

Aspects of contract and negligence for business



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Introduction:

Contract and negligence are two of the most important components of business law needed to build and execute relationship with different parties. A business is always in need of creating and maintaining relationship with internal and external parties for making sales products and services to the customers, appointing employees for organization or purchasing saleable products and manufacturing materials from suppliers. So it is usually thought that a business following terms and elements of contract law can become efficiently successful so as to build secured and good relationship with availing deserving rights. Negligence is a common issue faced in the business during operation. Harms or damages caused by negligence can be brought under a frame to negotiate claims of parties involved. Victims facing harms because of negligence of one party are entitled to make claim on the loss due to harms or damages by showing relevance to elements and terms of negligence.

Task 1

1. 1 Explanation of Importance of elements required for forming a valid contract:

A contract to be valid needs to have some elements. Absence of those elements makes a contract invalid due to its significance between the parties of contract. Following elements are considered as essential ones:

1. Legal relation motive: Parties having involvement in the contract should have legalized intention for making contract. Illegal intention of any party can turn a contract into an invalid one.

2. Offer: Offer is intention of doing something. Unconditional acceptance of the offer by other person in the contract is essential.
3. Acceptance: Offer made by a party must be accepted by the other party to whom the offer is made. Acceptance of offer can be in oral or in writing preferring the convenient one.
4. Consideration: Defined in terms of contract law, consideration is detriment of a person making the promise or benefit generated for other party of the contract. Both types of consideration should be measured in economic.
5. Capacity: people not reaching the age of 18 and not mentally ordered are not entitled to form contract and be party of contract.
6. Expressed or implied terms of a contract: Generally, the parties of a contract should have the agreement on the terms of contract. Contracts with terms which are not expressly mentioned in contract are called implied contract.
7. Genuine consent of Parties: There can't be any kind of forces physically or mentally on any party of the contract in making the formation of contract. They will freely show the consent to contract.
8. Discharge of contract: A contract with validity can be discharged by the ways of mutual agreement, contractual parties' performance and breach of frustration.

1. 2 Discussion on Impact of different types of contract:

Different types of contract have different extent of impact on the terms, objectives and parties of a contract. Types contract with impact on parties of contract have been discussed below:

Written contracts:

A written contract are formally signed by parties in written description with maintaining the assumption that all terms of agreement among contract parties are mentioned in the contract document without regarding verbal agreement (Wilson Huhn, 2002). These terms of the contract must easily be understood by them when present to them. There is also an assumption that terms of contract have been read and agreed to.

Verbal contracts:

Stronger level of trust among the parties is required in this contract and it can't be used as proof against any written contract. Verbal agreement support following ways:

1. Conduct other party both before and after the agreement,
2. Specific actions of the other party,
3. Past dealings with the other party.

But in following its impact may not be positive:

1. The value of transaction is remarkably high,
2. The presentation of a substantial document may raise more questions and uncertainty in the mind of parties (Elliott and Quinn, 2011).

Executed contract:

Executed contract is such a contract in which both parties of the contract have completed their specified obligations and responsibilities maintaining terms of the contract. This sort of contract is easier to form and transparent to perform undoubtedly.

Executor contract:

When parties of the contract are still to perform their own obligations and duties, it is called executor contract. This contract remains incomplete because of not performing some of its obligations by any or both of the parties. Parties of the contract need to have proper assumption over future incidents.

1.3 Terms of contract with reference to their meaning and effect:

Following terms are used in the formation of contract and these terms have different meaning and extent of effect on contract:

Circumstances:

Circumstances are the indication that is essential to assume the discussion with the assigned deal. A dislocate associated with station may capacitate detriment result.

Expressed contract:

When parties of contract mention terms of the contract either in verbal or in written during the formation of the contract, it is called expressed contract. A definite written or oral offer is made with the expectation of acceptance in a manner that explicitly expresses consent to the terms.

Implied contract:

Although contracts implied in fact and in law are known as implied contracts, a real implied contract consists of some obligations which arise from mutual agreement and intention of making promise without expressing it in words. A contract in implied nature depends on substances for its existence (Lunney and Oilphant, 2010) . So, an implied contract requires the act or conduct of a party before coming it into effect. Therefore, a contract with implied terms is not expressed by the parties but rather suggested from facts and circumstance referring to a mutual agreement.

Task 2

2. 1 Application of the elements of a contract in different business situations:

Law contract provides the guidance to make the agreement and to make compensation if agreement is violated by any parties. With following business scenarios, application of the elements of contract has been discussed:

Scenario 1

It was really a matter of disappointment for Miss Kaur not finding fountain pen available coming back to the antique as shop assistant Harry had made the promise of selling the pen to any other customer willing to buy it before her return. Moreover, to return to that antique shop she had to bear additional travel expenditure. They made the contract with offer and acceptance and this contract has been discharged on making a mutual agreement. Shop assistant should have informed Miss Kaur before selling the pen to another customer. Therefore, from view point of contract law, she can <https://assignbuster.com/aspects-of-contract-and-negligence-for-business-essay-samples/>

utilize the option of taking legal actions against the shop for claiming her travel expenditure used to return to the shop.

Scenario 2

To make renovations to the building of Charles, Murphy made a contract which was modified to increase the amount of renovation fee despite an unexpected argument between them. But Charles did not pay the increased amount to Murphy as per modified contract putting an argument that it was over the original contractual price. In such situation, Murphy has the option of showing the writings which were used to increase the price of renovation and agreement sent by Charles. Additionally, the witness of modified contract can be asked to be present to enforce Charles to fulfill the promise for making extra payment. Murphy is legally supported to sue against Charles for receiving that additional payment through following terms and elements of contract properly.

Scenario 3

At the time of starting career as self employed builder, Mia kept two requests of his brother and his friend with the condition of fixing and getting payment from them. But after getting service from Mia, both of them showed reluctance to make payment the agreed money with showing an excuse that they took the service of Mia for making getting the scope of gaining more experience on related job. As the contract was formed verbally, there was the risk of such sorts of avoidance. As he had congenial relationship with both of them due to be his friend and brother, he did think of making a written contract for security. Mia can force these two service receivers to <https://assignbuster.com/aspects-of-contract-and-negligence-for-business-essay-samples/>

make full payment through reminding description of contract formation and can search witness for the legality of claiming payments.

2. 2 Application of Law on terms in different contracts:

Elements and terms of UK contract do not have difference from that of general contract. As a standard form contract, a business deal between transporting companies, LSA Logistics Ltd. made a contract with a manufacturing company to distribute its products with following expressed and implied terms:

Expressed terms:

- Charging £250 per day for a single vehicle
- Transport Company will carry its products Five days in a week.
- Additional per day beyond selected days will be charged at £300.
- LSA Logistics will distribute only the products of that company etc.

Implied terms:

- LSA Logistics will follow allowed time for distributing manufacturer's products.
- LSA Logistics will not carry any illegal products.
- LSA will not carry beyond standard weight in its vehicle.
- LSA Logistics will distribute products in agreed areas etc.

Both of the parties signed on a document in this contract supporting exclusion clauses. Maintaining relevance to this term, LSA searched the way of breach of contract as the manufacturer was not fulfilling the elements and terms of contract. Manufacturer was forcing LSA to carry products beyond

specified and standard weight and distributing products specified limit.

Among different types of exclusion clauses, LSA followed true exclusion clause to breach the contract by firstly recognizing it and making excusing liability for this breach. This is a standard contract which has been breached following the agreed exclusion clause.

2. 3 Evaluation of the effect of different terms in contracts:

Scenario 4

X and Y made a written contract which contained some expressed terms. As Miss Y agreed to take dress smartly always during staying at office and not to wear trousers under any circumstances, she was supposed to wear dress smartly on 1st and 2nd June. Moreover, as research assistant Miss Y will work not considering hours to complete necessary tasks or assignments. But she has not been to complete the task within given time. For violating those mentioned terms, X became angry and upset and also got humiliated. For such sorts of depression, she had to take medical treatment. From this scenario, it is reflected that violation of terms of contract can lead to unexpected consequences to any party of the contract.

Task 3

3. 1 Contrast liability in tort with contractual liability:

Both of the liabilities are on the basis for failure to observe a duty imposed by law. One of them is by agreement and the other one is by duty of acting and performing in a reasonable manner.

A contract is formed by making agreement to be entered into by two or more parties. if one of the involved party fails to perform regarding contract terms,

then that party is thought to incur contractual liability (K. L. Hall, 1989),. This kind of liability is created if two or more than parties intend few things to each other. When default on the agreement is happened by any of the parties that is termed as breach of contract.

Tort is a common mistake arising due to the failure of one party in performing one's duty to have acted in reasonable manner so that no harms happen to others. Tort is termed as breach of some duties independent of contract which gives rise to a civil contract. Although most of the torts happening in the breach of contract are negligence but few others are intentional. (Clarke, 2010) defined that tortuous liability arises due to the breach of a duty primarily determined by law; such duty should be to person and its breach can be recognized by the action for making compensation.

Few differences between contract and tort are given below:

1. A tort is usually consent but a contract is founded on the consent of parties.
2. Privities are essential in tort but it is important implied in contract.
3. A arises from violation in performing responsibility but a breach of contract happens through infringement of a right.
4. Motive is considered with giving special emphasis in tort but it does relevance to the breach of contract.

3. 2 Nature of Liability of negligence:

Negligence in liability is defined as the failure to exercise the level of care for ensuring safety of another and this level of care a person would reasonably exercise under normal circumstances. This area of tort law known as

negligence involves harms which is caused due to carelessness of a party. According to Jay M. Feinman (2010), the negligence concept requires people exercising care when they act by taking potential harm into account that they might cause harm to other people. But laws of intentional torts allow an applicant to sue for the harm or loss caused by defendants either in accident or in careless. For that reason, tort of negligence is defined as a failure to behave with level of care that someone of ordinary prudence would have exercised under the identical situation (Schrader, 1987).

3. 3 Vicarious Liability in a Business:

Vicarious liability arises from a situation when one party becomes responsible due to unlawful actions of a third party. Moreover, the liable party also becomes responsible for his own share of liability. The liability comes into existence if one party has the possibility to become responsible for a third party and does show willingness to carry out the respective responsibility and exercising control (Eliott and Quinn, 2011).

A Vicarious liability can happen in a business in following way:

Unlawful and outlawed actions such as harassment or discrimination in workplace of an employee make his employer liable. Even though employer himself did not have involvement in committing unlawful action, he carries the liability as he is considered to take the responsibility to prevent or limit any kind of unlawful actions performed by its employees. In this case, the employer is assumed to have the capacity to avoid vicarious liability with taking proper exercise so as to prevent such unlawful behavior.

Task 4

4. 1 Application of tort of negligence and defenses in different business situations:

Scenario 5

Causing damage to the wharf by oil spilling from UK ship in Sydney harbor makes it legitimate to sue against chatters of the ship. For the possibility of facing such damage, taking required safety measures signals that there was the proximate cause in the event of this accident. Besides, the ship did not exercise reasonable standard care during taking oil from harbor. Again, in the tort of negligence, there must be actual injury to the party who sued. For this reason, fire from spilled oil on water caused damage wharf. So, owners of wharf should take action of suing against chatters of ship by following requires procedures and terms.

Scenario 6

Bell who was serving in vehicle maintenance by Shell lost sight of good eye due to flowing chip metal into his eye. Though the risk of losing sight of eye was little but protective measures should have been taken. Unfortunately, the duty of protection was not followed here. Carefulness by Shell in maintaining reasonable care was not standard enough and this has led to blinding bell.

4. 2 Application of the elements of vicarious liability in different business situations:

Alf employed as warden in Safe Care Home Ltd was accused of sexual abusing boys made a matter of disappointment for this company. As he was employed by that company, any kind of outlawed actions by Alf should have

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been countered by his employer. Though Safe Care Home Ltd proceeded to take advice on this issue as whether this company is vicariously liable for the torts, but trial of sue will go against this company for not verifying Alf's manner and ethics.

Mr. Khan sued against AB and Song Garage Ltd and its employee, Amos Bridge for disrespect and being hit by attendant Amos. AB and Sons Garage Ltd has been liable vicariously in this case for the unlawful actions in its working place though it didn't directly engaged in this actions. Being a customer, Mr. Khan logically expected good manner from attendant but situation and manner was unexpectedly opposite. So in this case sued by Mr. Khan, AB and Sons Garage Ltd can be considered as vicariously liable for attendant Amos.

Conclusion:

Contract along with its aspects have been described in the study. As the important aspects of contract, elements and terms of contracts are encompassed with making required explanation. Moreover, to clarify on contract, its different types have been discussed by bringing their definition and impact on the formation and execution of contract. For gaining proper understanding, several business scenarios have been answered with explanation and relevant advice. Negligence is an important issue of contract law and this issue arises from context of liability due to causing harm to any party of business. For suggestion to the victims of harm generated from negligence, the given business scenarios have been solved.

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