Marine Rio 13rd, may 2020
M6X01292 4 hours

Citing cases from the attached list and your own knowledge to support your argument read the scenario and give your advice:
Fred, George's friend, lets it be known that he has a Blueray player for sale. George immediately offers Fred £20 for the player as his own machine has recently broken down. Fred tells George that £20 is not enough and he will only accept £35.

On his own way to work George passes a local TV and video shop which has a DVD player in the window with a price tag of £30. Impressed by the great offer he enters the shop and immediately asks to buy the player in the window display. Mike, the shop owner, realises that the tag is wrong and tells George that the price is £40, not £30. Despite arguing Mike refuses to sell the player for any less than £30 and George, now thoroughly annoyed decides to leave the shop empty-handed.

The following morning but George decided to go back to the shop and buy the player from there for £30 and later in the afternoon on the same day Fred sends a letter to George accepting the offer of £20 for his DVD player. A few days later Fred's letter arrives and George phones Fred to let him know that he has already bought a DVD player from Mike's shop.

Advise the parties on any legal issues raised regarding the rules of offer and acceptance.
Answer:
In this case several offers are made and in different ways.
First, a first offer is made between George and Fred. There is an invitation to deal, indeed George offers an offer of £ 20 and Fred agrees to sell him at £ 35. To give an example to this part of the case, the case study by Harvey V Facey (1893) corresponds to this exchange between Fred and George. Indeed, there is a price declaration between the two parties, provided that there was no offer likely to be accepted. In this case, Fred's £ 35 offer replaces George's £ 20. That is to say, the £ 20 supply no longer exists (Hyde V Wrench (1840)).

George walking across the street through a window saw a blueray player in a store. A price of £ 30 was written on it. However the trader made an offer of £ 40. In this case, we have an invitation to process. This means that the merchant is ready to receive offers. To be more precise, we have a unilateral contract. Indeed, there is no promise from George or from the merchant. We can take the example of Partridge and Crittenden (1968). In this case, we have an invitation to process and not an offer.

George was allowed to walk out of the store hands free as he did not agree with the merchant's proposal.

Returning to the store the next day, George accepts the merchant's offer of £ 40. It is a one-sided contract, that is, George promises to pay the merchant, but there is no promise from the merchant other than to give him the game.

Finally, when Fred wished to accept George's offer, it was more possible because the £ 20 offer had been canceled by his £ 35 offer (Hyde V wrench (1840)).
In addition, the rule of the post states that the offer begins when the mail is posted (Adam V Lindsell (1818)). However, the offer was no longer valid, and George had bought from a store. In this case, we can refer to the case of Stevenson, jacques & Co V Mclean (1880). This letter is not specific in terms of offer or rejection, but a simple survey that needed to be answered. In this case George may refuse the investigation.

2) The general rule for the discharge of a contract is that the parties must perform precisely all the terms of the contract in order to discharge their obligations.

a. Briefly describe the circumstances of *Cutter v Powell* (1795) 6 Term Rep 320 and *Bolton v Mahadeva* [1972] 2 All ER 1322 and evaluate whether the judgements made at the time would be upheld today making use of appropriate Acts of Parliament and other cases listed to support your argument. (20 marks)

Answer:
Cutter V Powell (1795): A sailor had agreed to work on a ship. In the contract, it was said that his salary would be paid at the end of his service. Unfortunately he died during this trip. His widow had asked to recover the sailor's wages.
However, according to justice, since he had not finished his trip, and therefore had not finished his mission, the widow could not receive the money.

Today: the 1970 law in the merchant navy allows today to receive compensation in the event of death.
Companies are covered by the branch agreement of June 18, 1976 relating to the establishment of a death and disability insurance system for seafarers. A distribution of the contribution is made and necessary (Employer share: 60% - Officer share: 40%).
In the event of the officer's death, the termination indemnity is paid to his widow / widower or, failing that, his dependents.

Bolton V Mahadeva (1972): The plaintiff installed central heating in the defendant's house. The agreed contract price was £ 560. The accused was not satisfied with the work (smoke, the house was less warm) and refused to pay. The defects in the works amounted to £ 174 to correct the defects. The plaintiff's action to enforce the payment failed because the court found that there had been no substantial execution and therefore the claimant could not recover anything.

Today: We can take the example of the Hoenig v. Isaacs, in fact, Hoenig had decorated Isaac's house. However, Isaac found no taste in the decoration made by Hoenig. Isaac did not want to pay for the work. However, he had to pay them because the contract said that payment will be made when the job is finished. The work has been done so must be paid for. In the case of Bolton V Mahadeva (1972), the work was done. Mahadeva must pay but can claim damages for the work that needs to be corrected.

b) An agreement to extinguish a contract is itself a binding contract, provided that it is made under seal or consideration is exchanged otherwise the court must decide whether the discharge is bilateral or unilateral. What are the differences between bilateral and unilateral discharge of a contract . (5 Marks)

Answer:

A unilateral contract is made when a person promises to pay a sum of money, or to give a service in exchange for something chosen. However, there is no promise. There are "if..." in a unilateral contract. To illustrate this type of contract, we can take the case of "Carlill V Carbolic Smoke Ball Company Ltd (1893). The offeror had a promise (give £ 100) however the requester was not obliged to offer.

In a bilateral contract, there are promises in both parties. In this case, we can take the case of a person who is doing his courses: he agrees to pay for products and the seller agrees to supply the store and guarantee products.

3) Drawing examples from the attached list of cases and your own knowledge as appropriate:

a. Express terms of a contract can be oral statements or written statements. When can oral statements form part of the terms of the contract or be considered a representation? (10 marks)

Answer:

According to "Contract Law", a term is a promise or commitment that is itself part of the contract. While a representation encourages a person to sign a contract. To represent, we can take the example of Ecay v Godvfrey (1947). The defendant sold a

boat to the plaintiff (£ 750). He stated that, to his knowledge, the boat was solid and free from defect, but advised the applicant to have it surveyed. The boat was found to be defective.

The statement that the boat was healthy was just a representation. The declaration was not categorical enough to amount to a penalty and the notice to have the boat inspected demonstrated that the defendant did not want the plaintiff to rely on the declaration. Indeed, despite the fact that the defendant proposed to ask the plaintiff to look at the boat, he is not an expert, it is difficult to see all the errors. So it's not a term.
To define a term we can take the example of Bannerman V White (1861) 10 CBNS 844:
The applicant has contracted to purchase hops for the production of beer. He asked the seller if the hops had been treated with sulfur and told him that if he had any, he would not buy them because he could not use them to make beer if they had any. The seller assured him that the hops had not been treated with sulfur. In fact, they had been treated with sulfur. The statement that the hops had not been treated with sulfur was a clause in the contract rather than a statement because the claimant had communicated the importance of the clause and relied on the statement. His action for breach of contract was successful.
We find that hops are of great importance, so a term is a promise or commitment that is itself part of the contract because of the important. This is an important point in the contract, it is a contractual clause.

b. There are three groups of implied terms, name them and discuss how and why they may be read into a contract by a court. (15 marks)

We have three parts in implicit terms: by the court, by the custom and the statute.

By the court: we can take the example of *The moorcock (1889).* The Applicant docked his vessel at the accused's wharf on the Thames. The vessel was damaged due to uneven surfaces and rocks on the river bed. The plaintiff claimed damages from the defendant and the defendant argued that there was nothing in the contract to justify the condition of the river.
The court actually hinted that the riverbed would be safe for mooring. The court introduced the commercial efficiency test, that is, the term must be necessary to give commercial effect to the contract. If the contract has a commercial meaning without the term, the courts do not imply a term. The court held that the fact that the boat would not be damaged represents an implicit clause in the contract.

Implied terms are inserted to represent obvious but not expressed wishes. Implicit conditions are added to contracts independently (liverpool City council V Irwin (1976);
By custom: terms may also be implied in a contract by custom or local use (Hutton V Warren). However the conditions are not implied by custom if they are contrary to the rules of the contract.

By the statute: Certain conditions are implicit in contracts by law, to protect the parties in case of inequality (employment contract for example). (Law of 2015).
If these laws are not respected, the applicant has the right to:

-The short-term right to refuse the goods

-The right to repair or replace the goods

-The right to a price reduction or the final right to reject the goods.

4) What are the three types of misrepresentation and what remedies exist to the injured party? (25 marks)
Answer:
There are three types of misrepresentation: fraudulent, negligent and innocent

Fraudulent: This type of misrepresentation is serious, important and dangereous, it was signed recklessly and quickly. It's deception. In these cases, cancellation is favored, but damage is often present. Like financial loss (Mc Connel V Wright (1903)). We can take the example of Derry V Peek (1889). The company Plymouth, Devonport and District Tramways has published a prospectus indicating that the company was authorized to use steam trams, which would replace their horse trams. In fact, the company did not have such an authorization because the right to use steam energy was subject to the agreement of the chamber of commerce. The company made a request, honestly believing it would get an authorization because it was a mere formality. In reality, after the publication of the prospectus, the authorization was refused and the company ended up in liquidation. However, the statement was not fraudulent because it was not proven that the director of the company was dishonest, so that the plaintiff could not claim for deception. However, most of the time, in the event of a fraudulent misrepresentation, the remedies for the injured party are cancellation and / or damages.

Negligent: Historically there were either fraudulent and innocent false statements. It is now possible to do both at the same time: negligent. We can take the example of Esso pretroleum & Co V Marden (1976).
Esso said the service station would sell 200,000 gallons of fuel a year on the busy road. There were planned works that changed the entrance to the gas station. This caused a huge loss, sales were 85,000 gallons. He lost a lot of money. This information was not said, there was an incentive to conclude a contract. This is misleading information and entitles Maden to have damages.

For this, Esso Petroleum is responsible and gives the right to cancellation and compensation for damage.

Innocent: An innocent statement is a misrepresentation of material fact made by the defendant, who was unaware at the time of signing the contract that the statement was false. The remedy in this situation is usually the cancellation of the contract. According to the Act 1967, section 2 (2), a person who has concluded a contract after a misrepresentation has the right, by reason of the misrepresentation, to terminate the contract. In some cases, the arbitrator may declare the contract in force and award damages based on the nature of the misrepresentation and the loss that the victim could have lost. We can rely on the example of Salt v Stratstone Specialist Ltd (2015), in fact in this case, the accused sold a Cadillac to an individual. It was declared as new but the private individual saw major faults on the car. He tried to return the car and be reimbursed. The accused refused. The judge said there was a false statement on the part of the accused. In this case, the cancellation of the contract was the remedy despite the fact that the car was registered and used by the individual. The lapse of time between purchase and discovered defects remains "reasonable" and therefore normal to grant cancellation. If the cancellation had not been possible, section 2 (2) should not be used as an additional means of claiming damages but as an additional restriction. The availability of damages compensates for termination (fair).