

Aspects of contract and negligence for business

Business



Aspects of Contract and Negligence for Business Analyse terms in contracts with reference to their meaning and effect (250 words)

A contract is an agreement that is enforceable in a court of law. The agreement can take the form of a promise or promises that have been accepted by the parties. Two elements that are necessary for there to be an agreement is the offer that has to be followed by acceptance of the offer. Only agreements that can be enforced at the courts of law can be regarded as contracts. A contract must therefore have the element of an agreement and legal obligation. Not all agreements are necessarily contracts but only those that give rise to a legal obligation. Agreements to commit unlawful or illegal acts are not enforceable in a court of law and therefore cannot constitute a contract.

Essential aspects of a valid contract include an agreement that has to be composed of the element of offer and acceptance. For there to be an agreement there must be two parties involved, the party that makes the offer is known as the offeror while the party to whom the offer is made is known as the offeree. The two parties must come to a consensus on the same thing.

Intention to create legal relationship on the part of the parties to the agreement is essential in order to create a legally binding relationship. The consent between the parties to enter in an agreement has to be free and genuine and not forced or entered by mistake or misrepresentation. If in any case the consent is not freely entered, the resultant contract is not valid. The parties entering into a contract should be qualified to enter a contract. The qualification to enter into a contract include being of the right age, sound mind and not disqualified by any law of which the party may be subject.

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Apply the elements of vicarious liability in given business situations (250 words)

Vicarious liability entails circumstances where the principal is held liable due to the misconduct of his agent (Kraakman 670). The agent in this case can either be an employee in the course of employment, a police officer in charge of a police post, or a partner of a firm in the ordinary course of business. Liability in contracts can only happen if a tort is committed. In this case, the one who commits the tort is an employee while the employee was acting under employment when the tort was committed. In case of employment, employers can only be held liable for torts committed by their employees and not independent contractors. The employer In the case of *Limpus v London General Omnibus Co* (1862) 1 H&C 526, it was held liable for bus drivers racing, despite prohibition, causing a collision (Brennan 112). The assumption of vicarious liability is that principals have greater capability to monitor the actions of their agents and can therefore reduce the chances of an agent taking risk that would amount to misconduct and hence liability. Under the agency law, the principal is assumed the superior party with the capacity not only to monitor her agents' actions but also to alter the contractual terms of the agents including incentives. This, therefore, induces the principals to take actions in order to mitigate any form of liability by the agent. This may include also forcing the principals to internalize the costs of misconduct accompanying their productive activities (Kraakman 672). Application of vicarious liability on principals may take other considerations. For example, the principals are more informed than agents about accidents or risks and hence are in a better position to reorganize the workplace to mitigate the same. Further, principals are in a better position to monitor and

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discipline the agents than the courts.

Work Cited

Brennan, Carol. Tort Law Concentrate: Law Revision and Study Guide. New York, NY: Oxford University Press, 2013. Print.

Kraakman, Reinier H. Vicarious and Corporate Civil Liability, Harvard Law School, 1999. Web. November 12, 2014