

Essay on Business Law

1. Elements necessary for a valid contract

Offer

This is the promise or transaction to which the contract is based for the offered party to accept it. It is the proposition of some type provided in a contract. It does not mean that it should have a financial implication.

Acceptance

It is the agreement to take the offer by the body to which the offer is directed. The acceptance of the offer can either be stated verbally, inferred by action or put into writing. If the offer adheres to one of these methods it becomes binding.

Consideration

This is the advantage presented to an individual who is making the offer. It can also be seen as what is presented to each party as the agreed price for their promises. It also involves the payment of money from one party to the other as a benefit of value.

Mutual agreement

This is the consensus between the party giving the offer and the party to which the offer is directed in order to make the contract valid and binding. It is very important for the two parties before entering into a binding contract. Agreement of some terms is vital for any valid contract.

- Ways through which an offer will terminate
- Impossibility of performance
- Breach of contract
- Prior agreement
- Completion
- Rescission
- Completion
- Legal Capacity

This is the power or the capability issued by the law to a person in order to enter into a valid contract. Legal capacity gives a person a go-ahead to enter into a valid and binding contract. Ideally, this is to mean that not everyone is entitled to enter into a valid contract. Some of the persons who are not able to enter into a valid contract include bankrupts, prisoners, minors and people with mental impairment among others.

2. Definition of terms

Undue influence

This is a mental or moral domination that prevents a person of independent judgement and substitutes another person's objectives in their own place. In most cases, it arises due to superiority of physical power or due to pressure arising due to authority, relationship or position of the person submitting to it. For instance, it may involve the pressure that one applies to another in order to execute a will leaving assets in a given way.

Fraud in the Inducement

Fraud in the inducement implies the use of tricks to make someone to act to his or her disadvantage. It may include deeding away a real property of signing an agreement. The fraud impels one to enter into a deal without knowing the risks, obligations or duties incurred. This type of fraud is usually misleading to one party since it impairs proper decision-making. An outstanding example is if a father decides to transfer his property to his daughter who is a

physician on the basis that he will die soon. Since he as was misled to rely on her statement, he may have the obligation to seek damages for losses incurred (Macintyre 124).

Disaffirmance

This is the nullification of the existence of something of an earlier date. It can also refer to the act of a person entering a voidable contract claims that he or she will not abide by it. An outstanding example is a minor can prove they lacked the capacity to enter a binding contract hence may revoke the contract hence avoid is set forth.

Legal Capacity

Power offered by law to a juridical person or a natural person in order to enter into any binding contract and be able to sue and be sue under his or own name. Therefore, it is one's capability to enter into legally binding contract.

Ratification

It is the confirmation that an action that was not approved by a principal to his or her agent on basis that the agent lacked an authority to bind the principal legally. This term is applicable to international treaties and private contract law.

3. Contractual Remedies and how they are calculated

Compensatory damages

Damages that involve use of a specific amount of money to compensate the party aggrieved for the losses caused by the breach of the contract. The main aim of this compensation is to make the injured party completely again. There are two types of compensatory damages namely Expectation damages and consequential damages. Expectation damages are those damages whose intention is to compensate the amount that the injured party was to receive from the contract. The calculations for this damage are based on the market values or the contract itself hence they are straightforward (Macintyre 198).

On the other hand, consequential damages are those damages whose intention is to compensate the injured party for the indirect damages involved in the breach of contract. Their calculation depends on what the party expected at the time of contract. Therefore, the court determines the extent of the loss caused to the non-breaching party.

Liquidation damages

These damages are stated in the contract. They are usually used when the damages are hard to foresee and are usually a fair estimate of the damages that may arise in case of a breach. Their determination depends on what the two parties feel is appropriate during the contract negotiations (Macintyre 234).

Punitive damages

These are damages whose intention is to punish the breaching party and prevent him from repeating the same breach in the future. Awarding of such damages is very rare in contract law. They are usually awarded in conjunction with the actual damages and therefor their calculation is usually a relative proportion of the actual damages awarded but cannot go beyond four times the actual damages. For instance, if the actual damage that A should compensate B is \$100,000. An addition of \$75,000 may be the punitive damages.

Nominal Damages

They are damages that are awarded if the injured party does not incur a monetary loss. Their awarding is usually very rare since in most cases the breach of contract is accompanied by a loss. Their calculations are hard to determine but in most cases, a small amount is decided by the court to compensate the injured person. It may also include the costs of the lawsuit.

4. Smith and ABC Construction Case

There existed a valid contract between Smith and ABC construction company but not between Smith and XYZ construction company. It was not communicated for ABC construction to send XYZ Construction to start the work on the Smith's house. As a result, the contract existed between Smith and ABC Construction implying that ABC Construction was responsible for XYZ payment. On the other hand, Smith was liable to pay ABC Construction since they had a binding contract. Therefore, the relationship that exists is between Smith and ABC construction while the other one is between ABC Construction and XYZ Construction.

Smith was liable to pay ABC Construction \$250,000 plus the middle something little that would not make the price go up to \$300,000 as agreed during the offer. Smith needs to pay ABC Construction for additional repairs as agreed but should also ask for the payment of damages caused by ABC Construction. The damage should involve the loss suffered by Smith to repair the house.

Not all elements of a valid contract existed in this case. There was an offer given to ABC Construction by Smith to construct his house. Acceptance also existed when ABC Construction agreed the offer and went ahead to perform the job. On the other hand, there was lack of mutual agreement between the two parties. For instance, the two parties did not agree on the exact price of the contract they talked about something in the middle price of \$250,000 and \$300,000.

Work Cited

Macintyre, Ewan. Business Law. 4th ed. Harlow, England: Pearson Longman, 2008. Print.