

ASPECT OF CONTRACT & NEGLIGENCE



BTEC HND DIPLOMA IN BUSINESS (LEVEL 5) ASSIGNMENT COVERSHEET 2014

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ASSESSMENT CRITERIA TO BE ASSESSED IN THIS ASSIGNMENT

Identify all criteria to be assessed in this assignment

Achieved pass criteria	LO1		LO2				LO3					LO4		
Original Submission	1.1	1.2	2.1	2.2	2.4	2.5	3.1	3.2	3.3	3.4	3.5	4.1	4.2	4.3
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Achieved Pass Criteria	Merit criteria			Distinction Criteria		
	M1	M2	M3	D1	D2	D3
Original submission						
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AUTHENTICITY STATEMENT

I certify that the attached material is my original work. No other person's work or ideas have been used without acknowledgement. Except where I have clearly stated that I have used some of this material elsewhere, I have not presented it for examination / assessment in any other course or unit at this or any other institution.

Signature:

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ASSESSOR'S FEEDBACK

GENERAL COMMENTS

SPECIFIC COMMENTS

HOW TO IMPROVE YOUR ACHIEVEMENTS IN THE FUTURE

ASSESORS SIGNATURE AND DATE

Acknowledgement

Apart from the efforts of me, the success of any project depends largely on the encouragement and guidelines of many others. I take this opportunity to express my gratitude to the people who have been instrumental in the successful completion of this project.

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Thank you.

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Task 01

1.1 How can the essential elements of a valid contract be explained?

It should have to fulfill some essential conditions or the elements to become a valid contract as follows;

I. Offer & Acceptance

There should be a lawful offer as well as the lawful acceptance by the both parties of the agreement.

II. Intention of creating a legal relationship

If there's no such intention of legal binding to the agreement; then a valid contract is not further exist. Ex; Balfour vs. Balfour Case

III. Lawful consideration

Here the consideration can be defined as the recompense or the price of the promise given by the party to the other party who is contracting each other.

IV. Capacity

Here the both parties should be competent to the contract and the minors and the other disqualified persons by the law are not having the capacity to enter into the contract.

V. Free consent

Here the agreement should have to be free from the coercion, fraud, mis-representation and mistakes.

1.2 Was there a valid contract between Roger and the store? Reason your answer with valid legal position?

No, because this contract has become void since the advertisement would be only considered as an invitation to offer and the order placed by Roger will be treated as making an offer. Therefore the seller is allowed to refuse to sell the products of the advertisement which are

mistakenly printed here. On the other hand the Roger should know about the reasonable price of the LCD TV at the market and is it possible to buy at that price as well.

1.3 What are the differences between an offer and invitation to treat? Give examples and explain

Here the acceptance of the invitation to treat will be made an offer and the seller is allowed to accept that offer or not. But the acceptance of the offer will create a binding contract among the both parties who entered into. Therefore under the marketing tools of advertisements, brochures, auctions etc. the sellers are allowed to accept or reject the offer done by the clients and it is only making an invitation to make an offer and then make a contract if the seller has accepted it. So according to the context, it can be seen that there's only an invitation to offer made by the store other than making an offer directly.

1.4 Is there a contract between Roger and Adam? Explain with reasons.

No, because gratuitous promises are not considered as a good consideration and therefore there's no any contract between the Roger and Adam exist here. In order to make a legal contract, it is essential to have a valuable consideration among the parties who expect to enter into. Here the Roger as the father of Adam's has only promised to give him a television for the purpose of continually attending his son to his HND classes. Because of that Adam has no right to sue against his father who have act on behalf of his well- being under the contract law since there's no legally enforceable contract between them furthermore.

Task 02

2.1 What is the effect of termination of both Randal and John? Are they valid? Give your reasons with case reference.

Yes it is valid, because the breaching an essential promise or term will allow the innocent party to terminate the contract while recovering the damages for the losses occurred through

the contract. Here it has specifically mentioned that there was an essential clause in their contract for the next season to be present from the first night of performance itself and John has to be present for rehearsals 5 nights before the season's first performance. So it could be identified that the termination of both Randal and John would be allowed since the breaching of an essential term of the contract.

2.2 What is the importance of The Moorcock case (1889)?

This is highly important for the judgment of the implied term which are implied by fact, implied by the practice of the business as well as implied by the law itself. So here the Moorcock case is driven by the terms which were implied by fact. Therefore there is an implied warranty that the jetty should be safety and wharfingers should have to ascertain the status of the river-bed although Moorcock has not made any provision for the vessel's safety. Ultimately the court held that the wharfingers should have to pay for the damages happened to the Moorcock's vessel.

2.3 What requirements should be completed in order to give validity to exemption clauses?

Here the main aim is to exclude the liability of one party regarding the breaching or negligence of the contract. So it may contain in a document which is unsigned like a notice or ticket. In order to give validity to the exemption clauses, it should have to fulfill two main requirements such as the exemption clause should have to bring to the other ones notice when the contract is signed or before signing it and it should be given a reasonable adequate notice regarding the clause as well. Therefore it can be seen that the pre notice by the other party should be given regarding the exemption clause included in order to become them validity itself.

2.4 What are the effects of a contract entered into by misrepresentation?

Misrepresentations can be identified as untrue representations. It could be happen fraudulently, negligently or innocently. So here the remedies for the damages will depend on the nature of the misrepresentation as well. Because of that; under the fraudulent misrepresentation, the party who was injured could claim for the compensation for the losses emerged. Then under the negligent misrepresentation; injured party has restricted for the

reasonable foreseeable. Finally the rescission can be identified as the remedy for the innocent misrepresentation which is not be rewarded for the damages further. When it comes to see the effects of a contract entered into by misrepresentation is the capability of the injured party who can make the contract voidable or choose the rescission or continuing with it furthermore.

Task 03

3.1 Does any duty of care owed by the manufacturer of ginger beer to B? Explain the concept of duty of care.

Yes of course, because the manufacturers or the manufacturing companies are having the “Duty of care” towards their clients who buy and use products. Here they are having a duty of making the product safety while providing the warnings about the usage of such products. Furthermore “Duty of care” implies that there is a responsibility by a business or a person who has the reasonable care regarding their products or relationships with dealing others. According to the given case here, it can be identified that there is a duty of care owed by the manufacturer of ginger to the person B. Furthermore this indicates that the act of being a reasonable person who always pay attention and care the others.

3.2 Explain the developments of the concept of “duty of care”

Before 1932 with the decision of the *Donoghue v Stevenson*, it cannot be identified standardized cases for the duty of care. Here the *Donoghue v Stevenson* has identified as the modern case of the development of the negligence concept with the decision of Lord Atkin while deciding that the manufacturer of the ginger beer was owed the duty of care. Later under the cases such as *Anns v Merton & Murphy v Brentwood*; the court held that there should be the proximity as well as the foreseeability in order to become a duty of care and the defendant was become liable. However later it has identified three main stage tests under the case of *Caparo v Dickman* such as the foreseeability as well as the proximity and reasonable of imposing duties

3.3 Will Mrs. James have a successful claim?

Yes, because it is considered as a tortious liability and under the duty of care, it can be seen two main kinds of liabilities such as tortious liability and the contractual liability. So here

under the tortious liability the property owners are liable for the damages of James. The employers are responsible of covering the health and safety issues of the employees and as per the given scenario, it could be able to identify that the employers should have to be sued for the loss of her husband by Mrs. James because of the negligence of the tortious liability here.

3.4 What are the main differences between tortious and contractual liability?

Here it is possible to identify that the tortious liability as a part of the duty of care is having the liability for the damages happened to the people who haven't the contractual liability as well. But under the contractual liability, the both parties have promised to do the certain things on behalf of each other. However there are some legal remedies are available for the injured party under the breach of the contract. Therefore it is possible to recognize that there is a big difference among the tortious and contractual liability while expecting to be a reasonable person as well.

Task 04

4.1 Was Parker responsible for the injury of Saunders? On what basis ?

Yes, because under the "Tort of Negligence" Parker was responsible for the injury of Saunders and the negligence implies the failure of providing reasonable care and as a result of that it may cause the injuries to another party.

4.2 What are the aspects that Saunders should prove to claim compensation from Parker?

Here the Saunders should be assured that whether it has fulfilled the four main aspects of negligence such as duty of care, breach of duty as well as the factual causation and the damages or actual harm through the defendant's action itself.

4.3 If the accident happened due to the negligent fixing of brakes by Parker's Mechanic, is the mechanic responsible under professional negligence?

Yes, but however the Parker should have to prove the actual cause and the proximate cause for the accident here. Furthermore he required to establish that the mechanic was owed the

duty of care and the breach of the duty of care after diagnosing the issue. If Parker was able to prove the actual or proximity cause that accident has happened due to the negligent fixing of brakes by his mechanic, then he was the liable person for the damages here.

4.4 Is Parker anyway responsible for the loss suffered by Darcy? Why?

Yes, because under the tort of negligence, causation as well as the remoteness may tend to be liable by Parker for the losses suffered by Darcy here. According to the test of causation or “but for test” will ask the question of the sustainability of the loss but for the negligence of the defendant here. On the other hand the key test of the remoteness also can be considered as one of foreseeability as well.

4.5 If it was later confirmed by police that it was not only because of the defaulted brakes and reckless driving that caused the accident but also because Saunders was extremely drunk and was walking along the highway, stepping out of the pedestrian pavement. How would this affect the claims by Saunders?

So this may be treated under the contributory and comparative negligence here. As per the confirmations of the police that the Saunder has the sole fault, then it will reduce the amount of his claiming for the damages on the rules of *Pure Rule, 49 Percent Rule And 50 Percent Rule*. However under the ‘*Last Clear Chance Rule*’ will allow the Sauder to collect damages even though the plaintiff has contributed to the damages solely, if the defendant was having the last chance of preventing the accident or whether the defendant was possible to prevent the damages regardless of the negligence of the plaintiff or Saunder here.

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