

Aspects of contract and negligence essay samples

[Business](#), [Company](#)



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Question 6

This question presents two different contracts at hand. The first is the contract between Car-Rex Company and Ahmed for the sale of Dweeb 123. The other contract was between Car-Rex and the buyer from New York for the sale of the same car, Dweeb 123. Contracts are legally binding and enforceable provided that the essential elements of a contract are present. In an ordinary contract, there are conditions that are prerequisite to formation. There must be the offer, acceptance, intention to create legal relations, and consideration. Even though the sale of goods over the telephone or communication networks is an informal way of doing business, similar rules apply as with the formation of other types of contracts. The offer is where one party invites others to purchase his goods, and it is distinguished with an invitation to treat which does not amount to an offer. Acceptance is when the other party expressly agrees to buy the goods on offer. The intention to create legal relations is that both parties must intend the contract to be legally binding and enforceable. Consideration is that

there is some value or benefit exchanged between the parties. For example, money paid in exchange of goods. Another element, required often is that the parties contracting must have the capacity.

The issue in this question is whether Jerry breached his contractual obligations by selling the Dweeb 123 car to Ahmed after the promise to sell it to New York buyer. With regards to Ahmed, the general rule is that the offeree must accept the exact offer without modifications. This is similar to the mirror image rule, which states that if the offeree introduces new terms to offer, then it amounts to a counteroffer. In *Hyde v. Wrench*, the court held that if an offeree varies the terms of the offer, it amounts to a counteroffer which negates the initial offer. Ahmed varied the original terms of the offer by stating that he was willing to buy the Dweeb 123 at £175K. Hence, Ahmed's action amounts to a counteroffer which Jim may either accept or reject. As stated in the case of *Dickson v. Dodds*, an open offer for sale terminates when the offeror agrees to sell the item to a third party.

Therefore, the offer terminated once Jerry agreed to sell the car to New York based buyer. However, one of the terms was that he was to pay the full amount to Car-Rex Company account immediately after the conversation ended which was to be within a reasonable time. This formed the terms of the contract which would result to contractual breach. The New York buyer only transferred £5k into the company's account after checking later in the day. Therefore, he cannot insist that the car must be sold to him because he breached his contractual obligations which were fundamental to the contract. Ahmed on the other hand has a legal claim for the car in the event that he can prove that he issued genuine notes and that it was not within his

knowledge that the notes were not genuine. This is complemented by the fact that Jerry received the said amount on the belief that they were genuine notes.

Question 7

The issue is whether John had suffered injuries as well as loss which he could get compensation from Car-Rex. Although, both the law of contract and tort can be categorized as the law of obligations, contract damages must be based on expected losses. In contracts, liability will not arise through negligence, but through assumptions under the agreement of the contract. However where the damage to a party was not foreseeable in the event that there was an injury, the courts have been reluctant to award damages or compensation. In the case of *Hadley v Baxendale*, the court noted that damages that a party ought to receive from breach of a contract ought to be fair and reasonable. It should be seen as arising from natural cause of things from the breach of the contract, or such as reasonably ought to be in mind of both parties when they made the contract as the probable consequence of the breach. The sudden loss of the car and injuries to John through the car catching fire was not foreseeable to Car-Rex Company. If the company had that into contemplation, it would have considered the possibility of Crackers or John suffering loss and injuries. Again had the parties known they would have incorporated special terms as to the compensation in case of negligent acts of Car-Rex. The same principle is applied in the case of *Transfield Shipping Inc. v Mercator Shipping Inc* in which the freight market had fallen suddenly. It was held that the loss from getting a lower price was within the first rule in *Hadley's* case as arising naturally from that breach of contract.

Therefore, John cannot succeed in claiming compensation for injuries and the loss of the car as well as his other property. The principle above will be applied in determining whether John or Crackers should be compensated for the loss. This is because of the fundamental rule that a party can only recover those damages that were foreseeable unless there is an express term to the contrary. It will be wrong to hold a party liable for risks for which persons contracting in a specific market would not reasonably be said to have undertaken. Although, this was a sale of goods contract, the car that was bought by Crackers was of a merchantable quality and was only lost through uncertainties of fire.

Question 8

The questions are whether Car-Rex was vicariously liable for the actions of Colin and if so, whether Sarah can be compensated for the depression she suffered as a result of Colin's actions. The rule is that an employer is vicariously liable for the actions of the employee. Hence, various tests are conducted to ascertain whether the tortfeasor is an employee in strict contractual terms. The control and multi-factor test, which are essential tests in examining this relationship was established in the case of *Yewens v Noakes*. Therefore, Colin is not an employee of Car-Rex because he was not subjected to their command in the manner he conducts his business. Colin controls his business affairs and does not use the company's tool while undertaking his activities. To this end, Car-Rex is not responsible for Colin's negligence and is not vicariously liable for his actions. This is because he is not an employee of Car-Rex Company and the depression did not occur in the course of employment. The general rule under common law in

negligence claim is that the person who alleges injury must prove that he or she was owed a duty of care and that the duty was to some level breached.

Question 9

The issue is whether Car-Rex Company is liable for the negligent actions of one of their apprentice which occasioned injury. The rule is that an employer is vicariously liable for the actions of the employee. Hence, various tests are conducted to ascertain whether the apprentice is an employee in strict contractual terms. The control and multi-factor test can be applied in determining whether the apprentice was an employee of Car-Rex Company. An application of these tests reveals that the apprentice is an employee in strict contractual terms. This is because he or she was under the control of the company in conducting his/her daily activities. The tools that the apprentice was using belonged to the company and they dictated the manner in which he went about his duties. Therefore, Car-Rex Company will be vicariously liable for the negligent actions of the apprentice because he is their employee and the negligent actions occurred in the course of employment. However, the company can plead contributory negligence to mitigate their liability. Under common law, a person who contributes to an accident through his own negligent actions cannot claim full compensation in tort cases. Joanna's parents failed to take good care of her despite being a minor and these are the reasons why she wandered away and fell into the inspection pit. Therefore, even though Car-Rex owed Joanna a duty of care, she has contributed to her injury through her negligent actions of wandering away courtesy of her parents.

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