

Elements Formation and Enforcement of Contract Law

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Introduction

A contract is an agreement between two or more parties to offer a service, provide a product or commit to an act and is enforceable by law. It is an expressed agreement that comprises six elements, which make it a binding and legal document. The law of contract states that for an agreement to be upheld by the law, it must comprise acceptance, an appropriate offer, consideration, the intention of both parties to enforce the contract and objects of the contract as well as capacity (Cheshire & Fifoot, 1972). An offer details specifically what will be provided in the contract. Acceptance is termed as an element that comprises the agreement by the other party to the offer presented. Consideration refers to the mutual interest, for example, money, that is being exchanged between the involved parties. The law of contract states that, for a contract to be valid, the parties involved must meet the age criteria and have a sound mind. The law of contract is concerned with the legal enforceability of promises (Corbin, 1925, p. 572).

Features Of Contract Validity

In the *Carlill v carbolic smoke ball case*, the company had manufactured a carbolic smoke ball and then went ahead to advertise it as an influenza preventive measure. In the advertisement, the company included that any person who used their products but was still infected with influenza would be paid 100 pounds. Further, the advertisement included that it had deposited 1000 pounds to demonstrate its seriousness in preventing influenza. After seeing the advert, Mrs Carlill bought the smoke ball and used it as directed by carbolic instructions. However, she later contracted the influenza flu despite adhering to the product instructions. Mrs. Carlile then filed a lawsuit against the owners of the Carbolic Smoke Ball company to recover the 100 pounds. The owners of the company (defendant) argued that the advert did not qualify for an offer. Secondly, the defendant outlined that it was impossible to present an offer to the whole public. Thirdly, the company argued that the statement in the advertisement was wordy and did not state the time limit for contracting the flu, and hence, it was too vague to constitute an offer. Additionally, the company outlined that it did not receive notifications of acceptance from the plaintiff. Lastly, the company argued that no considerations were made and did not specify if the user of the balls must have bought them (McGinnis, 1988, p.130).

In the case, the court of appeal held against the defendant and stated that the plaintiff was to receive

the advertised reward since the advertisement was an offer of a unilateral contract. This type of contract was enforceable since Mrs Carlill had accepted the offer by performing the conditions specified in the offer, which were to use the ball three times a day, consistently for two weeks. The court argued that the advert demonstrated the intention of the defendant to keep the promise by depositing 1000 euros in the alliance bank and that the advertisement was not an invitation to treat but rather an offer. Secondly, the court ruled that an offer can be made to the whole public, and it can result in a unilateral contract by the public accepting the offer by adhering to the product instructions and user guidelines. Acceptance of the unilateral contract is not communicated by the offeree to the offerer because acceptance is through full performance (Barnett, 1986).

This case was considered a valid contract since it constituted an offer, acceptance, intention, consideration, sanity, and capacity, and therefore, it was not a mere invitation to treat. The case had all the main elements of a contract hence making it legally valid based on the law of contracts. An invitation to treat does not meet the requirements of being a valid contract since there is no offer. The court ruled out on the consideration that the company was a promisor and Mrs. Carlill was the promisee if the carbolic smoke ball company had promised to give out 100 pounds to the smoke ball users who still contracted the influenza flu. An invitation to treat entails an invitation for customers to submit an offer. The advertisement in the case did not invite customers to make an offer for the purchase of the smoke balls, while the advert indicated the willingness of the defendant to enter into a contract with the consumers of their products.

Consideration Of A Contract

Consideration in the law of contract refers to the mutual benefit or asset to be exchanged by the involved parties. It can also be defined as the price at which one party agrees to compensate the other binding party in order to make the agreement enforceable. A valid consideration must result in gaining something from the other party involved. The law of contract protects the promisee's reasonable expectation of performance. The court assesses the expectations and considers the reasonable position of the promisor. In considering the Marcus v. Florence case, Florence owed an unsecured loan debt to Marcus (plaintiff). When Marcus asked for security, Florence promised to provide a piece of land as an asset but never gave it out (Treitel, 2003). When Marcus (plaintiff) tried to impose the agreement for the provision of the security, Florence (defendant), however, argued that Marcus had not put forth any consideration. The court ruled out that the plaintiff can promise not to enforce the debt. But it did not. The plaintiff had shown forbearance, hence making it a valid consideration. Therefore, the agreement on the provision of security was binding.

In another incident at Strathmore University, the police were in their normal line of duty in protecting the campus assets during student strikes and boycotts. The owner of the school promised to pay for a police station to be stationed somewhere near the school so that they could take charge when during strikes to prevent the students from destroying the campus assets. The police comprehended and acted, but at the time of inquiring about compensation as promised, the campus proprietor denied

releasing the payments, claiming that the police were carrying out their normal duties. However, the court ruled that although the police had the role of providing protection, there was discretion as to the form it should take as they had performed extra services. The supplementary services offered by the police acted as an appropriate consideration for the promised money. Therefore, the police were entitled to the payment as the agreement was legally binding (Hale, 1943, p. 512).

Ultimately, any act carried out before the giving of a promise to offer some goods or make some payments can be at most times a consideration for the promise (Williston, 1914). However, the act must have been conducted when the promisor requests. Promises done in advance are bound to be considered or met. If this is not met, then the consideration is declared past. To illustrate a case, a farmer hired an employee to plow his farm. Later, when the employee was done, the owner of the firm promised to pay him \$ 400, and they signed a document to this effect. When the employee demanded the payment, the farm owner refused to pay. However, the court ruled that, since the work was covered as a whole in advance, the promise was void since it was past consideration. The law of contract rules out that the consideration must not be past should move from the promise, part payment of liabilities is not a valid consideration, it should be sufficient and more so adequate.

Donoghue V Stephenson Case

It is also termed the snail in the bottle case, which is an important case in Western law. It was instrumental in shaping the law of tort and the doctrine of negligence. The case is about two friends, Mrs Donoghue and her friend, who bought a ginger beer and ice cream in a café. The content of the package was not observable because the package of the beer was translucent. Mrs Donoghue drank some of the beer and dispensed the remaining over her ice cream, and suddenly a rotten snail floated. Mrs Donoghue suffered personal injury as a result of the shock. She went ahead and filed a claim against the ginger beer manufacturers (Smith & Burns, 1983, p. 140).

The main issue here was whether the manufacturer owed a duty of care to Mrs Donoghue in the absence of any contact between them. She took action to determine whether the manufacturing company owed her any compensation due to the injuries she suffered. During that time in Western law, for one to be compensated for such damages, there was a need for an established contractual relationship. The earlier cases held that due to the lack of a contract to represent the claims, the industrialist was in no position to pay for any damages caused by the consumption of its products. Mrs Donoghue, however, took her claims to the House of Lords, unlike the other complainants. She won the case, and hence, the law of negligence was established, as well as the neighbor test.

The Neighbor Principle

The neighbor principle arose from Mrs. Donoghue's case. The principle was by Lord Atkin. Articulated that who said that people should take reasonable measures and precautions to avoid omissions,

which can injure our neighbors. He went on further to question who our neighbors were. In his reasoning, he depicts a neighbor as the person who is directly or is most likely to be affected by our actions and omissions. Therefore, Atkin imposed the liability in negligence of the owner of the cafe, defining that the duty to care for the customers lay in the hands of the café owner. He also outlined the factors of the duty of care.

The neighbor principle, therefore, allowed for the filing of claims related to negligence if any party suffered any injuries. About the principle, liability tort and negligence identified the parties to whom any duty of care was owed in any critical situation as well as the parties who were close enough to be affected by omissions and negligent acts (Veljanovski, 2007). Although the principle does not open all the doors for negligence claims, it is effective enough to ensure that all people owe a duty of care to those that are bound to be directed by our omission and negligence, for example, in the case of Mrs. Donoghue.

Tests are to determine whether someone is employed or self-employed.

There are three tests which are carried out to determine the status of employment. It is very vital to ascertain the employment status regarding whether they are self-employees or employees. This is important because some employee rights come from the outcome of being an employee. An assessment of what is required by the law for a worker to be termed as an employee begins with a couple of common law tests established by the courts to aid in the identification of the availability of the employment contract. An employee commits to an agreement, which is the legal form of contract between parties, and it's enforceable by the law.

These tests above comprise the test of control, multiple, and integration tests. In detail, the test of control focuses on defining who has the right to take control over what must be done and how it must be done. This test is based on the idea that self-employed personnel are bound to take charge of their work sufficiently than an employee. However, people who work under strict supervision and monitoring are more likely to be classified as employees. The integration test is used to explain why expert workers were granted autonomy in carrying out their duties. Many researchers have had it that an individual is recruited as part of the organization under a service contract and is integrated into the organization. In contradiction, under a contract of service, work done for an organization is not integrated within. The multiple/mixed test focuses on the right of the worker to assign duties to another worker as well as risks and losses financial risks which are negated under the contract of service, that is, the worker is regarded as an employee.

In conclusion, the law of contract is essential in every business agreement. Before signing any contract, all parties should consider all elements provided by the law of contract to create a valid and enforceable contract. Abnormalities and lack of understanding of the essentials of a valid contract may result in unnecessary suits or invalidation of the whole contract, which might lead to losses.

Additionally, the law of contract makes sure that every party involved meets the end of the bargain and hence prevents conflict of interest.

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