Weston ltd v bloggs and co essay

This case presents two problems, firstly under the obligations set out in the contract the traders were required to finish all works by a deadline which was set for the end of November. Secondly the paint specified by the customer did not perform as said by the supplier and had peeled away from the pier after a 6 month period, the supplier had specified it would last 10 years.” Contract is distinctively about the voluntary assumption of obligation; it expresses this idea more directly.

So for example, the standard modern account of the distinction between contract and tort has it that, whereas in tort the duties are fixed by law and are owed to persons generally, in contract the obligations are fixed by the parties themselves and are owed to specific persons.”(Roger Brownsword – Modern Contract Law themes for the 21st century)This situation is generally about Breach of Contract, which concerns the two or more parties involved in the contract to uphold an agreement or promise. A valid contract requires: (1) an agreement; (2) an intention to create legal relations; and (3) consideration (unless the Contract is made by deed). Whilst each of these three requirements receives separate treatment, they must in reality be looked at together. In the case; Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd [1981] It was stated that a clause can limit liability, if set out in the contract correctly, even if the contract was breach due to negligence.

However no such clause was set, this may leave Bloggs and Co liable to redress any losses incurred by Western Ltd. Due to negligence. Damages may be awarded if a court decides that a defendant has either been negligent or broken a contract and foreseeable damage or loss results. The measure of damages in negligence is to compensate the claimant for

foreseeable losses or damage. Damages are intended to compensate the innocent party for the loss that he has suffered as a result of the breach of contract. In order to establish an entitlement to substantial damages for breach of contract the injured party must establish that: Actual loss has been caused by the breach; andThe type of loss is recognized as giving an entitlement to compensation; andThe loss is not too remote; andThe quantification of damages to the required level of proof.

Advice to Bloggs & CoThe issue of working to a deadline which in this case was set for the end of November was an obligation set out in the contract that both parties had considered and agreed to thus is enforceable by law. The obligations that the two parties accept when they conclude a contract should be outlined in the Terms which may be express or implied. As the contract was founded on agreement, both parties were free to agree the obligations to which they wish to be bound, this is known as the doctrine of freedom of contract. At this stage all specialist terms should be made clear to both parties, i. e. potential losses, time restraints and consequences of breach.

Bloggs & Co should consider Hadley v Baxendale where Hadley had Contracted Baxendale to transport a broken part of his mill to an engineer to be fixed, Baxendale was late in the delivery of the part and as a result Hadley lost money as his mill was un-operational, the courts awarded Hadley ï¿½25. 00 damages. It was this case in which the remoteness test was set out, the first limb of the test is objective and refers to general damages, the test is concerned with what a reasonable man should know to be the " ordinary course of things" (Victoria Laundry v Newman Industries), what is

within the reasonable contemplation, this will be a question of fact in the circumstances and the terms “ direct loss and/or damage” and “ direct loss” refer to losses which fall within this first limb. The second limb of the test covers knowledge of special circumstances outside the ordinary course of things. The question is what could have reasonably been contemplated by the party in breach with knowledge of the special circumstances. Knowledge of special circumstances may be derived from the innocent party or from other sources, for example, independent information about the innocent party’s business or about the existence of a particular market may suffice.

The second limb covers so-called “ special damages” and makes additional losses recoverable. It can be said that Bloggs ; Co breached their duty to uphold the contract which was agreed by both parties, the service provided failed to be delivered before the end of November causing Western LTD to loose potential profit over a busy business period. Western LTD may be able to recover their loss by claiming damages; there are two types of damages that have to be considered: Damages that are sufficiently uncertain may be referred to as unliquidated damages, and may be so categorized because they are not mathematically calculable or are subject to a contingency which makes the amount of damages uncertain. Liquidated damages (also referred to as liquidated and ascertained damages) are damages in which that the amount recoverable in the event of a specified breach (e. g., late performance) is agreed at the date of a contract.

In such circumstances a liquidated damages provision will be included in the contract. When damages are not predetermined/assessed in advance then the amount recoverable is said to be ‘ at large’ (to be agreed or determined

by a court or tribunal in the event of breach). In business agreements the presumption is that the parties intend to create legal relations and make a contract. This presumption can be rebutted by the inclusion of an express statement to that effect in the agreement.

This can be shown in Rose and Frank Co v Crompton Bros Ltd where a statement was written into the contract that discharged the intention to create legal relations this contract was held by the court to be a mere gentlemen’s contract in which neither party had the intention to create legal relations. The issue of working to a deadline which in this case was set for the end of November was an obligation set out in the contract that both parties had considered and agreed to thus is enforceable by law. The obligations that the two parties accept when they conclude a contract should be outlined in the Terms; the Terms may be express or implied. As the contract was founded on agreement, both parties were free to agree the obligations to which they wish to be bound, this is known as the doctrine of freedom of contract. At this stage all specialist terms should be made clear to both parties, i.

e. potential losses, time restraints and consequences of breach. ConclusionWestern Ltd failed to inform Bloggs & Co that their failure to finish the pier to the set deadline would inevitably cause the company to loose money during the particularly busy Christmas period. Bloggs and Co are undoubtedly at fault having not performed their obligations set out in the contract, however the Law states that u can not claim damages as a result of negligence if not previously stated. As there were no mentioned consequences involved when breaching the contract imposed on Bloggs and

Co Western Ltd have no case to claim any damages/losses incurred. It was possible for Western to address this matter before concluding the contract and if any such terms were to be implied they need to be clearly displayed in plain words.

See; (Roberts v Haylock (1832)Under the Sale of Goods Act 1979 traders must sell goods that are as described and of satisfactory quality. If consumers discover that products do not meet these requirements they can reject them and ask for their money back providing they do so in a reasonable time period. Alternatively, they can request a repair or replacement or claim compensation. Where there is a contract for the sale of goods by description, there is an implied [term] that the goods will correspond with the description; sale of goods act (1979). Also stated in the sale of goods act (1979), all goods sold should be fit for purpose and of a satisfactory quality taking into account any description or surrounding circumstances.

The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) provide that a term which has not been individually negotiated in a consumer contract is unfair (and hence non-binding on the consumer) if, contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer. The issue surrounding the failure of the paint is complex; the supplier has claimed that this certain type of " pier paint" will last for 10 years. As Western Ltd requested the use of this particular type of paint then the fault does not lie with Bloggs & Co. However this is all assuming that Bloggs & Co have not been negligent when using the product. Providing that Bloggs & Co

have not breached any terms the supplier has set out for the correct usage of the paint the fault will lie with the supplier and they will be liable to redress the customer. The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999 No 2083) provide that a term which has not been individually negotiated in a consumer contract is unfair (and hence non-binding on the consumer) if, contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer.

" In most of out states, the English common Law Doctrine that where one person makes a promise to another for the benefit of a third the latter may not enforce the promise, has never been excepted to its full extent. A great number of courts hold that a third party who has sustained damage from the breach of such contract, or who would have benefited by the performance thereof, may, under certain circumstance, recover upon it against the defending promisor." Columbia Law Review, Vol. 14, No.

8 (Dec., 1914), pp. 669-672″For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly)." See; Contracts (Rights of Third Parties) Act 1999. Taking into account the Contracts (rights of third parties) Act 1999, the promisor holds a duty of care to the promisee. The promise being that the product supplied would last for 10 years.

However the product has only lasted for 6 months which is obviously a long way from 10 years. The contracts act 1999 also states that where a third party may enforce a term of the contract that the promisee has already enforced, the promisor shall be protected against double liability. This means that if Bloggs and Co were to make a claim for damages they would then become liable to redress Western Ltd. To conclude, Western Ltd as a third party can enforce any term of the contract placed between Bloggs & Co and Dulux, as the paint does not live up to its description Dulux are liable under the sale of goods act 1979 to pay damages, the most simple way to look at this case is to assess the offer and acceptance aspect.

Dulux made an offer which may have been subject to terms and conditions; however, the offer was one that was made public and not only available to Western Ltd, therefore even if there was no direct contract between the parties Dulux holds the responsibility for providing goods that are fit for purpose and match their description. Western Ltd had accepted the offer and requested the use of the specific type of paint produced by Dulux; it is likely that the statement made by Dulux influenced the decision to purchase the paint, reinforcing the case.