Contract Law Case Studies: Concerning Application Of Postal Rule And Misrepresentation In Terms And Clauses

Case Study 1

Amanda wished to sell her carpet and advertised a notice in the window of a local shop. However, she did not receive any response for the purchase of the carpet, therefore she sent a letter to her friend Kamla for the sale of the carpet. Kamla answered the letter by accepting her offer but the letter was lost in the mail and Amanda did not receive it. In addition, the next day after the sale of the carpet, John, having seen Amanda's advertisement in the shop window the previous morning, phoned her and said he would buy the Persian carpet for £300. Kamla also phoned her and enquired about the delivery of the carpet. In order to provide legal advice, to Amanda against the accusation of Kamla and John it will be argued and reasoned within this paper.

The case provides, the issue that both John and Kamla have claimed that they have contracted with Amanda for the purchase of the carpet and that she has breached the contract by selling the carpet to a third party.

In order to provide legal advice to Amanda, the case has been analysed using the relevant legislations and case laws. The act that has been used for this case is the Contract Act 1990 which defines the terms for establishing a legal contract between the parties. The contract law has explained the terms of the contract and also the terms which make the contract void . Also, the Law of property act 1989 will also be considered to analyse the claims of John regarding the sale of the property.

Amanda and Kamla

The case provided by Amanda who has advertised her carpet to sell. Upon contact from Amanda, Kamla has written her a letter stating that she would buy the carpet, and if Amanda if Amanda can send it to her. Kamla has answered Amanda's letter on 19th May and wished to receive the response regarding the carpet soon. However, the letter was lost in the post and Amanda did not receive it. Kamla contacted Amanda to ask about the delivery, when she found out that the carpet has been sold to someone else therefore, she claimed that she had a contract with Amanda. Kamla has claimed that she was in a contract however, a contract is formed when it follows the three principles of the contract law. The offer from Amanda is called "invitation to treat which is the form of an offer that is given to another party in order to construct a contract between them. The invitation to treat is the offer that is made through advertisement or the displaying of good with the intention of selling it. According to the Contract Act 1990 , the contract between the parties is established to avoid any discrepancy in the trade or deal. In this regard, it has been analysed that the contract law is based on offer, acceptance, and consideration. As the case provides, Amanda has offered to sell the carpet which fulfils one principle of the contract, but it did not meet the other two principles which are acceptance and consideration. However, Kamla had sent the acceptance letter in response to Amanda's offer, which is supported by the postal rule. According to the postal rule, the acceptance of the offer is

valid as soon as it is posted. Therefore, answering back to Amanda is the acceptance of her offer as per the postal rule. The Postal rule is unlike the typical contract law which proposed that the acceptance of an offer is effective when it is communicated just as in the case of Amanda. As observed in the case of [Adam v Lindsell] in which the court decided the period of contract by stating that contract is also occurred through the means of mails and letters as they are also considered as legal documents. Hence, as per the postal rules the contract will be formed between Kamla and Amanda since the postal rule is valid here as per the case of [Adam v Lindsell].

John and Amanda

On the other hand, John has also claimed that he has made a contract with Amanda via phone call. However, as per the contract act 1990, no contract is registered or legal until it is in a written form. John and Amanda do not have any written documents of the contract that can be provided to the court. It indicates that no contract applies to Amanda for selling the carpet. As per the Law of property act 1989 , written communication is the main principle in order to make a contract regarding the sale or purchase of a property. The evidence can be supported from the case of [Bain v Fothergill] in which the transfer process of the land was rejected due to the fact that the contract was not in a written form. This case made an amendment in the terms of contract law and added written document as the basic principle of the establishment of a contract. Also, the case of [Walsh v Lonsdale], the lease of the mill was not transferred because the contract was not based on written communication. In this regard, the claim of John for the contract with Amanda is not valid because it is not based on any written document.

Conclusion

It has been concluded that the claims of John are not valid, however as per the postal rule the claim of a contract of Kamla is legal. Amanda is instructed to accept the claim of Kamla as a contract is has been made between them. The letter that Amanda sent to Kamla offering her the carpet is the evidence that Amanda agreed for the contract. This is because, the offer of acceptance was effective as soon as the letter was received by Kamla.

Case Study 2

As the case provides, Helen is the proprietor of a small hotel which is in of fixing. She has closed the hotel to fit in a modern plumbing system in place of old lead piping. The negotiation between Helena and Dereck who is the manager of Valient Plumbing plc lasted for a week during which Helen was successful to bargain down the price of the work to £46,000. Recently, a detailed quotation was sent to Helen from Valient through an email. The terms and clauses of Valient were listed in the quotation. However, Helen was so excited for the low price that she did not read the standard terms of the company has resulted in some major consequences. However, in order to advise Helen for the legal support the case will be analysed and the relevant case law.

The main issue is, that Helen did not read the standard terms and agreements of Valient which has now cost her a major loss. The terms mentioned, that any delay in the completion of the work will not charge any penalty on Valient. As a result of this, due to the delay in the work, Helen had to cancel bookings. Also, the terms mentioned that any mission, neglect or careless

workmanship will only be limited to £2,000. Whereas, the carelessness of the workmen costed £5,000. The main issue is the recovery of the monetary loss.

The relevant acts and legislations that will be used to construct legal advice for Helen mainly consists of “Unfair Contract Act (UCTA) 1977” and “Misrepresentation Act 1967”. UCTA provides regulations regarding the formation of a contract to restrict the contract terms. The purpose of UCTA is to develop unbiased contractual terms for both the parties. On the other hand, “Misrepresentation Act 1967” aims to provide security to both the parties that are planning to enter into a contractual agreement.

Analysis

The terms and conditions of Valient are not legally appropriate as it only benefits the company. Moreover, the terms and conditions of organisations are required to be beneficial for both parties. Valient has breach the terms of Unfair Contract Terms Act 1977 (UCTA) according to which Valient cannot restrict the loss amount to £2,000. The main reason for this term is that the restriction of the loss will affect the quality of services or products provided by an organisation . As per UCTA, Valient has the liability to pay any sort of loss occurred from the negligence of the company. As evident from the case of [Horace Holman Group Ltd V Sherwood International Group Ltd] that the software package from Sherwood International Group Ltd were not appropriate for Horace Holman Group Ltd which caused a loss of time for the directors and staff involved in dealing with the inadequacies of the software provided. As per the UTCA Negligence Act 1977, Sherwood International Group Ltd had to pay the penalty charged by the court to recover the loss of time of the directors and staff. Similarly, Helen had to pay £ 5,000 for the repairing of the Hotel that was caused due to the negligence of Valient’s workmen. It not only wasted £ 3,000 of Helen’s but also affected her clients which are the main resource of the Hotel Revenues. In addition to this, Misrepresentation Act 1967 has proposed that that misrepresentation can be of two categories such as fraudulent and innocent. However, in the case provided the misrepresentation is in the category of fraudulent because Valient knew that the work will not be completed in the committed time therefore the company made the clause that the delay will not cause any financial penalty on Valient.

Observed in the case of [Derry v Peek] in which Peek falsely represented the terms of the contract for his own benefit. The terms and exemption clauses of Valient are also not acceptable in the common law because it did not fulfil the basic principles of contract law which state that the terms should be unbiased to conduct a fair trade or services. Thus, the clauses of Valient refers to the fraud misrepresentation as evident in the case of [Royscot Trust Ltd v Rogerson] in which the car was termed brand new, but it was a used car. Similarly, the negotiation terms of Valiant has mentioned that the work will be completed in the given time. However, the work needed a lengthier time which caused a major loss for Helen and the hotel. Moreover, Valient is liable to pay the remedy of compensatory damage for the loss of Helen’s hotel. As paid in the case of [AXA Insurance UK plc v Financial Claims Solutions Ltd and others] in which the fraud company had to pay the compensation damage to all the sufferers.

Conclusion

As argued and evidenced, it has been concluded that Helen suffered a loss due to the negligence and misrepresentation in the terms and clauses from Valient Company Ltd. In this

case, Helen is advised to inform the court about the monetary loss of her Hotel. Additionally, it is advised that Helen must provide the court with the copy of the terms of negotiation in which Valient mentioned that the work will be completed within the given time. However, it was delayed and caused loss of the public image and monetary loss due to the negligence of the workmen of Valient. The UTCA also supports the case of Helen by stating that the clauses made for the benefit of one party is not acceptable as standard terms and conditions. Consequently, it is suggested that Helen must provide the terms and conditions given by Valient to acquire the remedy of compensation damage for her.