

Australian business law case study assignment

[Business](#), [Management](#)



QUESTION Running late for his exciting evening law class, Sam desperately seeks out a car park in the CBD of Melbourne, state of Victoria Australia. He spots the car park operated by Citipark Ltd. Sam drives up a ramp which has raised concrete barriers on either side. As it is rush hour, there are a few cars in front of him and soon some more line up behind him. Sam stopped his car at the barrier entrance of the car park which had a mechanical arm preventing cars moving into the parking bay unless the driver had first taken a ticket from the machine.

The automatic ticket-issuing machine projected a ticket, which Sam took. Above the ticket was a large notice, which read. ' Halt ' Parking at owner's risk. Take a ticket from the machine and then pay when you leave'. Sam put the ticket in his pocket without reading it and the barrier gate raised automatically. Sam then drove through and parked his car. When he returned to pick up his car, he found that it had been damaged by an attendant working for Citipark Car Park. The attendant was driving another car and carelessly drove into the side of Sam's car.

The parking ticket had these words printed on the back of it. ' Conditions of parking ' It is a condition of the issue of this ticket that vehicles are parked on these premises at the owner's risk and responsibility. The proprietors of this car park accept no responsibility for loss or damage to vehicles in the parking area whether caused by negligence or in any way whatsoever'.

Required (a) Advise Sam whether he can recover the cost of repairing his car from Citipark Ltd.

Your answer should separately consider Citipark's liability under common law and legislation. . (b) Assume Sam had been a regular user of Citipark Car park, how would this affect your answer to (a) above? (c) Assume that the exclusion clause applies and that Sam's car had been mistakenly handed over to a fraudster who falsely represented that he was the owner of the car even though he did not have the required ticket. Would Citipark Car Park be liable to pay Sam damages for the loss of his car?

Answers: Question 1: The given situation falls under the Exclusion Clauses. The law to be applied as per common law is that of unsigned document and as per legislation are Trade Practices Act 1974(C'th) and Fair Trading Act 1999 (VIC) Part 2 (Unfair Practices of trade). Applying the common law of unsigned documents two tests is involved. Legislation Law has to be applied directly. Answering the situation as per common law: The two tests are: (i)Nature of the document (ii)Reasonable notice

When seeing if the both the tests are satisfied, the nature of the document is satisfied, whereas the reasonable notice test fails as Citipark Ltd. Did not bring the terms and conditions clearly, moreover Sam did not go through what was printed in the ticket as he was in a hurry and he instead put the ticket in his pocket and drove up the ramp and parked his car. Further analyzing the situation and referring to earlier cases (Doctrine of Precedence) Sam can recover the cost of damage from Citipark Ltd. The previous cases which were referred to are ' " Causer v Brown", " Parker v South Eastern Railway Co", " Thompson v London, Midland & Scottish Railway Co" and " Thornton v Shoe Lane Parking Co". } Answering the

situation as per legislation: In the parking ticket issued by Citipark Ltd. States the following words- “ IT is a condition of the issue of this ticket that vehicles parked on these premises are at the risk and responsibility of the owners. The proprietors of this car park accept no responsibility for loss or damage to vehicles in the parking area whether caused by negligence or in any way whatsoever”.

The above statement according to Trade Practices Act 1974 Section 53 shows clearly that there has been an instance of misleading or false statements which is against the consumer's interest confronting the interest of the company's services and products offered. The Trade Practices Act 1974 (C'th) states that no person can have ' statutory misrepresentation'. Fair Trading Act 1999 (VIC) says that unfair trade practices should not be adhered to. Therefore it is implied term that Citipark Ltd. is liable to pay for the damages of Sam's car. Question 2: Situation is exclusion clause.

The law to be applied as per common law is that of unsigned document. Applying the nature of the document test and reasonable notice test my inference would be the following assuming Sam to be a regular user of the Citipark Ltd: Sam being regular user of the facility has to be aware of the terms and conditions of the management and he cannot claim the cost of damages from Citipark Ltd. Citipark Ltd therefore doesnot have to pay Sam for the damage caused to his car. This is different from the previous answer in the following manner: ??? In the first answer it is no where mentioned Sam is regular user. In the first scenario we have taken Fair Trading of 1999 (Unfair Practices) for the protection of the consumer as given in

legislation ??? In the second situation it is given that Sam is a regular user of the car park facility. Question 3: The situation here is Classification of Misrepresentation. The law to followed here is misleading or deceptive conduct ' Trade Practices Act 1974(C'th) Section 52 In this scenario applying the law of misleading or deceptive conduct ' TPA and classifying it under fraudulent misrepresentation assuming even if the exclusion clauses apply what is inferred is:

Sam's car has been mistakenly handed over to someone else by Citipark Ltd who did not have the parking ticket with him, in the context of fraudulent misrepresentations, the aim of damages is to restore the representee to the position he would have been in had the contract not been entered into; and, as with damages generally, the representee is under a duty to mitigate the loss to Sam. Trade Practices Act 1974(C'th) Section 52 states that ' A corporation shall not in trade or commerce engage in conduct that is misleading or deceptive or is likely to mislead or deceive'. The case of precedence is " Weitmann v Katies Ltd (1977)"