Legal aspects of commercial contracts

The employment law states that no young worker should work for more than eight hours per day or forty hours a week. There has to be a twelve hour period of rest between each working day and there has to be a two rest days per working week. If these young people have to work for more than four and a half hours then they have to be allowed a rest break of half an hour . Ben was seventeen years old when he took up employment. However, Ben was working much more than forty hours per week and was also being exposed to risk by being left in charge of the pizza outlet.

Therefore, he can approach the employment commission for redressal. After this he can approach the employment tribunal if the commission does not render proper justice to him. The age of legal capacity act states that the transactions made by a person aged between sixteen and seventeen years can be set aside by a court if they prove to be biased. However, such an application to the court has to be done before this person attains the age of twenty – one. For this act, a prejudicial transaction is one that a prudent adult would not have indulged in . The Working Time Regulations were enforced in October 1998.

The specifications of these regulations are that first, a worker can under normal circumstances be asked to work for forty eight hours a week. Second, the number of hours per day is to be limited to eight hours. Third, night workers have to be provided with free health assessments. Fourth, every worker has to be allowed a rest period of eleven hours per day. Fifth, there must be at least one day in a week that is an off day. Sixth, if the number of hours of work exceeds six hours per day then the workers have to be

permitted a rest break during the working hours. Seven, every worker is entitled to four weeks of paid leave per annum .

Therefore, Ben’s rights as provided by the working time regulations have also been violated. Hence, he can approach the national courts for infringement. If these courts do not render satisfactory justice, he can approach the European Commission. In Mulvein v Murray, Mulvein, a footwear seller employed Murray with the conditions that the latter, for a year, after discontinuing work with the former, should not sell to or canvass Mulvein’s clients. Further, Murray was also required to abstain from conducting sales or traveling in the areas where Mulvein conducted trade.

After termination of employment Murray was employed by another footwear manufacturer in Ayr. The court held that Murray was precluded from selling to or canvassing the customers of Mulvein, however, none of the other conditions were upheld by it . In our problem Ben had hired Jenny under the terms that for a five year period, she was not to contact his customers and that she should not work for any rival company. According to the decision in Mulvein v Murray, Jenny has violated the contract of employment by contacting Ben’s customers. In Bluebell Apparel Ltd v.

Dickinson, Dickinson was working as a manger for the plaintiff company. The contract of employment between him and the company specified that he should not work for any competitor for a period of two years after termination of employment with them and that he would neither disclose nor use their trade secrets. He left after six months to join Levi jeans, the court held that the plaintiff’s restrictions had been reasonable and were therefore

binding . Similarly, in Dumbarton Steamboat Co. Ltd. V. Macfarlane, the defendant, a partner in the plaintiff company, had been dismissed.

The court upheld the plaintiff's plea that he should be restrained from soliciting the business of their clients. However, the court did not agree to the plea that he should be disallowed from carrying on business anywhere in the UK . Moreover, in Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Co. (1894) AC 535, the court held that in order to protect the goodwill of a company it was essential to uphold the restriction that prevented the plaintiff from competing with the defendant . The Postal Rule states that an acceptance becomes binding on being posted and not on delivery.

This was how the had courts decided in Yates Building Co v Pulleyn and Muir Construction Ltd v Hambly . Moreover, in Jacobsen v Underwood, Underwood made an offer to Jacobsen, on the 2nd of March, to purchase straw from him. This offer was open till the 6th of March. On the last day of the offer, Jacobsen posted a letter of acceptance. Due to postal delay the letter reached only on the 7th of March. The court held that there was a contract as acceptance had been concluded at the time of posting the letter . In Thomson v James, James made an offer on the 26th of November to purchase an estate.

On the 1st of December Thomson indicated his acceptance by posting a letter. However, on the very same day, James posted a letter withdrawing his offer. Both these letters reached their respective destination on the 2nd of December. The court held that a binding contract had been formed . However, this aspect of the postal rule raises several difficulties. For instance, if the letter is lost in postal transit as had transpired in Household

Fire Insurance v Grant , in this case offeror was held to be bound. Further, in Henthorn v.

Fraser , it was held by the court that acceptance was complete as soon as it was posted because the circumstances were such that the parties were agreeable to using the post for communicating acceptance. In our case Ben had applied for a job, but his acceptance was not communicated to the company due to delay caused by a postal strike and Ben had to join the job without his letter having reached the employers. As per the decisions in the above cases, the contract became binding as soon as he completed the task of posting the letter.

Implied Acceptance states that silence does not denote acceptance. In Felthouse v Brindley, Felthouse had been communicating with his nephew, in order to purchase the latter’s horse. After several letters, Felthouse wrote to his nephew that if he received no further communication from him, then he would consider that the horse had been sold to him for an amount specified by Felthouse. Instead of replying to this letter, his nephew told Brindley the auctioneer that the horse was to be sold to his uncle. By oversight the auctioneer sold the horse.

The court held that the horse did not belong to Felthouse as there was no contract and that silence on the part of his nephew could not be construed to connote acceptance . Acceptance must be within reasonable time. In Glasgow, Newcastle and Middlesborough Steam Shipping v Watson, Watson put forward an offer to supply coal on the 5th of August 1871. This offer was for a year and at the rate of seven shillings per ton. The shipping company stated that it had accepted the offer on the 13th of October, 1871. However,

by this time the cost of coal had increased and consequently Watson refused to recognise the existence of a contract.

The court held that there was no contract as it has become void due to passage of time . The principles of European contract law or the PECL, state that if there is a transmission delay, then acceptance is deemed to have occurred unless the offeror sends a communication, without entailing any delay, that the offer has been withdrawn . The point of time when acceptance is effective is very important and in this regard the Convention on the International Sale of Goods Act 1980 or CISG states that acceptance of an offer is concluded at the instant that agreement to the offer reaches the offeror .

Ben became proficient in the pizza business and accordingly decided to establish a business of his own. With this objective he started his own enterprise. In order to defray his investment needs he availed himself of a bank loan of ? 30, 000. The bank charged him interest on this loan at fifteen percent. Whilst, sanctioning the loan, the bank insisted that he obtain the signature of a guarantor for this loan. Accordingly, Ben made his elderly grandmother the guarantor for this bank loan. His grandmother, however, was ignorant of the fact that if Ben failed to repay the loan, then she would have to do so.

In Royal Bank of Scotland v Purvis, a woman stood guarantee for her husband’s bank debts. Later on she tried to escape her liability by stating that she had executed the guarantee agreement with the bank at her husband’s behest and not of her own volition. Moreover, she declared that she had not acquired any formal education, what so ever and that as a result

was not conversant with commercial documents. She also stated that the guarantee was to be deemed as void as she had been ignorant of the nature of the document to which she had affixed her signature.

The bank rebutted this in court by stating that it had in no way compelled or induced her to sign the agreement of guarantee. Lord McCluskey, opined in his judgment that her contention was not tenable in law and that it was not permissible for her to state that as she had not perused the document she could not be held liable to comply with its contents. Moreover, His Lordship stated that she could have deferred the affixing of her signature to the document till such time as she could have thoroughly read and understood its content. Therefore, she was liable to the bank, in her capacity as guarantor of her husband's debts to the bank .

Similarly, Ben's grandmother cannot escape liability for having stood as his guarantor. Ben employed Jenny to help him in his business and while doing so made her sign a contract that precluded her, for a five – year period after termination of employment with his establishment, from contacting his customers or from working for any rival pizza companies. In the case Central London Property Trust Ltd v High Trees Ltd, the doctrine of promissory estoppel was invoked. In this case a landowner agreed to reduce the cost of leasing a block of flats, and then attempted to renege on the agreement stating that there was insufficient consideration.

The Court did not uphold the landowner's contention. However, courts have repeatedly stressed that the decision in this case is not to be construed to set a precedent for a party to renegotiate a contract on less favourable terms and then prevent that party from making a claim for damages . Roffey

had a contract to refurbish a block of flats. He sub-contracted the carpentry work to Williams. Roffey, realizing that the work would not be completed on time and that this would result in the breach of a penalty clause in their main contract with the owner, agreed to pay Williams an extra payment per flat.

Williams completed the work on these flats but did not receive full payment. He stopped work and brought in an action for damages. In the Court of Appeal, Roffey argued that Williams was only doing what he was contractually bound to do and had therefore not provided any consideration. It was held by the Court of Appeal that where a party to an existing contract later agrees to pay an extra " bonus" in order to ensure that the other party performs his obligations under the contract, then that agreement is binding if the party agreeing to pay the bonus has thereby obtained some new practical advantage or has avoided a disadvantage.

In the present case, there were benefits to Roffey such as: (a) making sure Williams continued his work, (b) avoiding payment under a damages clause of the main contract if Williams was late, and (c) avoiding the expense and trouble of sub contracting the work to someone else. Therefore, Williams was entitled to payment . Ben’s business showed rapid growth. In order to meet the demands of an Iranian importer, Ben ordered a pizza oven incorporating the latest features from Italy.

Unfortunately, this Italian oven manufacturer expressed his inability to supply the oven in time. Ben had to export the pizzas in a week’s time. Due to this delay in delivery of the oven, Ben stands to lose very heavily. Ben undertook these very large orders on the strength of the promise of the Italian company that it would supply the oven in time. Therefore, as per the

decision in William v. Roffey, the Italian company will be liable for the losses that Ben may have to incur due to the delay in delivering the oven.