Contract Law: Case Analysis Of A Binding Contract Between Soo Burgers And Mickey And Brett

Part A

Legal Issues

Whether or not there has been a binding contract between SOO Burgers and Mickey and Brett since they both had presented the golden ticket?

Rules

In the provided case scenario, the intrinsic rule of law relevant to the raised issue is that SOO Burgers has formed a unilateral offer's commercial agreement by promoting an advertisement on radio, newspapers and online. This offer has been made to the world at large hence, a promise of an act's performance made to the world cannot be revoked. This principal of law has been justified in the case of Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256. In this case, Carbolic Smoke Ball has posted an advertisement stating that whoever bought the smoke ball and used it correctly and still had flu will be entitled to 100 pounds. The court held that the words stated in an advertisement did mount up to an offer, and for one to accept the offer, he/she only needs to follow the indicated method of acceptance.

As per the case law of Carlill vs Carbolic, a unilateral contract is a form of agreement that is made by one party. It is only one party that forms an offer/promise with the intention of persuading the other for undertaking a specific task. As compared to the bilateral contracts, within a unilateral contract, the second party does not have a legal obligation to perform as per the terms of the contract. However, the performance of the second party and its compliance with the set conditions binds the first party into the agreement. Another feature of the unilateral contract is that it does not require notification of acceptance. This dismisses the rule that acceptance of a contract must be timely as found in bilateral contracts since the offer is ongoing.

The principal is also justified in the case of Merrit v Merrit (1970) 1 WLR 1211. In this case, a husband and wife separated had made arrangements for the future whereby he would transfer her the house after mortgage was paid off. However refused to do so later although he wrote it down and signed the paper. The court held that there was an intention to create legal relations since both husband and wife were not living together when the agreement was made. There was a similar case law established previously in Balfour v Balfour [1919] 2 KB 571, the court decided that a domestic agreement is made without the intention to create a legal relation. A husband had promised a pay his wife as house allowance. Later the husband suspended the allowance after the separation. The court refused to enforce the agreement since it lacked the intention for a legal bond.

It is a rule that the offeree should communicate his acceptance to the offeror to make a binding agreement. However, the court noted that this rule could not nullify disputed agreement as such

an offer did not require communication of acceptance. It only required fulfillment of the conditions. This rationale was later affirmed in the case of Brogden v Metropolitan Railway Company (1877) L.R. 2 App. Cas. 666. The claimant had been selling coal to the defendant for several years with an unwritten contract. The parties later contemplated having a formal agreement. The defendant posted the draft contract to the claimant. The claimant made some alteration and then sent it back to the defendant. The parties continued to trade until when the dispute arose. The court found that even though the claimant altered the document, his action complied with the unsigned terms.

Application

Applying the provided rules on contract law and invitation to treat claims, it can be analysed that Mickey and Brett's case could be deemed of the nature of a binding agreement in distinct issues. The first one is the principles of unilateral contract. The second issue is the distinction between a puff and promise. Unilateral contracts happen where one party provides a promise while the other party proceeds to the performance. The bargain of this contract is completed by the performance of the promisee as requested by the promisor (Roberts, 2017). One example is where a person loses his wallet. Then the person states that he will pay $100 to whoever finds the wallet.

There would be no need for the finder to communicate his entrance to the search. A finder just need to search for the wallet and bring it to the owner. Upon delivery, the finder becomes entitled to $100. One main relevance laid out by this authority regards acceptance of an offer. The original rule requires notification of acceptance to the promisor. This communication creates what the law calls the meeting of minds. It can be analysed that the Australian contract law makes acceptance a requirement to create a binding acceptance. This case brought a different development regarding the binding of agreements where notice of acceptance would not be necessary.

Applying the case law established in Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256, it can be analysed that there is a binding contract between SOO Burgers and Mickey and Brett since they did fulfil SOO Burgers' advert requirements by returning SOO Burgers golden ticket. Furthermore, by applying the case law established in Merrit v Merrit (1970) 1 WLR 1211, it can be analysed that since intention to create legal relations is an essential of a contract, SOO Burgers has the intention of creating legal relations with all its customers.

Conclusion

In conclusion, it is advised to SOO Burgers that they are bound under the established principle of contract law as provided under Carlill vs Carbolic case to provide Mickey with the Mazda CX-9s because he bought the 50 burgers and collected the golden ticket and then returned it to their head office. As far as Brett's position is concerned, SOO Burgers can argue based on the evidence of the receipts presented in their record that Brett did not purchased a single burger from them but he is claiming the car in return of the golden ticket.

Part B

Legal Issue

- Whether Mercedes has breached any of her statutory duty of diligence and care as a director?
- Was her decision for agreeing to the new premises' purchase protected by s 180 (2) of CA 2001?
- Whether she has any liability for breaching s 588G of the CA 2001, if Joytronics becomes insolvent?
- Whether Gregg has breached his duty of care as a director of company?
- Whether Gregg has any liability for the insolvent trading in case if Joytronics turns out to be insolvent?

Rules

Section 180 (1) of the Corporations Act (CA) of 2001 requires that, in the exercise of its functions and in the exercise of its powers, the verification of the care and diligence of the director should be done in the same position as a reasonable person.

If the company's director violates the obligation to act with caution and negligence, Section 180 (2) CA 2001 is provided as a guarantee. However, one could be protected under this section only if the director complies with the provisions of section 180 (2) to avoid his/her liability as a director. Section 588 (G) of CA 2001 established that an administrator violates his obligations if:

At that time, the company was in debt and he / she was the director of the company.

Due to the debt, the company has declared bankruptcy or declared bankruptcy.

There are reasonable grounds to suspect that the company would fail:

The principal knows these reasons, or

In such a situation, any reasonable person would know it.

He failed to successfully stop the bankrupt company.

In the recent case, Australian Securities and Investments Commission v Hellicar & Ors [2012] HCA 17 and Shafron v Australian Securities and Investments Commission [2012] HCA, decision was provided by James Hardie in which he held that a director should be careful and diligent in his/her duties as director and it is expected from him/her to be careful in making important decisions.

In another case, Australian Securities and Investments Commission v Rich and Others NSWSC 1229, (2009) 236 FLR 1; 75 ACSR 1, it was stated that although the director is a non-executive director, but due to his qualifications and experience, he is responsible for the company and also has duties as director, for which he is responsible. The duty of diligence and care was breached on his part. In Gamble v Hoffman (1997) 24 ACSR 369, it was clearly stated that no power was provided to take an ignorance Defense and lack of education for avoiding the liability imposed on him under the statutory and common law principles.

Application

Mercedes does not seem to be aware of the terms of Section 180. Irrespective of the doubts in this situation, it has not tried to question Felix about the rationality of the decision to transmit the future aspects of the nursery school. Only when adequate precautions are taken to investigate Felix's decision, he could use the provided Defense under sections 189 and 190 of the CA 2001 and find Felix to make the right decision, in his opinion (Fitzpatrick, Symes, Veljanovski and Parker 2017).

Applying the case law established in Australian Securities and Investments Commission v Hellicar & Ors [2012] HCA 17, Shafron v Australian Securities and Investments Commission [2012] HCA 18 and Australian Securities and Investments Commission v Rich and Others NSWSC 1229, (2009) 236 FLR 1; 75 ACSR 1, it could be analysed that Mercedes would be responsible for the breach of duty and diligence as director and the consequences.

In this case, although Mercedes had no dishonest intentions or personal interests in his decision, he doubted that the commercial decision would be taken quickly. However, she did not take the necessary precautions, as she was required to take under section 1318 of CA 2001. In addition, she did not believe that the decision was in the best interest of the company, as required by the final conditions of section 180 (2). As confirmed in ASIC v Rich, for directors, an important responsibility for financial transactions lies with a person and their total dependence on this person is an unreasonable explanation. Some people believe that the director has not taken adequate measures and has not taken preventive measures. As a result, it is unlikely that Mercedes is protected by Section 180 (2) and would be responsible for the violation of its obligations (Fitzpatrick, Symes, Veljanovski and Parker 2017).

Under certain circumstances, Mercedes suspected Felix's decision and has reasonable grounds to suspect that the company would fail. Irrespective of all the circumstances and doubts, Mercedes has not taken any measures to prevent the bankruptcy of the company and to support Felix in the trade, and the company has taken over the debt. Applying the case law established in Gamble v Hoffman (1997) 24 ACSR 369, it could be analysed that due to Gregg's lack of knowledge, he would not be able to protect sections of CA 2001 189 and 190 because he cannot delegate authority to Felix . In the case of insolvent transactions, it is also possible to better protect CA 2001, section 588 (H). His ignorance would undoubtedly show that he did not participate in the company's procedures.

Conclusion

From the application of the rules of Australian corporate law, it can be concluded that Mercedes would be responsible for bankruptcy transactions in accordance with Section 588 (G). It can also be concluded that if the company fails, the situation with Gregg would be the same as Mercedes. Gregg's lack of education would not be deemed differently. Furthermore, it could be concluded that Gregg has the liability for the insolvent trading in case if Joytronics turns out to be insolvent and he cannot be protected under sections 189 and 190.