2 – this would apply here as well, where the customer ought to have known that Vince was overstepping his bounds.

Vince did not have apparent authority (and obviously did not have actual authority, as BBB did not give him any express authority to make loans).

Vince would be responsible for his own actions (including if they were fraudulent) and BBB would not be bound by them.