

Business law essay sample

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



BUSINESS LAW

Part A: Question 1

Using the four-step process, discuss the element of agreement required for the formation of an enforceable contract. Have Sensational Sails and EquipU reached an agreement regarding the sale of the Italian machinery?

Identifying the Legal Issue

Bill and Ben are best mates and love to sail together. They want to turn their sporting interest into a business. They decide to start their own company called Sensational Sails Pty Ltd (Sensational Sails). Bill and Ben design and manufacture sails for all size yachts and supply wholesale to retail outlets. Their company becomes highly successful and soon they need more sophisticated machinery to ensure that their business is profitable.

Ben's cousin Marc is also in the manufacturing business, supplying plant and manufacturing equipment to factories. Marc is the sole director and marketing manager for the company EquipU Pty Ltd (EquipU). On Monday, Marc approaches his cousins and offers to sell the new sail making machinery, to Sensational Sails. Marc claims that the equipment will improve output and efficiency in the sail making factory by 20%. He says he is ready to sell the equipment to them for only \$50, 000. Marc says the offer will end on Friday at 5pm, and acceptance could be via email, fax or post.

Bill and Ben think that Marc's offer is exceptionally robust and one which would enable Sensational Sails to increase production and profit. Bill and Ben are keen to accept Marc's offer, but feel that they, certainly, should try to

negotiate better terms. On Tuesday, Bill sends Marc an email on behalf of Sensational Sails, which states " Sensational Sails are truly interested in your offer. However, we believe that the new equipment will only deliver a 15% Return on Capital, so we are only prepared to pay you the amount of \$30, 000 for the machinery."

Marc is at a three day conference on Tuesday, Wednesday and Thursday, so has not read his email. Meanwhile, Bill and Ben have reconsidered their position and are nervous that they may have missed the deal, because they have not heard back from Marc. They decide to accept EquipU's original offer and, on behalf of Sensational Sails, post Marc a letter on Friday morning agreeing to purchase the Italian machinery for \$50, 000. Just to be sure, at the same time they email Marc. Due to problems with Sensational Sails ISP, the email does not get to EquipU's system until 6pm Friday.

Over the weekend, Marc meets with his old friend Pauli who just happens to be in the market for the same Italian sail making machinery. Marc owes Pauli a favor so wants to give the machinery to Pauli instead of selling it to Sensational Sails. On Monday morning, Marc reads his emails and opens the post. He calls Bill and Ben and says the deal is off. Bill and Ben are extremely upset and want to force Marc to sell them the Italian machinery.

Relevant Rules of Law

Agreement is a vital element of contract. Agreement gets reached through two happenings, including communication of an offer and an acceptance. A single party presents a bargain and the other accepts, although, such agreement does not necessitate writing. Nevertheless, both parties have to

demonstrate consent to the same deal. A legitimate contract becomes formed, provided that other elements of a contract including legality, capacity and consideration exist, after reaching an agreement. This, in turn, forms enforceable duties and rights among parties.

a). Communication of an Offer

The offeror should communicate the offer to the offeree prior to the acceptance of an offer (Bhana, 2009). The offeror should clarify modes that will get use for communication, such as, e-mail, fax, letter and telegraph and other communication modes. An Offer is not legitimate until the offeree receives it and the offeror does not get bound by the offer until when the offer gets accepted. Hence, it is significant for the offeror to realize when the offeree gets aware of the offer.

b). Acceptance of an Offer

Offer acceptance should be communicated to the offeror in the mode directed or implied by the offeror during the offer (Tulsian, 2000). For offers that requests acceptance through the mail, the implication is that the offer acceptance occurred when the letter of acceptance became posted. This gets confirmed by checking the date on the postage paid stamp. For all other communication means, the acceptance cannot be regarded to be complete until the offeror becomes alerted of acceptance, and until the acceptance occurs, no legal rights or responsibilities occur (Tulsian, 2000).

Applying the Law to the Facts

First, Marc approaches his cousins and offers to sell Sensational Sails new sail making machinery that has just been developed in Italy. Thus, Mark, being the offeror, communicated the offer to the offerees (his cousins). Besides, Marc tells his cousins that they can communicate acceptance through email, fax or post. Thus, Marc, being the offeror communicated the methods that would be used for communication. Marc goes for a three day conference on Tuesday, Wednesday and Thursday, which makes him not to read his email, and over the weekend, he meets his old friend Pauli and decides to sell the machine to him. At this point, Marc was neither aware that Sensational Sails Ltd had not accepted the offer nor that the same Company had communicated acceptance through the post and email. Therefore, the acceptance could not be regarded as complete because the offeror was not alerted of the acceptance. Besides, Marc was not liable for having his old friend Pauli acquire the same Italian, sail making machinery, considering that an offeror does not get bound by the offer until when the offer gets accepted.

Second, Bill and Ben post a letter and communicates acceptance through email. This was in agreement with the contract law, which requires offer acceptance to be communicated to the offeror in the mode directed or implied by the offeror during the offer.

Despite Bill and Ben sending the letter and the email before the stipulated deadline, both email and the letter arrived after the deadline. According to the law of a contract, offer acceptance occurs when the letter of acceptance

becomes posted, and this can be confirmed by checking the date on the postage paid stamp. However, acceptance can not be regarded to be complete until the offeror is alerted of acceptance, for all other communication means including email. In this case, we should note that Marc had not received the letter of acceptance that was sent by post.

Conclusion

Drawing from the above facts, Sensational Sails and EquipU have not reached an agreement, in relation to the sale of the Italian machinery. First, when Marc decided to give Pauli the offer, he was not aware of any communication of acceptance by Sensational Sails. Second, despite the fact that he opened his email on Monday and saw the acceptance from Sensational Sails, this mail had arrived at 6pm, and he had not received the posted letter, so that he would confirm otherwise about the time of acceptance. Hence, the acceptance between Sensational Sails and EquipU was incomplete, and the agreement could not be enforced before a court of law.

Question 2

Assume that the parties have reached agreement as required by law. Using the four-step process, consider whether the other elements required for an enforceable contract are present. Can Marc enforce the contract against Sensational Sails Pty Ltd?

Identifying the Legal Issue

Marc and his cousin Ben and friend Bill go for a sail on Saturday afternoon and manage to resolve their differences. They also conduct cordial

negotiations regarding the sale of machinery and the price. Bill and Ben agree, on behalf of Sensational Sails, to pay to EquipU the sum of \$39, 000 for the Italian machinery. Marc proceeds to import the sail making machinery from Italy and has it delivered to Sensational Sails factory for installation. He hands the invoice to Ben who says: “ Thanks Marc we appreciate this and are very excited about the new machinery. We will organize the bank to transfer to you the amount of \$30, 000, and we deducted \$9, 000 because we did the catering for your wedding six months ago”.

Marc is furious and says to Bill and Ben that is not the arrangement they agreed, and Sensational Sails have to pay EquipU the full amount of \$39, 000. Bill and Ben say that they don’t need to stick rigidly to the terms of the agreement as it is all between family and friends anyway.

Relevant Rules of Law

a) Consideration

Consideration can be defined as what the promisor obtains as a substitute for the promisor’s promise. So as, to be legal, consideration should be a valuable thing, which the individual acquires in exchange for the promise completed (Miller, 2011). Consideration cannot be a thing that the individual has received ahead of the promise. Besides, consideration should not be something that an individual is already allowed to receive, by law, or under any other enforceable contract.

In case a creditor consents to accept a smaller amount than the agreed amount on the expected date, there exists no consideration for the creditor’s

guarantee to relinquish payment of the amount remaining, according to the rule of consideration. So as, to obtain this sum, the creditor may, if he so wishes, litigate for payment of the remaining amount, instantly, after obtaining payment of the smaller amount.

b). Capacity to Contract

Not everybody is allowed to enter into agreements that should bind them at law. Some groups of promisors have to be confined as an issue of public policy, either on the basis of their immaturity and rawness or owing to their incapacity to understand the nature of their actions in getting into enforceable agreements. These groups include minors, bankrupt people, mentally incapacitated, Corporations and labor unions.

c). Legality

In case, parties enter into an agreement with illegal objectives such an agreement cannot be enforceable. Such illegal objectives include agreements to commit offenses, including agreement to steal and acquire products under deceit. Agreements that upset the public interests cannot be enforced (Miller, 2011).

Applying the Law to the Facts

First, Ben and Bill had agreed to pay Marc an amount of \$39, 000, and Marc had consented to this amount. Hence, consideration was evident at the time of the contract. According to the law of contract, consideration is what the promisor obtains as a substitute for the promisor's promise. So as, to be legal, consideration should be a valuable thing, which the individual acquires

in exchange for the promise completed. All these requirements were sufficient at the time of the agreement.

However, Ben and Bill later gave Marc an amount that was \$9, 000 less of the agreed sum. Ben and Bill refused to pay Marc the \$9, 000, because they had done catering for Marc's wedding, six months previously. According to the law of contract, consideration cannot be a thing that the individual has received ahead of the promise.

On the other hand, Sensational Sales are allowed to contract because we are not informed that Ben and Bill are minors, bankrupt or mentally incapacitated. Besides, their Company is neither a corporation nor a labor union. Again, the contract between Marc and Sensational Sales aims at providing sophisticated machinery for sail making. Thus, parties do not enter into the agreement with illegal objectives, such as, stealing or committing other crimes.

Conclusion

Drawing from the above facts, we can see that all elements of an enforceable contract were present, during the formation of the contract. Elements of enforceable contracts such as legality and capacity are evident. This is because the objectives of the contract do not offend the public, and the two executives at Sensational Sales, Ben and Bill can be bound by law. Also, the element of consideration was evident because the two parties had settled for \$39, 000, which Marc would acquire in exchange for the promise of providing the machine.

Hence, Marc can enforce the contract against Sensational Sails Ltd. This is because Sensational Sails Ltd seems to have breached consideration as an element of an enforceable contract, by refusing to pay Marc the \$9, 000, due to past, provided catering services.

According to the law of contract, consideration cannot be a thing that the individual has received ahead of the promise. The fact that Ben and Bill refuses to pay Marc the \$9, 000, due to earlier provided catering services, implies that they have breached the law of consideration, and the contract can be enforced in a Court of law.

Part B

Business contracts contain various terms that have imperative legal implications. The most common forms of contract provisions are warranties and conditions. Whereas both warranties and conditions have significant insinuations for the rights of the parties to the contract, there exist variations between the two provisions.

A condition is that thing which must happen for the contract to take place (Tulsian, 2000). For instance, a contract may require that Apple Poly Inc will sell Bretaz Inc 150 Poly-Carbon roofs at \$1, 500 on the condition that Bretaz Inc inspects the roofs for quality and any faults approved by that corporation.

In case, a condition is desecrated the contract loses its strength and becomes invalid. Drawing from the above example, if Bretaz Inc inspects the 150 Poly-Carbon roofs and finds them to have faults, the contract becomes

negated. Apple Poly Inc will not be expected to deliver the roofs and Bretaz Inc will not be expected to pay anything for the roofs.

Conversely, a warranty becomes guaranteed by the producer or vendor of a commodity that a certain realistic claim concerning a commodity is valid (Tulsian, 2000). A warranty could read “ this roof is guaranteed to not rust, shred or crack for 1 year commencing on the date of its procurement.” Such a warranty can be regarded as express, since it is clearly declared. There also exists another warranty called implied warranty. This warranty becomes formed by state law, and it seeks to assure that a commodity will satisfy its designed purpose, rationally.

In case, a warranty becomes infringed the party procuring the products, or the party secured by the warranty is entitled to compensation. Such damages might be declared in an express warranty. For instance, a Company may ascertain that a product will endure for seven years, or else, the buyer is will obtain the money back, in case the product is defective.

References

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Tulsian, P. (2000). Business law. New Delhi: Tata McGraw-Hill.