

Aspects of contract and negligence for business

Law



The paper "Aspects of Contract and Negligence for Business" is an outstanding example of an essay on law. Contract law refers to the body of rules that control contractual conformity entered into by two parties. In the contract agreement, the roles and the responsibilities of both parties to each other are clearly spelled out. For any contract to be valid there must be an offer, acceptance, a consideration, an intention to create a legal relationship and the parties must have reached the age of the majority. Contract addresses transaction such as the sale of goods and services. In case of breach of one of the party then the other party can claim for damages (DEAN, 1995). On the other hand, tort laws control refer to a situation where one party or person has harmed or injured the other person. It governs the relations in the day to day activities among different persons in the society or a state. Tort laws cover infringements where the party deliberately harms the other person such as in a fight (OLIPHANT & BAGSHAW, 2007). In tort laws incidents that are not intentionally committed by an individual are also covered such as negligence and strict liability claims. In case a party is liable he/she pays some monetary damages to compensate the victim the undergone losses.

To some extent contract laws and tort laws tend to be similar. First is that both deal with a duty that a party will breach. For example in contract violation breach concern the duties in the contractual agreement (DEAN, 1995). In tort is also a breach of duty in which one party fails to perform his duty injuring the other party. The second similarity is that in both breached parties claim for damages.

To consider the liability in contract and tort laws, consent of the parties

involved in the lawsuit is very vital. In a contract, the parties must enter into an agreement without being forced or coerced. Therefore, if one party breaches the contracts he/she is liable and the other party is entitled to claim damages to restore him back to the original position.

On the other hand, in tort consent is not considered. It involves the intrusion of one party into safety, health, profits of privacy of the injured party. On these bases, the intruder will be liable to the other party and therefore will pay some damages for compensation for the loss or some awarded in a lawsuit in order to punish the defendant (DEAN, 1995).

Negligent issues are based on the non-contractual association between parties. A good example is a patient and a surgeon or two drivers on the road.

Nature of obligation: obligations between parties are not agreed instead it's imposed by the law. E. g. road user has a duty of care to other road users. In case of any damage caused by a driver to another due to his negligence then he is liable to the claimant (OLIPHANT & BAGSHAW, 2007). The law is not aware of your ignorance as a driver, therefore, though inexperienced you will be judged as if you are qualified since he had put him/her self as professionals with the skills and abilities.

Causation and Remoteness of Damages: the two tend to be considered differently since each is tested differently. This is usually based on whether such an incident could have happened were it not for the other party. E. g. if a patient arrives into a hospital at emergency and then dies the doctor is not liable for his death. The measure of remoteness in negligence is one of foreseeability (OLIPHANT & BAGSHAW, 2007). For example of oil spill on the

sea and flows to where welders are carrying out their work and due to this, they switch off their machines that due to the fear of catching fire, and you as cause of the spill inform them that it could not catch fire and they continue with their work and all over a sudden fire breaks out. In this case, it was held that a person who had spilled the oil was not liable since the only foreseeable damage was pollution.

The measure of Damages: on the determination of liability, remedies are then considered so as to put the claimant in a position had the tort not be committed. It is worth noting that just like contract the damages can be reduced due to the plaintiff's conduct. Partial defense of contributory negligence can lead to this reduction. This is mostly evidenced whereby the plaintiff contributed significantly to their loss at the time when the tort was being committed.

Vicarious liability is a situation in which the defendant is found guilty of an offense despite the fact that they did not commit the offense themselves. Employees are considered valuable assets of a business and therefore responsible for the creation of value and profit to the business (OLIPHANT & BAGSHAW, 2007). Employees have the right, therefore, to entitle rights into their benefits that are responsibilities of the employer (business). these include insurance provisions, recruitment, and training under right programs, listening and having a concern of their employees, and even being liable for damages though caused by the employees in their own way.

Therefore, the business is vicariously liable when an employee executes the tort in the course of the consistency with the employer. However, this is not

applicable when an employee is out of duty, proofed that its employee's carelessness or criminality (OLIPHANT & BAGSHAW, 2007).