

swimmingpool co pty
ltd essay sample



**ASSIGN
BUSTER**

Swimmingpool Co Pty Ltd employs Martin as the manager of their Tasmanian sales division. Martin is to quote to potential customers the cost of installing the various pools that the company offers, to draw up any new contracts on behalf of the company and further to ensure that a deposit is paid by potential customers, monies which are then deposited in the company's bank account. Martin is on a fixed salary but his contract of employment allows for the payment of a bonus if he exceeds his annual target of signing new customers. The company is very impressed with Martin in the first month of his employment; he has signed at least 20 new customers and work has begun on at least half of the new projects signed. After the lapse of another month the company receives a number of complaints from customers who claim that the construction of their swimming pool is substantially different to what they had contracted for. A number of customers were given wrong advice on the suitability of the placement of their new swimming pool, which means some newly constructed pools are sinking into the ground, the repair of which will cost the company considerably.

It appears also that some of the deposits have not been paid into the company's bank. Martin appears to have kept part of the money collected. The company also discovers that Martin is in the process of setting up his own business which will compete with Swimmingpool Co. In considering the facts above make some legal observations on the following: 1. Is Swimmingpool Co liable for Martin's actions? On what basis in law would this be the case? Employers and Employees always have an agreement of mutual consent and it is legally binding on each of the party to strictly adhere with

the set rules and regulations. Although, Martin must be sound enough to make wise decisions and he was responsible for all his actions and reactions but since he was employed by the company and no check and balance was made until and unless complaints were lodged. It is the duty of any company to ensure that each of their employee is working at their best and customer satisfaction is being achieved at all levels as evaluation comes as one prime rule in planning to achieve desired goals. The term used in this scenario is Vicarious liability.

It is a form of strict, secondary liability that arises under the common law doctrine of agency - respondeat superior- where the responsibility of the superior is to keep an eye on the acts of their subordinate, or, in a broader sense, the responsibility of any third party that had the "right, or the ability or duty to control" the activities of anyone who violates. It can be distinguished from contributory liability, another form of secondary liability, which is rooted in the tort theory of enterprise liability. Under a legal doctrine sometimes referred to as "respondeat superior" (Latin for "Let the superior answer"), an employer is legally responsible for the actions of its employees. However, this rule applies only if the employee is acting within the course and scope of employment. In other words, the employer will generally be liable if the employee was doing his or her job, carrying out company business, or otherwise acting on the employer's behalf when the incident took place.

The purpose of this rule is fairly simple: to hold employers responsible for the costs of doing business, including the costs of employee carelessness or

misconduct. If the injury caused by the employee is simply one of the risks of the business, the employer will have to bear the responsibility.

Employers are vicariously liable, under the respondeat superior doctrine, for the negligent acts or omissions by their employees during the course of employment (sometimes referred to as 'scope of employment'). Courts sometimes distinguish between an employee's "detour" vs. "frolic". For instance, an employer will be held liable if it is shown that the employee had gone on a mere detour in carrying out their duties, whereas an employee acting in his or her own right rather than on the employer's business is undertaking a "frolic" and will not subject the employer to liability. Employer will be held liable if an employee does an authorized act in an unauthorized way which is the actual scenario here in this case study. Employers are also liable under the common law principle represented in the Latin phrase, "qui facit per alium facit per se" (one who acts through another acts in one's own interests). That is a parallel concept to vicarious liability and strict liability, in which one person is held liable in criminal law or tort for the acts or omissions of another and so will be the case here with employee being the former and employer being the latter.

2. Can the company claim they are not liable for Martin because he has not followed instructions? Explain. Under federal anti-discrimination law an employer, regardless of their size, may be legally responsible for any misconduct on the part of its employee unless and unless it can be show and prove that 'all reasonable steps' have already been taken to ensure the reduction of this liability. The law mentioned above clearly explains how Swimmingpool Co. can actually claim itself to be free of any responsibility on

the part of the employee's mistake. If it proves it to show all reasonable steps without fail is the only condition under which all discriminations are neglected and no supervisor is held responsible for its subordinate because it is the prime duty of every employer to ensure that he is hiring the right person and then evaluating him from time to time. However, if he doesn't do it, then he is questionable in the court of law for his employee's irresponsible behavior and misconduct.

Therefore, only under such a situation, the company can claim itself not liable for Martin's actions. 3. Is Martin liable to his employer for any of his actions? On what basis in law would he be liable? Since, the employer and the employee have both signed an underwriting that ensured that none of them would violate the right of another and each one of them would work with complete correspondence to each other so as to ensure maximum benefits, profits and utilization, Martin's act of deceiving the company through miscommunication, poor guidance, poor quality, no customer satisfaction, hoarding up of money and setting up a whole new business in competition against the parent company is an illegal criminal act where he is to be questioned for his unworthy behavior and misconduct. Since, the company has complainants and proofs, Martin is at risk here because the court would analyze the entire situation and claim him as a criminal.

While signing an agreement, an employee has to ensure the company that none of his actions would come up with adverse reactions and that none of what he does would affect the company, offend the owner and employees or bring a bad word to the goodwill of the firm. Martin has gone so far that it would be impossible for the employer to forgive and forget because if a

person does something once, there are very high chances of him doing the very same thing again as well or something of a much higher caliber. In such a situation, employers often need to fire the employee to prevent any such future repetition on the part of the same employee and any other who would take heed out of this. However, there is an exception to on what basis would he be liable. The employer has complete rights to fire the employee but he has no rights to restrict his compensation and salary. Employee has the right to get hold of any money that is due towards him no matter what happens and this money has to be paid. Although, situation would be a lot different when the employee would have affected the employer and the company on other terms such as financial loss. Only under such a situation, the employee can file a lawsuit against the employer for any money that was blocked or etc.

Otherwise, looking at the scenario and how Martin has affected Swimming pool Co., it is quite evident that Marin cannot hold the company liable for any of his actions because he was an on ground manager and it was his task to ensure that best was happening and inform if any violations were taking place in any way. 4. Has Martin breached any law if he is planning to set up his business? Explain The term that would clearly explain the scenario here in this case study is Restraint of trade. It occurs when an employer attempts to prevent an employee from carrying out certain activities that are related to his or her employment. It is not uncommon for employment contracts to include " restraint of trade clauses" that may apply both during the employment and after the employment comes to an end. Even when there is no restraint set out in an employment contract, the law implies certain

restraints into every employment relationship. Some of these implied restraints may continue after the employment comes to an end as well.

In fact, in Australia, it is a well-settled law that employees owe certain duties to their employer, not least of which is their duty not to disclose or use their employer's confidential information inappropriately. Australia. Primarily, employees have a duty of loyalty, fidelity and good faith arising from the employee-employer relationship. Employees are also often under express contractual obligations not to disclose or misuse their employer's confidential information and equitable principles oblige an employee not to misuse confidential information of an employer. Finally, legislation, principally the Corporations Act 2001 (Cth), prohibits directors and officers from misusing confidential information for their own benefit. It is a breach of the duty of good faith for an employee to be engaged in competition with his employer. Competitive activity during his employer's time will almost certainly amount to a breach.

Save in exceptional cases, this is also likely to follow where competition is in the employee's spare time: see *Hivac*. "The employee must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third party without the informed consent of his employer." If you are an employee proposing to set up in competition with your employer, you should not use or take with you records relating to your employer's business or use any sensitive information such as costs, formulae, processing or financial information taken from your employer. All

such information should be obtained from public sources or independently from suppliers. If you are an employer, you should:

Remind departing employees of their contractual, general law and statutory obligations and ensure that employees deliver up or destroy all documents (including electronic records) that contain the employer's confidential information. You should also check departing employees' emails and company computer files; and Impose post-employment restraints on employees to prevent them from developing a business in competition with their former employer for a specified period of time as part of their employment contracts.