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 law, it must comprise acceptance, an appropriate offer, consideration, the intention of both parties to enforce the contract, the object of the contract, and capacity (Cheshire & Fifoot, 1972). An offer details specifically what will be provided in the contract. Acceptance is an element that comprises the agreement by the other party to the offer presented. Consideration refers to the mutual benefit, 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 sound minds. 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-prevention measure. In the advertisement, the company stated that any person who used its product but was still infected with influenza would be paid 100 pounds. Further, the advertisement stated that it had deposited 1000 pounds to demonstrate its seriousness about preventing influenza. After seeing the advert, Mrs. Carlill bought the smoke ball and used it as directed by the Carbolic company’s instructions. However, she later contracted influenza despite adhering to the product instructions. Mrs. Carlill then filed a lawsuit against the owners of the Carbolic Smoke Ball Company to recover the 100 pounds. The owners of the company (the defendant) argued that the advert did not qualify as an offer. Secondly, the defendant argued 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 a time limit for contracting the flu and, hence, was too vague to constitute an offer. Additionally, the company argued that it did not receive notification of acceptance from the plaintiff. Lastly, the company argued that no consideration was provided and that the advertisement did not specify whether users of the balls had to 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 defendant's intention 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 that it can result in a unilateral contract when members of the public accept the offer by adhering to the product instructions and user guidelines. Acceptance of a unilateral contract is not communicated by the offeree to the offeror because acceptance occurs through full performance (Barnett, 1986).

This case was considered a valid contract since it constituted an offer, acceptance, intention, consideration, soundness of mind, and capacity and, therefore, was not a mere invitation to treat. The case had all the main elements of a contract, hence making it legally valid under 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 on the issue of consideration that the company was the promisor and Mrs. Carlill was the promisee because the Carbolic Smoke Ball Company had promised to give 100 pounds to smoke-ball users who still contracted influenza. 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; rather, the advert indicated the willingness of the defendant to enter into a contract with consumers of its 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 contracting party in order to make the agreement enforceable. Valid consideration must result in one party 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 (the plaintiff). When Marcus asked for security, Florence promised to provide a piece of land as an asset but never provided it (Treitel, 2003). When Marcus (the plaintiff) tried to enforce the agreement for the provision of security, Florence (the defendant) argued that Marcus had not provided any consideration. The court ruled that the plaintiff could promise not to enforce the debt. However, he did not do so. The plaintiff had shown forbearance, hence making it valid consideration. Therefore, the agreement on the provision of security was binding.

In another incident at Strathmore University, the police were performing their normal duty of protecting campus assets during student strikes and boycotts. The owner of the school promised to pay for a police station to be located somewhere near the school so that police could take charge

during strikes and prevent students from destroying campus assets. The police agreed and acted, but when they inquired about the compensation as promised, the campus proprietor refused to make the payment, 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 because they had performed extra services. The supplementary services offered by the police acted as appropriate consideration for the promised money. Therefore, the police were entitled to the payment because the agreement was legally binding (Hale, 1943, p. 512).

Ultimately, any act carried out before a promise to offer goods or make payments is given can, in some circumstances, constitute consideration for the promise (Williston, 1914). However, the act must have been conducted at the promisor's request. Promises made in advance are subject to consideration. If this requirement is not met, then the consideration is declared past. To illustrate, a farmer hired an employee to plow his farm. Later, when the employee was done, the owner of the farm promised to pay him $400, and they signed a document to this effect. When the employee demanded payment, the farm owner refused to pay. However, the court ruled that, since the work had been completed before the promise was made, the promise was void because it was based on past consideration. The law of contract states that consideration must not be past, must move from the promisee, and must be sufficient, although it need not be 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 ginger beer and ice cream in a café. The contents of the bottle were not observable because the beer bottle was opaque. Mrs. Donoghue drank some of the beer and poured the remainder over her ice cream, when suddenly a rotten snail floated out. Mrs. Donoghue suffered personal injury as a result of the shock. She went ahead and filed a claim against the ginger-beer manufacturer (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 contract between them. She took action to determine whether the manufacturing company owed her any compensation for 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. Earlier cases held that, due to the lack of a contract to support the claims, the manufacturer 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 articulated by Lord Atkin, who said that people should take reasonable measures and precautions to avoid acts or omissions that can injure their neighbors. He went on to question who our neighbors were. In his reasoning, he depicted a neighbor as a person who is directly or is most likely to be affected by our actions and omissions. Therefore, Atkin imposed liability in negligence on the manufacturer, explaining that the duty of care toward the consumer rested with the manufacturer. 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 injuries. Under the principle, the law of tort and negligence identifies the parties to whom a duty of care is owed in a particular situation, as well as the parties who are close enough to be affected by omissions and negligent acts (Veljanovski, 2007). Although the principle does not open all doors for negligence claims, it is effective enough to ensure that people owe a duty of care to those who are directly affected by their omissions and negligence, as in the case of Mrs. Donoghue.

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

There are three tests that are carried out to determine employment status. It is very important to ascertain employment status regarding whether individuals are self-employed or employees. This is important because some employment rights arise from being an employee. An assessment of what is required by law for a worker to be termed an employee begins with a number of common-law tests established by the courts to aid in identifying the existence of an employment contract. An employee enters into an agreement, which is a legal form of contract between parties and is enforceable by law.

The tests above comprise the control, multiple, and integration tests. In detail, the control test focuses on determining who has the right to control what must be done and how it must be done. This test is based on the idea that self-employed personnel are more likely to take sufficient control of their work than employees. 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 skilled workers may be granted autonomy in carrying out their duties. Many researchers have argued that an individual recruited as part of an organization under a contract of service is integrated into the organization. In contrast, under a contract for services, work done for an organization is not integrated into it in the same way. The multiple/mixed test focuses on the worker's right to assign duties to another worker, as well as risks, losses, and financial risks, which are reduced under a contract of service when 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. Defects in and a lack of understanding of the essentials of a valid contract may result in unnecessary lawsuits or invalidation of the whole contract, which might lead to losses. Additionally, the law of contract helps ensure that every party involved fulfills its end of the bargain and, hence, prevents conflicts of interest.

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