

Law for engineers: analysis of contract law



**ASSIGN
BUSTER**

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Area of Law

The law involved in the case at hand is contract law, specifically involving commercial or business matters where both parties, Deveraux and Havana Moon Mechatronic Engineering Pty Ltd intend to be legally bounded.

Principle of Law

For a contract to be valid and legally enforceable, there must exist essential elements of intention to create legal relations, agreement plus consideration between parties. The requirement of intention to create legal relations determine if a case is legally enforceable by differentiating between domestic or social matters and commercial or business matters.

As in *Edwards v Skyways*[1964] 1 WLR 349, the claimant, a pilot who worked with the defendant is being asked to retire. However, the defendant reneged on a promise made to the claimant that, if the claimant withdrew his contribution on the company pension fund, he would be paid the equivalent of contribution in an ex gratia payment. It was held by court, an agreement was made in business context, thus the agreement is consequently presumed legally bounded and enforceable.

The next element for a contract to be effective is there must be agreement between parties. An agreement is established when there is a 'meeting of the minds', where both parties are agreeing to the same thing and cleared about what are they agreeing to (Khoury & Yamouni 2010). It is often being

interpreted in terms of offer and acceptance, when offeror makes an offer and accepted by offeree, a binding contract is created.

In contrast, invitation to treat is no mean an offer. In *Partridge v Crittenden* [1968] 2 All ER 421, an advertisement was advertised as “ Bramblefinch cocks, hens -25s each”, it was judged as an invitation to treat instead of offer hence the seller did not prohibitly selling the birds.

Besides, the Rule of Signature state that a contract should at least partially in writing to note the legal effect of a signed document and indicate that it is agreed and cleared on both party. In *L'Estrange v Graucob*[1934] 2 KB 394, L bought a defective vending machine and signed without reading the agreement, which the agreement did mentioned “ not responsible for defects”. He then raised the case, but the court held that since he signed the agreement, it indicate he understood all the terms and thus there was no breach of contract.

In fact, intention and agreement alone are not enough to make an effective contract. Instead, an agreement must be supported by consideration where parties on both side must promise for a promise or act for a promise or promise for an act and vice versa. In *Currie v Misa* (1875) LR 10 Exch 153, it was stated that each party to a contract much receive a benefit and each suffer a detriment. In contract law of consideration, promise need to be paid before the promise can be legally enforceable (Khoury & Yamouni 2010). It is simply a price for a promise. This principle also known as doctrine of consideration requires a party to a simple contract must provide

consideration before that contract can be enforced. Following are the several rules that govern the doctrine of consideration (Gibson & Fraser, 2007).

First, consideration must not be past. This is simply due to past consideration is something that already been done which is unable to be form as a part of the current or future bargain element. In *Re McArdle (1951) Ch 669* , Majorie ran some renovation on a bungalow that was left on trust for her husband and his siblings. After the renovation, Majorie's husband and his sibling agreed to pay Majorie 480 pound for the renovation from the proceeds of sale of the bungalow, thus they signed a document stating the consideration. However, the payment was never paid. A court was appealed and held that the promise was made after the consideration and ceased with an ineffective past consideration.

Similarly, in *Roscorla v Thomas (1842) 3 QB 234* , the plaintiff bought a horse from the defendant, but only asked about the condition of the horse after transaction made. Later the plaintiff found that the horse is abnormally violent and ask for a refund. As the court held, it is obvious that the promise made after contract was formed, hence the consideration was a past and never was a part of the contract. Therefrom, the plaintiff could not enforce on the promise made.

Though, a past consideration also can be valid if it is proceeded by a request or something is accomplished in business context and both party were agreed to the terms. In *Lampleigh v Braithwaite[1615] EWHC KB J17* , Braithwaite committed a murder and then requested Lampleigh to obtain him a pardon. Lampleigh managed get the pardon for Braithwaite and he

promised to pay Lampleigh 100 pound, but it was never paid. It was held, although the promise to make payment came after the consideration, which is treated as a past consideration, Braithwaite is obliged to pay Lampleigh because the consideration was proceeded by request.

Likewise, in *Ipex Software Services Pty Ltd & Ors v Hosking [2000] VSCA 239*, as per agreed between Hosking and Ipex, Hosking will merge his software company with Ipex and shares in Ipex would be transferred to him as return. However, merge have been accomplished by Hosking before a written agreement regarding the share transfer been made. Subsequently, Hosking sue to enforce agreement on Ipex for refusing to transfer the shares. Soon the court held that the agreement was legally enforceable as Hosking was informed in the first place that he would be granted the shares in the new merged company.

Secondly, consideration must move from the promisee. This imply that the plaintiff who wish to enforce the contract must prove that the consideration is provided by him and him only. It will not valid if consideration is from third party or agreement enforcement request is done by third party. For example, in *Tweddle v Atkinson[1861] EWHC QB J57*, the father of bride came into an agreement with the father of the groom that they will pay the newlyweds a sum of money. But the bridge's father died before payment was made. The groom's father also died soon after hence, no enforcement was done on the contract. Following, the groom sought enforcement on the agreement but failed as it was held that, first the groom was not part of the agreement, and secondly the consideration did not move from the groom.

Finally, a new promise of consideration is not entitled if there is existing contractual duty. In *Stilk v Myvick [1809] EWHC KB J58*, during a voyage two of the twelve crew deserted the ship. The captain then promised the remaining crew to split the wages of the deserted crews and the claimant was one of the remaining crew. When the voyage is completed, the captain never paid up. As the claimant was already under existing duty to work on the voyage, the captain was not obliged for the payment.

Yet, if the party performed beyond their contractual duty, a new promise of consideration maybe valid. In *Hartley v Ponsonby[1857] 7 EB 872*, as half of the ship crew deserted the ship, the captain promised the remaining half of the crew getting paid extra when they sailed the ship back. The captain then refused for the extra payment. It was held the promise is enforceable because the crew performed beyond their duty to replace the deserted crews.

Applying the Law

From the beginning of the case at hand, it can be seen both parties had serious intention to create a legal relation. There was a meeting between Deveraux and Havana Moon Mechatronic Engineering management team regarding Deveraux's issue, in which it was in a business context. It was then Deveraux successfully negotiated the pay increase.

A negotiation is simply an invitation to treat rather than an offer. Therefore, no agreement was made as there was no offer like the precedence in *Partridge v Crittenden [1968] 2 All ER 421*. Plus, no signed document that

indicate both parties agreed on the terms hence no effective contract was established as referred In *L'Estrange v Graucob [1934] 2 KB 394* .

As for consideration element for Deveraux's, he provided his consideration as his previous work and education. It was made clear that past consideration is not valid because it was not made as an element in the contract, similarly in *Re McArdle (1951) Ch 669* and *Roscorla v Thomas (1842) 3 QB 234*. Although the consideration came from the promisee (Deveraux), but ultimately it is deemed invalid due to it was a past.

Furthermore, Deveraux was already had a contractual duty in the company, he was not entitled to have a new promised, similar case happened in *Stilk v Myvick [1809] EWHC KB J58* .

Conclusion

The bottom line of Deveraux's case, he cannot enforce the agreement with Havana Moon Mechatronic Engineering due to the fact, there was no valid agreement made nor signed document. Besides, the consideration provided was not valid.

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