

Discuss Whether Melanie Can Sue Brad.

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Scenario 1: Discuss whether Melanie can sue Brad.

Issue: The question arises of whether a discretionary bonus should be paid.

Analysis: The employer has the discretion to pay bonuses and incentive payments to his employees. The application of law can be difficult in this regard because the law in this area is grey. According to Australian Law, if an employment contract has a clause about the payment of a bonus, then the employer has an implied duty to pay that bonus. Although the payment of the bonus is discretionary, the law in Australia states that the discretion must not be exercised in a perverse, irrational, arbitral and capricious manner. Thus, the discretion of the employer is not absolute.

Rule: The law in Australia implies that despite having discretion, the employer has a duty not to apply it, taking a decision that no reasonable board would have made, i.e., not to stop the bonus on firing an employee. However, it must be kept that performance bonuses are often subject to the commercial context facing the employer and the precise nature of the contract between the employer and his employee. The bonus is often paid for both as a reward for loyalty and an incentive for high performance. Therefore, an employer has a legitimate right to refuse a bonus if an employee has resigned, but the case of Melanie is the other way around, i.e., she did not resign; she was fired. Moreover, the payment of a bonus after cessation of employment largely depends on the commerciality of the payment and the wording of the bonus.

Conclusion: Melanie's position is strong despite the fact that the bonuses and incentive payments are discretionary. According to the given scenario, Melanie was given a target of completing the work within ten days which she complied, as she was keen to get more work from Brad in the future. However, she was not promised to be given a bonus for her work at the time of giving her the assignment. But, at the celebratory lunch, Brad promised her a bonus for 'her effort,' i.e., for the work that is done. Thus, the bonus was promised as an incentive; it was based on the meeting of a clear target. Therefore, Brad cannot indiscriminately or unreasonably refuse to pay Melanie her bonus. Melanie has the right to sue in this situation.

Scenario 2: Can Rob recover the furniture from

Judy?

Issue: Goods bought on credit under disguise have been sold to another party.

Analysis: Recovering goods from a third party has a limited scope. If the goods have been sold in their original state to a third party, then the seller has the right to discover them only if there is a retention of title clause between the seller and the debtor who has not sold the goods to the third party. Furthermore, the enforcement of this right is dependent on the specific wording of the contract between the two parties. Even if the title retention clause is upheld in the courts, Rob does not have the right to enter into the property of Judy to recover the goods because he does not have the receipt to show his transaction with 'Vince Colosimo.'

Most importantly, Vince Colosimo does not exist in this contract for the sale of goods. He was a rogue who fraudulently bought the furniture from Rob and sold it to Judy, who also believed that she had seen the person on the television. However, for the purpose of recovering his goods from Judy, Rob must prove his transaction with "Vince Colosimo." Although he lacks the receipt, he can provide some witnesses to this event. For instance, someone from the neighbourhood must have seen the furniture moving out of Rob's office. Despite the fact that 'Vince Colosimo' was present on the scene, he can link it with him. The rogue can also be found and identified due to the similarity in his facial features with Vince Colosimo – the television actor. Rob would be able to recover his furniture from Judy's place, proving the fact that the transaction took place and that the furniture belonged to him because the debtor failed to make the complete payment on time.

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Conclusion: Rob's position is strong as he can recover goods from Judy. However, he might face difficulty in proving his transaction with "Vince Colosimo" because he lacks a receipt for the sale of his office furniture to him. 'Vince' only paid Rob \$5000 for the furniture and picked it up the next day through a few friends without showing up on the door ever again. Rob, due to the misunderstanding of mixing the rogue with the famous television celebrity Vince Colosimo, did not ask for a receipt. Furthermore, he believed the men picking up the furniture from his office told him that his remaining payment would be made within the next twenty-four hours. The payment was never paid. Rob followed the movement of his goods with the help of police officers and located them with Judy – the third party in the case.

Scenario 3: Advise Rob if Jeff owes him a duty of care for negligent misrepresentation. Find two cases to support your conclusion.

Issue: Jeff has breached his duty of care by giving financial advice to Rob for the expansion of his dental business.

Analysis: Jeff Price is an accountant and financial adviser. While slightly inebriated, he told Rob about the sound position of his dental business for expansion despite the fact that he knew nothing about his business. Rob relied on his statement and borrowed \$50,000 from Northpac Credit, a small credit union. Rob underestimated the costs of expanding the business, and things did not go as planned. Rob has to forfeit a \$5,000 deposit on new premises and defaults on the Northpac loan. For these reasons, Rob wants to sue Jeff; he has a right to do so because Jeff had a duty of care towards Rob, which he failed to fulfil. There is negligent financial advice with economic loss.

Rule: Negligent misrepresentation is a tort. It contains the duty of care. However, a distinction is made between the professional who has willfully passed wrong information and the scenario in which he did it without knowing. In Rob's case, Jeff knew nothing about his business. Rob asked him for financial advice on expanding his business; there was a clear chance that Rob was going to rely on this information. A similar situation occurred in *Esanda Finance Corporation Ltd v Peat Marwick Hungerfords* (1997), where misrepresentation of fact was made by the defendant despite knowing it, and the plaintiff, consequently, had to suffer economic loss due to it.

Moreover, Jeff is an accountant and financial adviser. Despite the fact that he met Rob at a party and they both did not know each other before that, he is responsible for giving him the best financial advice. In *Mutual Life & Citizens' Assurance Co Ltd v Evatt* (1968), there was no immediate relationship between the advice giver and taker, but due to the element of reliance, the defendant suffered harm, and the plaintiff paid damages in this regard. The facts of the two cases are almost similar, i.e., Jeff failed to fulfil his duty of care due to his professional standing towards Rob, which resulted in economic loss for him.

Conclusion: Jeff had a duty of care towards Rob due to his professional standing in the field, which he failed to fulfil. There is negligent financial advice with economic loss.

Scenario 4: Give one example of a UN Global

Compact human rights principle that might have particular relevance to Rob in his dental practice, and explain why in a short paragraph.

According to the UN Global Compact, health is everyone's business. The nine principles of the UN Global Compact can affect the dental business of Rob in two ways (Guide to the Global Compact):

Firstly, Rob must provide safe and healthy working conditions to his employees. Complying with this principle is a pressing need of the time for successfully transferring new technologies to developing countries. The top management must commit to the provision of safe and healthy working conditions to the employees of the organization. The best example in this regard comprises zero incidents of illnesses and injuries at the workplace (Takala et al., 2012). For instance, the top management must take due care in eliminating environmental pollution from the workplace because it is dental practice and chemicals are being used. Furthermore, Rob must take due care when using the equipment. Numerous diseases can be transmitted through the mouth, and Rob uses the same machinery and equipment on his patients. Therefore, he must sterilize his tools before using them on a patient. He must also keep a complete record of his patient's medical conditions that might affect the next patient immediately. For example, if a patient has flu or some other contagious infection, then Rob must sterilize all of his tools and the room before assigning another patient to the same facility.

Secondly, Rob must take the initiative to provide access to basic health, education and housing facilities for his employees and families if they lack these facilities from other sources. Rob does not run a large organization and can handle the application of this principle on his own. However, it was a large organization, so Rob could have made a department such as a payroll to fulfil this duty by collecting relevant information about the workers and updating Rob on their economic and social status and all the facilities that were lacking in their household, and Rob is responsible for providing them.

List of References

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