**Assignment on Business and Corporations Law: Case Study**

**ISSUE:**

This assignment is being drafted to provide appropriate legal advice to Ms Julia Brennan, a supermodel by profession, on her rights & available remedies against damages she suffered vis-a-vis her purchase of a blender from the ‘Super Big Brand Store’ and the accident occurred subsequent to usage of the blender. The physical injuries caused to her right hand during the accident rendered her incapacitated for entering into the required fitness program she was supposed to undertake to prepare for her new TV commercial. The said commercial would have been a big career opportunity to earn professional fame and recognition as a Supermodel in the advertising industry apart from monetary earning of AUD 12,000.

The injury caused to her by the blender she purchased from the ‘Super Big Brand Store’ jeopardized her chance at career advancement and opportunity to earn AUD 12,000. The aforesaid study has been undertaken on the basis of principles of the Australian Contract Law, the Australian Tort Law (Negligence) and the Australian Consumer Law separately.

**Q. 1. Contract Law**

**RULE:**

A contract is a promise or a set of promises undertaken by one person to do something or refrain from doing something that is legally binding.  A promise or set of promises will be legally binding if certain criteria are met. In Australia this requires that there be [an agreement](https://www.australiancontractlaw.com/contractlaw/formation-agreement.html) (comprising an offer and acceptance), [consideration](https://www.australiancontractlaw.com/contractlaw/formation-consideration.html), [intention to create legal relations](https://www.australiancontractlaw.com/contractlaw/formation-intention.html), [capacity to contract](https://www.australiancontractlaw.com/contractlaw/formation-capacity.html) and free and fair consent.[[1]](#endnote-1) Further, one of the essentials of a proper contract is free and fair consent and consent which is based on misrepresentation and deceitful conduct is not a free and fair consent. Such a flaw goes to the very root of contract and as such it can be repudiated or invalidated at instance of the aggrieved party.

**ANALYSIS:**

It is submitted in this context that the supplier had offered the product on its shelf to be sold and Ms. Brennan agreed to purchase the same. So the issue of offer and acceptance was resolved. She also agreed to pay the full price despite banner of 50% discount being there after being told by the salesperson that the offer had elapsed previous day so there was consideration as well (deception part is discussed later). Ms. Brennan also was of sound mind while making the purchase and as such had capacity to enter the contract. On the face of it, its quite clear that Ms. Brennan performed all obligations on her part for a valid contract. It needs to be analyzed whether the banner was just puff or unilateral offer to the world at large. The banner read, “Buy it today and you’ll get 50% off”. Since no date was mentioned and the language on the banner being quite clear, it has to be analysed as a unilateral offer as held in the landmark *Carlill v Carbolic Smoke Ball Co* case[[2]](#endnote-2). However, Ms. Brennan did not insist upon paying only 50% of the price and as such she had agreed to pay the full price, albeit reluctantly.

However, the conduct of the sales person at “Big Brand Store” was definitely deceitful and there was pre contract misrepresentation because on the date of purchase Ms. Brennan was told that the discount was till yesterday (that too ambiguously) and on the day Ms. Brennan went to the store again post her injury she was again told the same thing. Section 18 of schedule 2 of *Competition and Consumer Act*, 2010[[3]](#endnote-3) prohibits sellers from engaging in misleading and deceptive conduct.[[4]](#endnote-4) Furthermore silence can also be deemed to misleading conduct[[5]](#endnote-5) in certain circumstances and the cryptic answer of the sales person “sorry that was yesterday” when the banner does not specify any end date is clearly misleading and deceptive.[[6]](#endnote-6) One of the essentials of a proper contract is free and fair consent and consent which is based on misrepresentation and deceitful conduct is not a free and fair consent and thereby is voidable at the instance of the aggrieved party. Hence the instant contract can be repudiated or invalidated at instance of Ms. Brennan**.** Not only was the conduct of “Super Big Brand Store” misleading and deceptive but the supplier was also unconscionable in its conduct towards potential customers by luring them with discount offers and thereafter denying the same to the customers.[[7]](#endnote-7)

**CONCLUSION:**

Ms. Brennan has remedies available under common law of equity as well as under statutory law as per the provisions of Australian Consumer Law. In Equity, Ms. Brennan can sue Big Brand Store seeking damages for the deceptive conduct, misrepresentation about quality of the product, subsequent injury and resultant loss suffered by her.

**Q. 2. Tort Law(Negligence)**

**RULE:**

The Law of Torts has historically been governed by the Common Law and its evolution has always been precipitated by the evolution in the judicial pronouncements and judicial sentiments[[8]](#endnote-8). The Tort of negligence has been one area of Law of Torts which has witnessed most development in this respect.

The facts of the extant case highlight one of the most fundamental elements constituting the tort of negligence, i.e. the duty of care and more precisely, the standard of care which must be adhered to by the supplier while selling a product to the customer. In this very context, understanding of few essential elements is vital in understanding the nuances of ‘duty of care’, ‘standard of care’ and ‘reasonable foreseeability’ so as to address the concerns of the consumer in this case in a lucid manner and accordingly the elements have been discussed hereunder.

**ANALYSIS:**

One of the basic criteria of the tort of negligence is Duty of Care[[9]](#endnote-9) on the part of the Defendant. ‘Duty of care’ principle underwent landmark evolution in the case of Donoghue v Stevenson, 1932,[[10]](#endnote-10) and it was held that one owed a duty of care towards his neighbour. In the present context, neighbour (Customer, here, Ms Julia) being in a reasonably proximate position as to the Supplier ‘Super Big Brand Store’, and as such the supplier needs to exercise due caution so as to safeguard the proximate neighbor, Ms Julia against any injury or loss that should occur on account of his acts or omission.

Besides the above explained criteria of Duty of Care & Proximity test[[11]](#endnote-11), test of reasonable foreseeability also needs to be applied to substantiate the plaintiff’s claims. In this case the rule of reasonable foreseeability comes to the rescue of defendant in this case, as the defendant may argue that the occurrence of the accident, prima facie, is not foreseeable. Hence the ‘Super Big Brand Store’ could have cited the lack of reasonable foreseeability in its defence in this case.

However, there is an exception to the rule of reasonable foreseeability popularly known as ‘egg shell skull rule’. In cases of personal injury, if it is established that the defendant’s conduct was the cause of injury, the defendant becomes liable for all subsequent injuries irrespective of the fact that such injuries were reasonably foreseeable or not.The above rule of exception gets significant in the instant case, as the defendant was aware that in event of omission of usage demo or not providing the customer with safety warnings manual, happening of an accident would be quite imminent.

Examining the facts of the instant case in light of the Law of Torts, a perusal of the flow of events substantiates that neither did the Store ensure the quality and safety standards of products nor did the Sales Assistant at the Store fulfill his/her duty of care towards the customer and compromised the safety of customer, as a consequence of which Ms Julia Brennan suffered with loss of health caused by the accident, loss of career momentum, monetary professional loss of AUD 12,000 and incurred legal expenses too. Fraudulently assuring customers of high quality, superb, durable and reliable products and supplying substandard goods not meeting promised returns and having potential of causing grave injuries and losses.

**CONCLUSION:**

Considering the facts of the case discussed above, its quite conclusive that Ms Julia is legally entitled to remedies in the form of compensation from the ‘Super Big Brand Store’ for the direct damage in the form of medical & legal expenses incurred as a consequence of the accident. Besides she is also entitled to the compensation of the monetary loss of AUD 12,000 that she would have otherwise earned had the accident not taken place. Ms Julia would also be entitled to compensation for the indirect damage in the form of loss of opportunity to earn professional fame and recognition as a Supermodel in the advertising industry; which she would have otherwise earned had the accident not taken place.

**Q. 3. Consumer Law**

**RULE:**

The Australian Consumer Law (ACL) is the national law that safeguards consumer rights to protection & fair trading practices in the Australian land. The law is principally concerned with safeguarding the interests of consumers of goods & services against unfair trade practices and ensuring adequate remedies are met in the eventuality of any breach of the law that takes place detrimental to the interest of the consumers. The major functions of ACL are:

1. Safeguard interests of consumers against unconscionable conduct of traders, misleading behaviour, unfair trade practices and false representation
2. Providing safety standards for adherence by traders
3. Fixing extent of liability of manufacturer and
4. Fixing extent of product liability

In the context of this case study, evaluating the merits of the case need to be analyzed on the bases of unconscionable conduct, misleading behavior, unfair trade practices, false representation, bait advertisement, offers, prices and standards of product safety laid down under the Schedule 2 of the *Competition & Consumer* Act (ACL) (2010).

Schedule 2 of the *Competition & Consumer* Act (ACL) (2010)[[12]](#endnote-12) has elaborated on the said bases stating that a person must not engage in a trade that is misleading or deceptive (Part 2-1).[[13]](#endnote-13) Further, it explains unconscionable conduct and states that a person must not engage in a trade or commerce that is unconscionable (Part 2-2). Part 2-3 explains that a contract shall be invalid if the terms of the contract are unfair. Besides, Part 3-1 of Chapter 3 has classified bait advertisements under unfair trade practices. Para 12DE (1) (b) of Competition & Consumer Act (ACL) Act No.2 (2010) further discusses offers and prices offered in a contract.

All products a trader supplies must be safe and meet consumer guarantees under the Australian Consumer Law (ACL). A trader cannot sell banned products and must ensure that products comply with relevant mandatory standards before they are offered for sale. Consumers can also seek [compensation for damages and loss](https://www.accc.gov.au/consumers/consumer-rights-guarantees/compensation-for-damages-loss) caused by a safety defect in products supplied by a manufacturer.

**ANALYSIS:**

In the instant case the ‘Super Big Brand Store’ has been found negligent and lacking in compliance to standards mandated under the above discussed Chapter 2 of the Trade Practices Amendment Act (ACL) (2010). Habitually enticing customers through displaying stale/fake offers and subsequently denying customers the same; displaying offer to sell high quality, superb and safe product but providing product of poor safety standards to the consumer instead; all point to bait advertisements, misleading or deceptive trade practices being followed at the ‘Super Big Brand Store’.

In the context of product safety and consumer safety, the ‘Super Big Brand Store’, the supplier here has been negligent and has failed in notifying and making the customer aware of the product liability, clear and thorough user instructions, safety warnings & demo services; thereby risking consumer safety. The damages hence caused to Ms Julia Brennan are solely the result of the unconscionable conduct, misleading & unfair trade practices, false representation, bait advertisement, and non-compliance to

standards of product safety.

**CONCLUSION:**

Considering the facts of the case discussed above, its quite conclusive that Ms Julia is legally entitled to compensation from the ‘Super Big Brand Store’ for the direct damage in the form of medical & legal expenses incurred as a consequence of the accident. Besides she is also entitled to the compensation of the monetary loss of AUD 12,000 that she would have otherwise earned had the accident not taken place.

**List of References**

1. Latimer, P. (2012). Australian Business Law. CCH Australia Limited'. [↑](#endnote-ref-1)
2. Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1. [↑](#endnote-ref-2)
3. Competition and Consumer Act, 2010 [↑](#endnote-ref-3)
4. Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592 [↑](#endnote-ref-4)
5. Cornwall-Jones, Jason --- "Breach of Contract and Misleading Conduct: A Storm in A Teacup?" [2000] MelbULawRw 10. [↑](#endnote-ref-5)
6. Re Demagogue Pty Ltd v Nicholas Ramensky and Gisela Elizabeth Ramensky [1992] FCA 557. [↑](#endnote-ref-6)
7. Commercial Bank of Australia v Amadio (1983) 151 CLR 447. [↑](#endnote-ref-7)
8. Balkin, R. (2009). Law of torts (4th ed.). Chatswood, NSW: LexisNexis Butterworths. [↑](#endnote-ref-8)
9. Vines, P. (2000). "The Needle in the Haystack: Principle in the Duty of Care in Negligence" . UNSWLawJl, 25. [↑](#endnote-ref-9)
10. Donoghue v Stevenson, AC 562 (House of Lords 1932). [↑](#endnote-ref-10)
11. Harlow, C. (2005). Understanding Tort Law. London: Sweet & Maxwell. [↑](#endnote-ref-11)
12. http://classic.austlii.edu.au/au/legis/cth/consol\_act/caca2010265/toc-sch2.html. [↑](#endnote-ref-12)
13. *Competition and Consumer* Act, 2010, available at https://www.tobaccocontrollaws.org/files/live/Australia/Australia%20-%20ACL%20-%20national.pdf. [↑](#endnote-ref-13)