Business Law  
Intake BCom 23   
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a) The legal issue is to examine if any action can be taken against Hewlett

by determining if a contract had been formed when Packard agreed to purchase the laptop and whether Hewlett breached the contract by selling the laptop at a higher price to Compac.

Firsty, we have to distinguish if this is an offer or invitation to treat. An offer takes place when the offeror expresses an intention to be bound by the offeree. There is communication between both parties on the offeror’s willingness to make a promise, equating to a binding contract. However, an invitation to treat is merely an action by one party to invite interested parties in making an offer to form a contract. Accepting an offer requires a legally binding contract whereas accepting an invitation to treat is merely making an offer.

Hewlett is making a bilateral offer by offering his latop at $800 to any classmates. An offer has to be clear, complete and final. Hewlett’s offer was not vague, as it is understood that the laptop was being offered at $800 to any classmates. It was complete in terms that both parties know what they are getting and had to give. Lastly, the offer was final, as Hewlett will be bound by clear and complete terms once Packard has accepted the offer. By agreeing that he will give the laptop to Packard after transferring his data, Hewlett has conducted a willingness to enter into a binding contract that states the terms of the agreement of the accepted offer.

Acceptance occurs when the offeree agrees to the offeror by an act or statement. The offer is accepted when it is communicated unequivocally between both parties and becomes a promise. The offer and acceptance has to be fully understood by both parties. A simple and verbal contract makes Hewlett and Packard legally bound to each other in promising to supply goods and promising to pay a price respectively.

When Hewlett sold the laptop at $1000 to Compac, he has broken his promise of offer to Packard. Hewlett, as offeror cannot revoke an offer once Packard, the offeree has accepted it, even if a third party offers a higher price than the original offer. Packard can sue Hewlett for terminating an offer without valid reasons as both parties are in a legally binding contract. In the case of Carlil v Carbolic Smoke Ball Co (1983), the plaintiff made a monetary claim from the defendant as they had offered $100 to consumers who bought and used the smoke ball and still contracted flu. The court determined that the defendant made an offer and by purchasing and using the product, the plaintiff has accepted the offer, thus able to claim.

b) The legal issue is whether Eatendie Restaurant is liable in the tort of negligence for damages caused upon Packard and Acer.

For a party to be liable in Tort of Negligence, they must first be established as owing a duty of care to the aggrieved party. A fixed standard set of duty can determine if they have breached their duty of care. It must also show that the aggrieved party has suffered damages due to the infringing party’s breach of duty.

Once established that a duty of care is owed, the party must act reasonably to avoid any harm to anyone that they can reasonably foresee will be affected by its acts or omissions. In the case of Anns V Merton LBC (1978), Lord Wilberforce stated that in order for an action to be considered reasonbly foreseeable, it must prove that either the damage or injury is foreseeable, there is a proximate relationship between parties or it is just and reasonable to impose duty.

Whether Eatndie Restaurant owes Packard a duty of care depends on their relationship. Eatndie Restaurants owe a standard duty of care to all its patrons, which can be established in the Neighbour Principle identified in Donoghue V Stevenson (1932) whereby patrons are directly and closely affected by the acts of Eatndie Restaurant.

Eatndie Restaurant has failed to act with duty of care towards Packard. It is a standard duty of an F&B outlet to follow necessary hygiene guidelines to ensure a clean environment in preparing food for customers. They have committeed negligence when the lizard was found in Packard’s burger and have failed in abiding by standard operating procedures as the lizard incident could have been avoided if they had taken necessary precaution.

In negligence, Packard seeks to establish that the failure and omission of Eatndie Restaurants’ acts was the proximate cause of his injury. Packard suffered damages that are forseeable and not too remote after consuming a burger containing a lizard. He felt nauseas and vomitted, thus had to be admitted to hospital. Emotional damages were further incurred when Packard suffered from psychological trauma and had to attend regular psychiatric evaluation as everytime he sees a burger, he gets reminded of the lizard which induces vomitting.

The four essential points have been highlighted as Eatndie Restaurant did owe a duty of care to Packard and as a result of them not taking precaution and a breach of duty of care, Packard suffered damages. *Res ipsa loquitur* also explains obvious reasons that Eatndie Restaurant acted negligently as the lizard incident could have been prevented under their control had they taken necessary precautions. It was an unexpected and unintended careless act on the restaurant’s part and Packard’s behaviour did not contribute to the incident. Therefore, Packard can sue in negligence.

In Acer’s case, even though Eatndie Restaurant owed a standard duty of care to Acer in the form of an F&B outlet and patron relationship, the damage suffered by Acer was directly caused by Packard and not through Eatndie Restaurant’s negligence. It was out of goodwill that prompted Acer to render help to Packard.

Proximity is the link between the relationship of the party that owes a duty of care and whom the duty of care is owed. Despite establishing the fact that Eatndie Restaurant does owe a duty of care to Acer, the restaurant only breached it’s duty of care towards Packard and not Acer as the lizard was found in Packard’s burger.

In order for Acer to sue, he needs to prove that Eatndie’s negligence was the proximate cause of his injury. Injuries suffered by Acer are too remote as nobody could forsee that Acer would slip and fall on vomit. Thus, Eatndie Restaurant cannot be held liable for incidents that are unpredictable and do not have a reasonably forseeable link to their actions.

However, Acer can claim that it was a human’s natural instinct to render assistance to those in despair immediately. According to the “but for” analysis, the plaintiff would not suffer damage but for a “certain event” that caused damage. It forms an indirect relationship between the plaintiff’s damage and defendant’s negligence. Acer would not have slipped on Packard’s vomit if Packard did not feel nauseas had he not eaten the burger containing a lizard that Eatndie Restaurant prepared.

c) The legal issue is whether obligations contained in the contract are expressed by Percil to Acer. There is an exemption clause in the acknowledgement form signed by Acer and for it to be valid, we must determine if it had been incorporated into the contract.

Express terms are agreed expressly by both parties in an oral or written contract. Stating an exemption clause in a contract effectively assures that the party who includes it in will limit or exclude liability under circumstances where there is a breach. Incorporting an exemption clause bounds into a contract where a contractual document is produced, regardless if it is read or understood.

By signing a form to acknowledge that Acer has left her dress at Fresh n Foul Laundry, she is deemed to have agreed to the terms and conditons stated in the form. Even if she did not read or understood the form, it is taken that she has agreed to the exemption clause in the form. In the case of Thompson v LMS Railway (1930), the plaintiff had not read the exemption clause that excluded liability for injury on the timetable. The court determined that from the purchase of the ticket, conditions had been expressed. As such, even though the plaintiff did not read them, the exemption clause was still valid. Thus, Acer is unable to sue Percil for damaging her dress as she has signed a written contract with an exemption clause.

However, in Chapelton v Barry Urban Council (1949) the exemption clause was stated at the back of the ticket. The court ruled that a reasonable man would presume that the ticket was just a receipt and not a contractual document stipulating conditions. The exemption clause had not been successfully incorporated so it is deemed invalid.

Therefore, Acer can claim that what she had signed was a mere acknowledgement that she has left her dress at the store, which did not tantamount to an acknowledgement of exemption clause. She can also insist that she had been misled by Percil’s claim that his “cleanser was safe on all fabrics and there was nothing to be worried about.” Acer can sue Percil on the grounds of misrepresentation, as Percil’s statement was not a fact but an opinion that had induced Acer in believing that her dress would be safe.

**References**

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