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Law Assignment Sample 2

**Assignment**

The facts of the case study submit that Jack Daniels is the owner of a Porsche motorcar and he had purchased the same @ $100,000. However, he is now in urgent need of money and thus places an advertisement in the Adelaide Advertiser “‘*for sale, an immaculate silver Porsche motorcar, bargain at $75,000. This is a genuine sale and the owner will not accept offers. The first person to deposit $5,000 to the credit of Jack Daniels at the Glenelg branch of the State Bank will be treated as the successful purchaser. The balance of the purchase price will be payable on delivery of the vehicle*.’

Considering the above advertisement, there are two persons who acted instantaneously;

1. Harry Smith deposited his cheque for the sum of $5,000 with the Glenelg branch of the State Bank and had acted as per the instruction of Jack;
2. Paul Jones in error deposited $5,000 in cash with the Adelaide Bank City branch.

However, later it was discovered that the Porsche had been in a serious accident and was valued at only $40,000. Neither Harry nor Paul is now willing to proceed with the transaction.

**The main issue at this stage is whether either Harry or Paul can be compelled by Jack to purchase the Porche and pay the balance amount.**

However, Jack was planning to purchase shares worth $75,000 from the money he generates after the sale of the Porche. However, since the deal was not got through, he suffered loss as the shares of $75,000 were increased to the v alue of $150,000.

**Another issue at this stage is to analyse the rights of Jack.**
Both the issues that are highlighted above can only be resolved after an analysis of the law of contract and the situations under which a valid contract established between the parties can be rescinded.

In Australia, there are several laws that prevails and that guides the relationship between the parties and the business. However the most significant law is the law of contract.

The law of contract establishes the rules and regulations under which a valid contract be framed and the circumstances under which a contract formulated between the parties can be rescinded by either of the parties.

In Australia, an agreement which has the enforceability of law is considered as a valid contract. Thus, prior understand a contract it is necessary to understand as what constitutes a valid agreement. (Clark J, 2013)

**An agreement** is the combination of a valid offer followed by a valid acceptance. Both offer and acceptance results in the formation of contract and is held in *Gibson v Manchester City Council - CA* (1978). (Moles R, n.d)

Thus, it is important to analyse the legal framework of both offer and acceptance.

**An offer** is the first element of a valid contract. An offer is made by an offeror and the person to whom the same is made is called an offeree. An offer is nothing but the intention and desire of the offeror which is communicated to the free with the hope and pretext that the same will be accepted by the offeree without any deviation to the terms of the offer. The concept of offer was validly explained in *Zealand Shipping Co. Ltd. v Satterthwaite & Co Ltd (The Eurymedon)* (1975). (Moles R, n.d)

However, when one person instead of making offers, wishes to receive the offeror from the people than the same can be done by various modes, such as, advertisements, displays, auctions, etc and such action is considered as **invitation to treat** in the law of contract and is explained under *Pharmaceutical Society v Boots Chemists* (1953). In invitation the person inviting the person is an offeree the people making the offers are offeror. (Moles R, n.d)

Thus, in Heathcote Ball v Barry (2000) it is rightly submitted that an offer is distinct from an invitation to treat.

It is now important to submit that an offer must accompany with an acceptance in order to formulate an agreement.

**An acceptance** is the confirmation by the offeree to the offer made by the offeror. It is held in *Felthouse v. Bindley* (1862) that the acceptance made by the offeree must correspond to the terms of the offer and must be communicated to the offeror in order to hold it valid. A silence is not an acceptance. The acceptance must be the mirror image of the offer made. (4Lawschool, 2012)

However, when an acceptance is made by the offeree but the acceptance does not correspond to the terms of the offer than it is counter offer which revokes the original offer making the acceptance with new terms as an original offer and is held in *Brinkibon Ltd v Stahag Stal und Stahlwarenhandelsgesellschaft mbH* (1982). (Abbott N, 2009)

It is also submit that many a times a party establishes a **unilateral form of contract** and is analysed in *Australian Woollen Mills Pty Ltd v. The Commonwealth* (1954). In unilateral contract the person making the statement submits that the statement made by him must be considered as an offer and who so ever acts as per the desire of the offeror than such acts of the person will be regarded as acceptable resulting in the formation of a contract. In unilateral contract thus there is no need to communicate the acceptance to the offeror to make it binding. Mere completion of actions as desired by the offeror is enough to constitute acceptance. (4Lawschool, 2012)

When an offer and acceptance is made than a valid agreement is established, but this agreement must accompany with other elements, such as, consideration, capacity and intention.

**Consideration** is the benefit which moves amid the offeror and the offeree for the fulfilment of the promises exchanged between them and is held in *Coulls v Bagot’s Executor & Trustee Co Ltd* (1967). (Abbott N, 2009)

Further, the offeror and the offeree must have the **legal intend** to bind themselves with the offer and acceptance exchanged amid them legally. Which means that if any party violates his part of obligation than he will be move to court for remedy and is held in (2004). (Practical law, 2006)

And both the offer and the offeree must be **major, of sound mind**, and must not be barred by law while forming any contractual relationship between them. It implies that the parties must be legally capable to enter into a contract that is established between them.

Thus, these are the most important essential elements that are required in contract formation. The elements are very necessary in the formation of a contract of contract because of the same is not are not present than there cannot be any contract that can be formed amid the parties.

However,

It is important to submit that one of the essential in the formation of a contract is that the parties to the contract must have legal intention to be the contract, that is, the party’s intent that the contract must be legally enforced.

But,

A contract is said to be not as per law if the same is not formulated by the party without good intention and is supported by an element of misrepresentation.

**Misrepresentation** is a statement which is made by one party to another because of which the other party is induced to enter into a contract which he otherwise would have not entered into and is held in *Alati v Kruger* (1955). It is submitted that the misrepresentation that is made must be either of fact or law and must go to the root of the contract. (Moles R, n.d)

When misrepresentation is made by the party not innocently but intentionally than such kind of misrepresentation is a fraudulent misrepresentation. When the misrepresentation is proved on the part of one party than the other party (aggrieved) has the option to cancel the contract. Thus the contract supported by misrepresentation is voidable contract.

Many a times, one party acts on the instruction of another party under **mistak**e and part with his money in favour of the other party, in such circumstances, the party in mistake has the right granted under restitution always to recover his money back and is righty held in the leading case of *David Securities Pty Ltd v Commonwealth Bank of Australia* (1992). The right of restitution is permitted by the courts against the defendant so that he may not receive unnecessary gain at the expense of the claimant. (Tyree A, 2005)

Now, after analysing the law behind the law of contract, the issues raised above are analysed and resolved.

**Rights of Harry and Paul against Jack**

It is submitted that Jack has place an advertisement though which he intends to sell his Porche. As per law of contract, an advertisement is an invitation to treat. But, in the situation submitted under the case laws, it is submitted that Jack does not intent to receive offers but intends to receive acceptance. He rather makes it crystal clear that the advertisement must be regarded as an offer provides the person intends to accept the offer must act as per his wishes.

Thus, acting on the desire of Jack, Harry and Paul both deposited money in the bank. However, Harry deposited the money in the right account whereas the deposit by Paul was not correct.

Thus, it is submitted a valid contract is framed between Jack and Harry.

**Rights of Harry**

It is submitted that a contract is valid when the same is accepted with legal intention.

As per the facts, Jack submitted that the car was spotless and worth $75,000 which was later found that the car was met with an accident and the actual worth of the car is $40,000.

It is submitted that the fact that the car had met with an accident is within the knowledge of Jack, however he intentio0bally concealed the fact in order to generate higher amount of money. The facts were revealed which if known to Harry may have resulted in the deviation of his decision. Thus the representation was fraudulent and there is misrepresentation on the part of Jack.

So Harry has full right to cancel the contract on the grounds of misrepresentation and claim his deposit back from Jack.

**Rights of Paul**

 The facts submitted that like Harry, Paul has also acted on the advertisement placed by Jack. It is submitted that the requirements of Jack to consider the actions of the interested party as acceptance is to deposit the amount of $5,000 with the Glenelg branch of the State Bank.

However, Paul has mistakenly deposit the $5,000 in cash with the Adelaide Bank City branch. Thus, he has not acted in the prescribed manner as desired by Jack. Thus at this stage there cannot be said any lawful contract that existed amid the parties.

However, Paul has full right to claim his deposit back as the same was deposited in mistake. The claim is valid and the amount deposited is recoverable by applying the principle of restitution. Jack cannot gain any advantage from the mistaken actions of Paul which are undertaken by him under the misrepresentation caused by Jack himself.

**Rights of Jack**

 As per the facts submitted herein below, it is held that there is no contractual relationship that exists amid Jack and Harry or Jack and Paul. Thus Jack does not have any right against either of the parties.

The facts that he intends to purchase the shares from the proceeds of the car will not make any difference as the contract with Harry is nullified because of the presence of misrepresentation and the contract with Paul is nullified because of the presence of mistake.

However since he is the owner of Porches thus he has all legal right of an owner. Apart from that Jack has no other right against either of the parties.

Thus, it is submitted there is no contract established either between Harry and Jack or Paul and Jack. However, both Harry and Paul has the right to recover their money from Jack.

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