Contract law advice style answer

ASSIGN BUSTER

Arron and Tracy have entered into three different types of contracts. Firstly, there is a contract for sale of goods between Tracy and HAL[1]for the purchase of the coffee machine. Secondly, there is a contract for service among Arron and Matthew for the decoration of the hallway. Then, there is a contract for sale of description between the Arron and the dog-seller for the purchase of dog. The contracts appeared to be consumer contracts, since they satisfied the requirements established under the Unfair Contract Terms Act[2]. Section 12[3]states that a person dealing under a consumer contract is when one party performed in the course of a business and not the other party. Moreover, the goods in consideration must be ‘ of a type ordinarily supplied for private use’.[4]Section 2(1) of the Sale of Goods Act[5]states that for a consumer contract to exist there must be ‘ a money consideration’. In application, it is clear that Arron and Tracy are consumers, which are not acting in the course of the business, but we cannot say the same for the other parties. In the cases of *Stevenson* [6]and *R & B Customs* [7], the term ‘ in the course of a business’[8]is wisely explained, it is clear that the other parties who contracted with them are included.

THE LUXURY COFFEE MACHINE*

The purchase of the luxury coffee falls under the implied terms of s. 14 SGA[9], which says that the goods supplied must be of “ satisfactory quality”. Under S. 14 (2A)[10], the test is that of ‘ a reasonable person’ would regard as satisfactory. Thus, when the coffee machine was bought no one will expect it to burn hands and to be unsafe (considering the criteria in s. 14 (2B)[11]of the act. Here, it includes safety as per s. 14 (2B) (d)[12]. Indeed, the General Product Safety Regulations 2005[13]has included

electrical equipment as having a requirement to be safe, by being properly insulted. However, this is not the case when the coffee machine becomes too hot which is clearly unsafe. It is clear though that s. 14[14]is in breached since the product supplied burnt hands by becoming too hot.

Consequently, Tracy can return or ask for a refund of the price (£150) and damages. Nevertheless, in order to entitle to this, it must be established that Tracy has not " accepted" the product. Otherwise, if it has taken place the remedy is damages only which will be under s. 11 (4).[15]Furthermore, s. 35 (4)[16]says that acceptance occurred when a buyer retain the goods for a certain period of time without intimating to the seller that she rejected it. The question of time had an extensive discussion about how long and what actually is a reasonable time. It was first established under the case of *Bernstein* [17] *,* under which there was a maximum of 3 weeks. However, it was later replaced by *Clegg* [18]the actual law which provides a period of 7 months. In application, Tracy is visibly within the time limit, as she rejected the offer when she returns the coffee machine back to HAL.

Furthermore, since Tracy paid the coffee machine with her credit card, she may have additional rights under the Consumer Credit Act 1974[19]. In fact, she enters into a consumer credit agreement which is defined under s. 8 (1)[20]as an agreement between an individual and the creditor by which the creditor provides the debtor with credit of any amount. In application, this is the case when Tracy paid the product with her credit card define as ' financial accommodation' under s. 9[21]. It was a regulated consumer credit agreement under s. 8 (3)[22]as it was not an exempt agreement. It also constitutes a restricted use, according to the situation in the problem as per

s. 11 (b)[23]and a running account as per s. 10 (1) (a)[24]. Consequently, as the product is purchase with a credit card, there is a D-C-S agreement under s. 12 (b)[25]; debtor: Tracy, creditor: Barclaycard and the supplier: HAL . In such a case, where there is a faulty product, which is the case Tracy has a ‘ like claim’ against the credit card company under s. 75[26]. HAL and the credit card company are ‘ jointly and severally liable’ for the aforementioned breach of S. 14 SGA[27]. Therefore, Tracy has a claim against both HAL and Barclaycard. Indeed, if the claim against the shop is unsuccessful, then she is entitled to use s. 75 as a shield.

Furthermore, even if Vicky is not a party to the contract she might have a claim against HAL since the privity of contract was overcome by the narrow rule of Lord Atkin in the case of *Donoghue v Stevenson* .[28]Despite the fact, that she could claim under negligence it will be best to sue under Consumer Protection Act[29]since there is a strict liability.

Vicky might claim a civil liability under Part I of CPA[30]which covered damage or personal injury caused by the faulty products, when her arm is burn. The coffee machine is defective as per s. 3, since no one will generally expect the coffee machine to become too hot and unsafe. Therefore, she will be able to sue for damages.

Moreover, there may be a potential criminal liability under Part II of CPA which covered damage caused by unsafe product. Certain goods need to satisfy the safety requirement under s. 11 (1)[31]. Therefore, a failure to meet the safety regulations is a breach under s. 12[32], but unless the product supply is unsafe which here is visibly the case.

Additionally, HAL will try to rely on the exclusion clause. In order to be effective, the clause needs to satisfy certain legal rules. When Tracy went to return the coffee machine, she was pointed a notice which states " Sale items cannot be returned". Applying the case of *Olley* [33] *,* which established that for a notice to be incorporated it need to be before or at the time of the contract. Since, Tracy could not remember having seen the notice before; it is very likely that there clause was not incorporated. Even if the clause was valid, it will not make a difference because s6 (1) UCTA states that liability in consumer contract for breach of s. 14[34]cannot be excluded.

MATTHEW, THEDECORATOR*

The contract between Arron and Matthew is governed by the Supply of Goods and Services 1982[35]since the substance of the contract is based on services. The SGSA[36]consist of two parts; Part 1 consists of the quality of goods supplied under the contract for the services and Part 2 is about the supply of services

Under Part 1, there is an implied term that goods supplied on the part of the act to be of satisfactory quality and fit for purpose under s. 4. This section mirror the provisions contain within s. 14 (2A) and (2B) of SGA[37]. It should be noted that there is no provision equivalent to s11 (4) and s. 35. Therefore, generally when Arron buys the wallpaper guaranteed to last 10 years he will expect the product to be of satisfactory quality and to durable as per the other relevant circumstances under s. 4 (2A)[38]which mirror the provision of s. 14 (2B) (e)[39]. But this was not the case when the wallpaper falls off the wall after six weeks.

Unlike Part 1, which implied term concern the goods, Part 2 implies following terms concerning the supply of services. Contrarily, to Part 1 it is possible to exclude liability, under s. 11 UCTA for breach under the service part of the contract. A contract for supply of services is defined under s12[40]as “ a contract under which a person (the supplier) agrees to carry out a service.”

Under Part 2 there is an implied term under s. 13[41]that the services provided by the supplier will be carried out within a reasonable care and skill. It should be noted that s. 13 implies generally accepted to be innominate term as in *Hong Kong Fir* [42]by depriving the innocent party of the whole benefit of the contract. This is clearly the case here when ‘ the wallpaper fall off.’ Applying *Nettleship v Weston* [43] *,* there is no defence even if the person claims to have to their incompetent best. Under, *Bolam* [44]if the skilled conforms within the standard required is of a reasonable competent member of the relevant trade, he will not be liable due to others different views. As established in *Philips* [45], the services must be carried out with such a care as within the capacity of his degree of experience which he claimed to have . He must have a level of skill of such specialist which he holds to Arron as in *Grieves* .[46]Therefore, when Arron employed Matthew, he expected the work to be done with a reasonable care and skill and not be fall off within six weeks.

Clearly s. 4[47]and s. 13[48]are in breached. Consequently, Arron will be able to ask for damages since rejection will be impossible. The claim for recovery of damages is for the poor service or poor quality of materials used in the contract term, it includes actual damages for the failure of wallpaper which has not be achieved it result by holding on the wall and consequential

damages for the money which Arron will have to expense to repair the breach. In order to entitle to this, Arron must have taken reasonable steps to mitigate his loss suffered, which require acceptance of offer from the defendant to rectify the matter, like under the case of *Payzu* .[49]It is clear that mitigation of loss had occurred when Arron suggested to Matthew that he should properly do the work again. Hence, Arron will be able to recover for the damages since he gives the opportunity to Matthew to redo the work properly.

Additionally, Matthew tried to rely on the exclusion clause, when Arron tells him that he should properly ‘ redo’ the work. An exclusion clause is used by a party in order to restrict or limit liability in an event of a breach of contract or any other specified circumstances. But, for it to be effective three legal conditions need to be consider; the common law, the UCTA and the Unfair Terms in Consumer Contract Regulations 1999[50].

Under the common law, the clause must be incorporated and constructed. According to the scenario, the clause was incorporated by an express agreement since there is not enough information to state that a contract was signed between the parties. Therefore, it is very likely that the clause was incorporated. As for the construction of the clause, it must be established that in interpretation of the contract the clause cover the breach which has occurred. In application, the clause is constructed in a plain language but it does not cover the breach. Hereafter, the clause might not be hold as constructive by court.

In addition, the statutory controls need to be considered. The legislation for exclusion clauses is governed by the provision under UCTA and UTCCR. The UCTA was created in order to protect the weaker party, for example the consumer. Under s. 11(1), the reasonableness test need to be consider, under which the term must be fair and reasonable by including all circumstances '[…]which were or ought reasonable to have be known[…]'[51]. In the problem question, it is clear that the terms are not fair and reasonable since Matthew restricted the term of the contract for his own benefit and not for Arron (the consumer). He excluded all extra cost and loss arising out of the decorating services.

The UTCCR will not be applicable due to lack of information about the presence of a contractual term or a standard form. Even if the exclusion clause is valid s. 7[52]states that liability for consumer contracts for breach of s4 and s13 cannot be excluded. However, this liability can be excluded if satisfies the requirement of the reasonableness which is visibly not the case here.

Arron might have a criminal liability against the producer for the commercial practices of the wallpaper through television advertising. The liability will be under Schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008[53]which replaced some consumer protection legislation; like CPA Part 3 or even the TDA[54]. He can claim liability for misleading actions under Regulation 5. It occurs when a misleading information lead the average consumer to make a decisive reason to enter the contract. In application, it is clear that it is the 10 years old guarantee, which encourages Arron to buy this specific paper. This commercial practice clearly

distinguished the product from the competitor (para. 3 (a) of reg. 5), was obviously a main characteristic of the product (para. 4 (b) of reg. 5) which makes him make a decisive decision in buying this product rather than the others.

PUPPIES*

The buying of pedigree dog is governed by the SGA. However, the effect of the statement must first be drawn, by stating whether it is a puff, a representation, a term or a sale by description. The difference between these statements will be established. A puff is a ' mere boast or unsubstantiated claims' which are used by advertisers for their products and services . An example is the case of *Carlill* [55]. Representations or contractual term are statements made in course of negotiation for a contract. While, a term of contract define as outcome to pre-contractual negotiation between parties can be distinct in two types; implied and express.

It could also be a sale by description under s. 13 which implied term is that the goods must ' correspond' to the words used for the description of the goods. In application, it is clear that is a sale by description where the adverts states that the dogs are ' pedigree dogs' with ' friendly temperature'. S. 13 is breached as the description is inaccurate and that the dogs are crossbreeds, aggressive and snappy. There is a strict liability under s. 13 and the remedy, will allow Arron to reject the good and receive damages.

Next, Arron has paid the pedigree dog with his credit card; he may have a claim under CCA. Under the CCA, a D-C-S agreement is established, under

s12 (b) consisting of the debtor; Arron, the creditor; the credit card company (Barclaycard) and the supplier (the dog-seller). It may be that has a claim under s. 75 where the creditor is jointly and severally liable with the supplier for the supplier misrepresentation and for breach of s. 13 SGA. If, the claim is not successful under SGA against the supplier, Arron will be to use s. 75 as a shield.

Criminal liability is regulated by the regulation 5[56]for the false information which deceived the consumers. The false statement of the advert may lead to a criminal offence under reg. 5 CPUTR which prohibits false information to be applied on goods. S. 2 (2) (a), states that goods includes the descriptions and details of animals as per there ‘ sex, breed or cross […]’[57]. Under s. 3 (1)[58]explains the term of “ false to a material degree”. In application, it is clear that the advert the newspaper is a material degree and that there is a breached of Reg 5.

2515 Word Count*(Excluding titles)

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