commerce undergraduate society

COMMERCE MENTORSHIP PROGRAM

MIDTERM REVIEW SESSION

COMM 393

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PRACTICE PROBLEM 1: CONSTITUTION + CHARTER OF RIGHTS & FREEDOMS

The issue at hand is whether the Charter of Rights and Freedoms applies to Penny's case.

As seen in **Liebmann v Canada,** the Charter of Rights and Freedoms only applies to government and government-run institutions and prevents them from making decisions or passing legislation that would infringe on the protected rights in the charter. However, according to section 1, no rights are absolute, and the burden of proof shifts to the government to establish that the infringing law or decision is justified.

In this case, given that the Bank of Canada is a crown corporation and operated by the government, the Charter of Rights and Freedoms would apply.

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Next, we must assess whether Penny would be successful in claiming that her charter rights were infringed. Section 15 of the charter indicates that " Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

According to Liebmann, In order to prove that a section 15 right was infringed, the plaintiff's situation must satisfy the following criteria:

1. They are being treated differently on the basis of a named ground;
2. It is discriminatory; and
3. Their dignity is demeaned.

In Penny's case,

- She was indeed treated differently based on age - her offer was retracted.
- It was discriminatory, as the disqualifies her only on basis of age- not merit.
- Her dignity as a professional was demeaned. She clearly had the qualifications to be offered the job, however, her offer of employment was retracted because of her age, thus undermining her abilities.

As such, we can conclude that Penny's section 15 rights were infringed upon.


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PRACTICE PROBLEM 1: CONSTITUTION + CHARTER OF RIGHTS & FREEDOMS

From there, the burden would shift to the government to show that the infringement was justified under s.1, i.e. that Penny's charter rights are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In this case, the government may argue that a minimum age is required to ensure that there is adequate experience at senior levels in public organizations. However, they would likely not be successful in this argument as there are other methods of ensuring experience that are less likely to infringe on s.15 rights. For example, the years of experience required could be directly specified.

As such, we can conclude that Penny would be successful, prima facie, with her action. However, the government can use s.33 to keep this law and renew it every 5 years. In other words, despite the infringement, under s.33, the government could keep the law in force.

B) When it comes to discriminatory actions done by private entities, the Charter of Rights and Freedoms would not apply. The action would have to be brought up under the provincial Human Rights Code and tried in the provincial Human Rights Tribunal instead. As such, Penny would not be successful.

PRACTICE PROBLEM 2: INTENT + OFFER + ACCEPTANCE

A) The issue at hand is whether there was a binding contract established between Erica and Vicky.

In order for a contract to be binding and enforceable, it must have all of the following elements: intent, offer, acceptance, consideration, capacity and legality. Given that this is a business transaction, capacity and legality can be presumed.

INTENT refers to both parties wanting to create a legally binding contract. Using the Objective Test from Carlill v Carbolic Smoke Ball Company, a reasonable person looking at the conduct of the parties must be able to say that they show a serious intent to make a contract and become bound by it. In this case, this appears to be true as it is a business transaction and neither party seems to be denying intent.

An OFFER is a promise or a proposal with at least 3 clear terms: the parties, the price and the subject. In this case, Erica's website posting on May 1st counts as an offer, as she is selling scrunchies at $25 to whoever is willing to accept.

An offer can LAPSE in the following circumstances: when a counteroffer has been made, the offer has been revoked, the offer has been rejected, OR the offer has not been accepted within a reasonable time.

In this case, given that Vicky's email on May 25th did not have any evidence of her suggesting a higher or lower price, it does NOT count as a counteroffer - but merely an inquiry about the price. To Vicky's inquiry, Erica replied no and did not propose a counteroffer - meaning the original offer stands. Based on the information on the website, Vicky was given until June 2nd to accept the offer.

PRACTICE PROBLEM 2: INTENT + OFFER + ACCEPTANCE

ACCEPTANCE must be an absolute acceptance of all the terms within the offer. It is valid when communicated to the offeror, in the method requested, before the offer has lapsed or been revoked. In this case, Vicky notified Erica about her willingness to accept on May 29th, before the lapse date (June 2nd). However, given that Vicky CALLED Erica instead of emailing (which was a requirement for acceptance), Erica's revocation during the phone call precedes Vicky's acceptance.

To conclude, no binding contract exists between Vicky and Erica, as the offer was revoked before Vicky could have accepted in the proper manner. Therefore, Vicky cannot sue Erica.

** Clarification with regards to "invitation to do business": As seen on page 138 of the the textbook, when an ad is posted on the internet, the seller is the offeror and the consumer is the offeree - whereas in actual retail stores, the consumer is the offeror and the seller is the offeree; meaning what the retailer advertises is just an invitation for the consumer to make an offer. So in this case, the posting was an offer because it was put online. **

B) As seen in Rudder v Microsoft, when not expressly stated in the contract, the general rule is that the courts will apply the law of the jurisdiction in which the contract was made. This jurisdiction is determined when acceptance is received by the offeror.

In this case, we know that Erica lives in Toronto, which is where she would've seen the acceptance email from; therefore **Ontario Law applies.**

PRACTICE PROBLEM 3: CONSIDERATION & EQUITABLE ESTOPPEL

A) The issue at hand is determining which contract the parties are bound by and whether the doctrine of equitable estoppel can be used to defend Peter.

Peter and Rachel had a contract for the delivery of 150 mini cheesecakes on October 30th, in exchange for $1000 in compensation. However, Rachel changed the delivery date to October 31st at the request of Peter without receiving any new consideration. As seen in Caliguiri, all parties to a contract must receive some sort of benefit with material value. Past consideration is considered NO consideration - unless there is a seal. Additionally, a promise made without receiving consideration is gratuitous and not enforceable.

In this case, Rachel's decision to extend the deadline of delivery to October 31st is considered a gratuitous promise, as she was not offered any consideration or extra compensation in return. This means that both parties are bound by the terms of the *original* contract.

However, as seen in the Duke's Cookies v. AMS Case, gratuitous promises can become enforceable through the doctrine of Equitable Estoppel if all of the following criteria are met:

1. There is a current legal relationship between the parties. (contract)
2. There has been a promise to relax legal obligations. (or a gratuitous promise was made)
3. The promisee relies upon the promise and alters his conduct so that it would suffer hardship if it was not lived up to by the promisor.
4. Equitable estoppel is being used as a shield in defence for a claim, and not as a sword in a cause of action.

PRACTICE PROBLEM 3: CONSIDERATION & EQUITABLE ESTOPPEL

We must now assess if all of the equitable estoppel criteria have been met.

- It seems that a legal relationship does exist between the parties, as all of the elements of a contract, being intent, offer, acceptance, consideration, capacity and legality exist.
- There has been a promise made to relax the contract's obligations, given that Rachel's extended the delivery date to October 31st.
- Peter seemed to have suffered financial loss/hardship from Rachel not paying for the cheesecakes, as he spent a lot of money on temporary help- and will now have no money for rent.
- Equitable estoppel is not being used as a sword because Rachel is the person suing Peter.

To conclude, a court will agree that the doctrine of equitable estoppel can be used to defend peter and estopp Rachel from suing him for breach.

PRACTICE PROBLEM 4: CAPACITY

A) The issue at hand is whether there is a binding contract between Joanna and Netflicks, given that she does not have capacity. Capacity is defined as 'the ability to bind oneself legally to a contract' (Re Collins). Under the Infants act, ALL contracts in BC are unenforceable against minors and voidable at their option- unless they fall under the Students Loans Act or the BC Tenancy Act. However, the contracts can still be enforced by the minor against the adult.

Although Joanna is only 17, she can choose to remain in the contract and be bound. Therefore, she can sue Netflick's for breach.

B) Still Netflicks. Waivers signed by the parents of a minor have no effect on the rights of the minor - as such, parents cannot waive an infant's right to sue.

PRACTICE PROBLEM 5: LEGALITY

A) As seen in the Phoenix case, an interlocutory injunction is an order to prohibit a party from certain activities in relation to a business and prevent irreparable harm until the case can be heard in court. Due to interlocutory injunctions being granted as interim relief, the party seeking one must show three things: There is a serious question to be tried, they will suffer irreparable harm if the injunction is not granted, and the balance of convenience favour granting the injunction.

In this case, if the courts were to grant an injunction, that would affect Cathie's ability to make a livelihood for herself. Therefore, the courts must look at the restrictive covenants in detail and see whether they are reasonable on a balance of convenience.

B) The issue, in this case, is whether Heaven's Kitchen can prove the reasonableness of its restrictive covenant and prevent Cathie from continuing with her business.

According to common law, all contracts in restraint of trade are considered "prima facie" void and illegal; however, they CAN be enforced, given the party seeking to uphold them can prove they are reasonable and do not affect the public interest. In order to do so, all of the following criteria must be met (Phoenix):

1. *Is the restrictive covenant reasonable with respect to the public interest?*
    a. *Is there a restraint on competition looking at the nature and location of the business?*
    b. *Would enforcement deprive the public of some special service?*
2. *Is the restrictive covenant reasonable and necessary to protect the parties to the contract?*
    a. *Is there a proprietary interest entitled to be protected? (goodwill, client base, secrets).*
    b. *Is the size of the restricted geographical area reasonable in light of the nature and location of the business?*
    c. *Is the length of time reasonable in light of the nature and location of the business?*
    d. *Is the scope of the restriction reasonable?*

PRACTICE PROBLEM 6: MISREPRESENTATION

A) The issue, in this case, is whether the sales representative engaged in "misrepresentation" and if so, what remedies are available.

Misrepresentation is a false statement made during bargaining that induces a party to enter into a contract, but was not a term of the final contract. The party must have reasonably relied on the false statement to enter into the contract and suffered damage as a result. While misrepresentation does not make a contract void, it does make it voidable at the option of the harmed party.

Misrepresentation can happen in 3 main ways:

1. Innocently, where the maker of the statement honestly thought their statement was true.
2. Negligently, where the maker of the statement had a duty of care but carelessly failed to check the validity of their statement. (Collins v Dodge City). This can include situations where the maker of statement has some kind of special skill, judgment or knowledge and a duty of care is owed to the harmed party.
3. Fraudulently, where the person's statement was a deliberate lie (Werle v Saskenergy)

In this case, it is possible that Dave truly believed the DG200 sticks were of high quality and engaged in innocent misrepresentation- however, due to his status as a sales representative and professional drummer, he had a duty to know whether the sticks were actually "break proof" before recommending one to Melody. On the other hand, it is also possible that Dave made the statement just to make a sale, given that he did pick out a pricey model to show Melody.

As such, we can conclude that a court will view Dave's actions as either negligent or fraudulent misrepresentation and award Melody with a remedy of rescission OR damages. If this was a case of innocent misrepresentation, the remedy would have been rescission and indemnity.

PRACTICE PROBLEM 7: UNCONSCIONABILITY

A) The issue, in this case, seems to be that of unconscionability. An unconscionable contract is a contract in which there is unequal bargaining power between the parties and the powerful party gets an extremely advantageous deal. (Mackay v. Cesar). Unconscionability can be used as an equitable doctrine to void the contract and aid the disadvantaged party.

The following criteria must be met in order to establish a contract as unconscionable (Mackay v. Cesar):

1. The bargaining position of the parties were unequal
2. One party dominated and took advantage of the other
3. The consideration involved was extremely unfair

In Henry's case, the bargaining position of the parties was definitely unequal, as Henry is an 80 year old senior who does not know anything about the internet. Knowing this, the SHELLUS representative took advantage and sold him the highest tier of service, causing Henry to be stuck in a long term contract and spending an outrageous $1200 per month, when it should have been a figure around $100. As such, we can conclude that the SHELLUS plan constituted an unconscionable contract and Henry can have the contract void by court.

B) Unconscionability occurs in one-time contracts where there is unequal bargaining power between the parties and the weaker party is extremely disadvantaged in the process. However, with undue influence (Buckwold Western), there is a 'special relationship' between the parties, they have known each other for a long while, and the weaker party is robbed of his or her free will.

As seen in Buckwold Western, a party alleging undue influence must satisfy the court that domination was exerted by the other party in the special relationship for the purpose of securing some advantage. The burden then shifts to the stronger party to prove there was NO undue influence.In both cases, if proven, the contracts will become void.

PRACTICE PROBLEM 8: INTERPRETATION

This is an issue of interpretation and ambiguity of terms, as there is no consensus on what “cold” actually means. When such an issue occurs, the goal of the court is to determine the true commercial intention of the parties and interpret the contract in line with this intention.

When it comes to interpreting express terms, the courts move through 3 approaches in an attempt to resolve the ambiguity.

1) Strict/Literal Approach: They first look at the ordinary, grammatical and dictionary meaning of the word. If the meaning is ambiguous or does not make sense with regards to the situation, they move on to the next step. In this case, the term “cold” does not have a clear dictionary definition and there is no widely accepted meaning, so the courts would have to move on to the next step.

2) Liberal Approach: With this approach, the court would have to look at the intent of both parties, the circumstances surrounding the contract, knowledge of the parties and past transactions (BKDK Holdings). If the meaning is still ambiguous, they would move on to the next approach.

In this case, it could be that the landlord is attempting to delay installation. However, that would be commercially absurd if the landlord were able to breach his obligations of installment under the contract through delay tactics for an indeterminate time based on his subjective argument. Most likely, a court would resolve the ambiguity by considering what a reasonable person would understand the word to mean, which would favour installation of the unit within a time period closer to what the Andersons argue.

However, if this is still not resolved at this stage, a court would move on to contra proferentem.

PRACTICE PROBLEM 8: INTERPRETATION

3) Contra Proferentem: With this approach, the courts prefer the meaning proposed by the person who did NOT draft the term- and as such, interpret the term against the interests of the drafter. According to this approach, “whoever holds the pen and creates the ambiguity must live with its consequences”.

In this case, the Andersons were the party that created this term, therefore the court will interpret the contract against them and in favour of the landlord. This means that the heating system will be installed at a temperature lower than 17 degrees.