Liebmann V. Canada (Minister of National Defense)

Facts:

Liebmann applied for the position of Executive Assistant to the Commanding Officer in the Persian Gulf Operation. Staff Officers recommended he be appointed and the Commanding Officer agreed. When command staff became aware that Liebmann was Jewish they decided not to select him. Liebmann challenged the decision, as well as CFAO 20-53 (an enactment for which the decision was based upon) under s. 15 of the Charter.

Issues:

1. Should the court consider the constitutionality of CFAO 20-53?
2. Does the Charter apply to the decision not to appoint Liebmann?
3. Were Liebmann's equality rights under s. 15 of the Charter infringed?
4. Could infringement be justified under s. 1 of the Charter?

Decisions:

1. The court should not consider the constitutionality of CFAO 20-53
2. The Charter does not apply to the decision not to appoint Liebmann
3. Liebmann's equality rights under s. 15 of the Charter were infringed
4. The infringement could not be justified under s. 1 of the Charter

Reasons:

1. CFAO 20-53 was not the reason that Liebmann was not permitted to serve in the Persian Gulf and was not in effect when the decision not to give him the position was made. CFAO 20-53 was not relevant to the action before the court and thus should not be considered.

2. The Charter applies to decisions made under delegated statutory authority. The decision regarding Liebmann was made under the authority delegated by the National Defense Act and is thus under the authority of the Charter.

3. Liebmann was treated differently from others based on personal characteristics of the type enumerated in s. 15, and there was definite discrimination in a constitutional sense in that his dignity was demeaned.

4. The respondents did not show that it was reasonable to discriminate against Liebmann because he was Jewish.

Legal Principles:

- The Charter applies to decisions made under delegated statutory authority
- Infringement of s. 15 of the Charter occurs if someone is treated differently based on characteristics outlined in s. 15, and as a result the person's dignity is demeaned

Montane Ventures Ltd. V. Schroeder

Facts:

Montane Ventures (plaintiff) entered into a contract for the purchase of land from Mr. Frank Schroeder (defendant.) After meeting all negotiated requirements to satisfy the leasehold agreement, the plaintiff's agent inquired, via fax, as to whether additional (separately negotiated) considerations might be provided. On receipt of this inquiry, the defendant saw it within his rights to cancel the prior agreement and substitute for a new contract with a substantially higher offer price. The defendants argument is that this is valid, on the grounds that the inquiry amounted to rejection and counter-offer, thereby terminating the original offer and agreement.

Issues:

1. Does the addendum (the inquiry) constitute a rejection/counter offer to the original agreement?
2. If this does not constitute rejection/counter-offer, should specific performance for the original agreement be awarded to the plaintiff?

Decisions:

1. The addendum did not constitute rejection/counter-offer to the original agreement, but rather confirmation regarding a prior oral conversation.
2. Due to the circumstances of the contract (that it be for sale of land) specific performance will be awarded.

Reasons:

1. Adequate evidence was provided that the defendant discussed the matters of the inquiry with the plaintiff's representative while meeting all pre-negotiated commitments. Since the addendum did not necessitate a signature or formal acceptance in any manner, it cannot be construed as an offer or formal rejection of prior terms.
2. Seeing that the dispute involved the sale of land, specific performance is the proper award for damages to the injured party.

Legal Principles:

- Inquiring as to whether the negotiating party can provide additional considerations to the agreement, without explicitly demanding such considerations, does not amount to rejecting a current offer or substituting such for a counter-offer
- Specific performance will normally be awarded to the injured party, at their request, when the dispute involves the sale of land

Rudder V. Microsoft Corporation

Facts:

A class action was filed on behalf of two Canadian citizens, representing a common class of Canadian subscribers to the MSN Messenger service, against the Microsoft Corporation. The suit alleges that the corporation engaged in unfair billing practices relating to subscription fees charged to its clients; the suit was filed in the Ontario Supreme Court (OSC.) The defendants have filed for a permanent stay on these proceedings, pursuant to a clause in their "membership agreement" referring all disputes related to the Messenger service to the jurisdiction of King County, WA. The plaintiffs claim that, as they were not aware of this clause when agreeing to the service, they should not be bound by its terms.

Issues:

1. If the plaintiffs did not knowingly consent to the "forum selection clause," should they be bound by its terms?
2. Should the OSC forcibly override this clause to ensure fair and equitable justice is served?

Decisions:

1. The plaintiffs will be effectively bound by the terms of the clause.
2. The OSC will not overrule the clause, and a permanent stay will be granted to the defendants.

Reasons:

1. The plaintiffs were repeatedly notified of the forum selection clause when registering for the service, and by agreeing to this online contract they should be bound by its terms. As law school graduates, the plaintiffs should especially be aware that agreeing to the terms of a contract equates to agreeing to each and every term stipulated within the contract (bar fine-print that is not effectively communicated to the parties.)
2. There is no evidence that the courts in King County, WA will rule in a biased or inequitable fashion. Furthermore, it will be easier and more efficient to claim any awards that the class may win as a result of the action when the hearings are within Washington's borders

Legal Principles:

- Legally defensible exemption clauses will bind parties to all terms and conditions provided within the clause (where defensible means that the clause has consideration)

Hong Kong Bank V. New Age Demographics

Facts:

Ms. Margaret Chronister (defendant) made a personal guarantee on the loan of funds to her husband's company, New Age Demographics, provided by Hong Kong Bank of Canada (HBC, plaintiff.) The company could not repay the debts outstanding, and subsequently defaulted on the loans. The defendant, who is thus held liable on the debt due to her signing of the loan guarantee, claims that the guarantee is unenforceable (as it provides no direct benefit for her, and therefore has no consideration.) This motion is by the plaintiffs seeking enforcement of the guarantee for repayment of the loan plus applicable interest.

Issues:

1. Does the signing of the contract without an affixed wafer constitute signing under seal?
2. Is there consideration for the guarantee?

Decisions:

1. The contract is effectively "signed under seal." Her argument was that it was not sealed. She did sign though and court, taking from precedent decisions, said it was signed under seal.
2. Consideration was given to Ms. Chronister for her signing on the guarantee.

Reasons:

1. Contracts which state that they are "under seal" and are notable of this condition will be held to be under seal, even in the event that the formal seal has not be placed on the document when signed.
2. Referring to "the Bank of Nova Scotia v. Hallgarth et al" (1986) consideration does not necessitate that benefits arise directly to the contracting party. If a benefit is provided to a third party (in this case the plaintiff's husband) to the detriment of the promisee (in this case HBC) then there is cause for consideration in the promisor (Ms. Chronister)'s guarantee.

Legal Principles:

- There may be consideration for a party's promise even when there is no direct benefit to the party as a result of the promise. All that is required is that the other party to the contract (promisee) makes a sacrifice resulting in a benefit for some party designated by the promisor.
- When contracts are signed under seal, there is no need to establish consideration for promises of the agreement.

Saskatchewan River Bungalows V. Maritime Life Insurance

Facts:

The plaintiffs filed this motion on behalf of Mrs. Fikowski to enforce an insurance policy on the life of her late husband. According to the policy, the insurance would be effective provided the company receive regular payments on or 31 days after the specified due date. If the payments were not received within the grace period, the policy will lapse and the insured will be required to send a written submission for re-instatement. However, and applicable to the argument at hand, MLI has regularly allowed later submissions by the policyholders without actively terminating their insurance coverage. On July 26th, 1984, representatives at SRB mailed a cheque (which was never received) to MLI for payment of premiums. MLI then sent numerous "payment due" and "effective policy lapse" notices to the Fikowski's, who did not receive these notices immediately due to extenuating circumstances. Once the plaintiffs received these notices, they immediately sent re-payment to the MLI offices (although due to the abnormally late period of payment, MLI did not accept this payment and maintained the revocation of coverage.) Mr. Fikowski passed away shortly afterwards, and Mrs. Fikowski now wishes to enforce the policy on her husband's life.

Issues:

1. Does the postal acceptance rule apply to the premium payment method?
2. Is equitable estoppel applicable to this case?
3. Was the policy in force when Mr. Fikowski passed away?

Decisions:

1. The postal acceptance rule does not apply.
2. Equitable estoppel is applicable to this case.
3. The policy was not in force when the insured passed away.

Reasons:

1. As the contract explicitly states that payment must be received by MLI in order for the policy coverage to be effective, the postal acceptance rule cannot apply.
2. By accepting premiums and maintaining coverage beyond the stated 31-day grace period, the defendants (MLI) have indicated to their customers that they will not enforce their strict legal rights as defined in the contract. Therefore, since the plaintiffs relied on this practice to their detriment, equitable estoppel may be enacted as a defense.
3. Although equitable estoppel will prevent MLI from enforcing their strict legal rights, it cannot be extended so far as July of 1985 (seven months after the final notice was originally mailed) as this would effectively be using estoppel as an offense.

Legal Principles:

- When a contract explicitly requires acceptance receive the offeror, the postal acceptance rule cannot apply
- When an act on your part indicates that you will not enforce your strict legal rights, and the other party relies on this to their detriment, you cannot take the other party by surprise (equitable estoppel only as a defense)

Black Swan V. Goldbelt Resources

Facts:

On May 29th, 1995, the trial judge ruled that Black Swan might enforce their top-up provision in holdings of Goldbelt Resources, pursuant to the agreement of companies dated January 14th, 1992. This agreement was constructed in order to prevent the dilution of interest in Black Swan's holding of Goldbelt to less than 5% of the company less 19,500 shares. Goldbelt has argued that the agreement relates exclusively to new capital issues to Comptoir holdings, and all other new issues are therefore not subject to automatic top-ups. This appeal is made to re-interpret the context of the agreement, as it relates to the issuance of shares of ownership in Goldbelt Resources to a third party (Pegasus Gold Inc.)

Issues:

1. Should the context related to which the agreement was made be factored into its interpretation?
2. Does the loan from Pegasus apply to the said contract, and should it be interpreted as an issuance of equity position?
3. Should it be implied that Black Swan's holdings be topped up conditional to the topping up of Comptoir's holdings?

Decisions:

1. The explicit words alone shall be strictly interpreted as being the final form agreement.
2. Yes, it is both applicable to the contract and a necessary input in the top-up calculation.
3. No, Black Swan's contract is independent of the contract between Goldbelt and Comptoir.

Reasons:

1. The objectives of the parties prior to formalizing an agreement in a written contract are dynamic. As such, the only means to legitimately interpret an agreement is through strict interpretation of the terms found in the final form agreement. Any further interpretation would be speculative as to what was a genuine intention of a party versus what was the give and take of the process of negotiation.
2. The loan from Pegasus (in the form of convertible debentures) implies the offering of "rights to purchase." As such, the loan stipulates a top-up of Black Swan's holdings, and the face value of the loan shall be incorporated in the top-up formula.
3. This is contingent upon the evidence found admissible in (1.) As it is not explicitly stated in the contact, and the court could not find this view "giving effect to the intentions of the parties," the interpretation of Black Swan's top-up contingent upon Comptoir's top-up cannot stand. As such, the appeal is dismissed.

Legal Principles:

- Any agreements between parties not finalized in the contract form may be revoked or altered at any time
- In cases of intense negotiations, the final contract is strictly interpreted by the courts
- Parties to contracts do not show acceptance of views of interpretations simply by being silent or showing complacency
- Liberal interpretation cannot revoke terms explicitly stated or alter their basic meaning

Borek V. Hooper

Facts:

The plaintiff commissioned the defendant (Hooper) to paint for her, for an agreed upon price of $4000. About three years later (it was supposed to last about 10 years), evidence of deterioration presented itself in yellowing of the canvas and paint cracking in the corners. In trial, the judge found that the painting did not maintain merchantable quality for more than half of its (arbitrarily determined) economic life, and as such awarded 50% of the purchase price to the plaintiff in damages. This motion is an appeal to the decision, on the grounds that the contract was for the provision of services rather than the sale of goods, and damages should be determined accordingly.

Issues:

1. Does the defendant have a liability for damages?
2. Does the "sale of goods act" apply?
3. Will the appeal succeed?

Decisions:

1. The defendant is liable for damages.
2. The sale of goods act does not apply.
3. The appeal will be granted. However, the trial is not upheld but rather sent back to small claims court to be re-tried.

Reasons:

1. The defendant did not provide services meeting an appropriate standard as determined by the appeals court. The materials and procedures employed by the respondent were proven to be sub-par in contrast to the expectations of the industry.
2. The contract specified for the provision of a service, not the delivery of a product. It is merely coincidental that materials passed from servant to customer; the fee was meant for the skill and labour provided.
3. The appeals court found that the trial judge erred in his calculation of the appropriate damages. However, as the defendant is still liable for damages, the appropriate calculation of these damages must be re-determined in the small claims court.

Legal Principles:

- The "Sale of Goods Act" applies only to goods that are of established merchantable quality, and not specific goods for which the application of skill is the main determinant of the good's value
- If you buy a finished product, like a painting from a museum, then the sale of goods act applies

Kovacs V. Holtam

Facts:

The plaintiff made a purchase agreement with the defendant for the sale of a 1963 Falcon Futura for the price of $2500. As stipulated in the agreement, the defendant would retain the vehicle for the purpose of restoring it, at which point he would contact the plaintiff for delivery. Before the restoration was complete, the vehicle was destroyed in a fire (believed to be caused by arson.) The plaintiff has brought this action to the court seeking damages in the amount of the purchase price.

Issues:

1. Is the defendant liable for the loss of the car?
2. What remedy does the plaintiff have?

Decisions:

1. The defendant is held ultimately liable.
2. The appropriate remedy is the forfeiture by the defendant of the purchase price ($2500) plus applicable legal costs.

Reasons:

1. Title remained with the defendant until the appropriate maintenance had been done to the good, and the purchaser had been notified of its completion, as stipulated in the Sale of Goods Act. As such, the risk of loss is born by the defendant in this case, and the purchaser is entitled to a repayment of the funds if the good cannot be delivered.
2. As the defendant is not in the position to perform his obligation as defined in the contract (namely, the delivery of the property from the seller to the buyer,) the plaintiff is entitled to a return of his money. Since the ruling is in favour of the plaintiff, the defendant is also liable for legal costs on scale 3 ($80.)

Legal Principles:

- If a party must perform an additional act/service to the subject good, title does not transfer until that act/service has been performed, until the good is in a deliverable state, and **until the buyer has been notified as such**
- The party who holds title to the subject good is ultimately for all risks and liabilities associated with this ownership

Dawe V. Cypress Bowl Recreations

Facts:

The plaintiff (Ted Dawe) was injured in a skiing accident on January 6th, 1991. This accident was allegedly caused by the negligence of the ski-lift operator, "Cypress Bowl Recreations Ltd," whom the plaintiff argues did not adequately inform him of the risks associated with a section of the skiing area. At argument is whether the exemption clause on the lift purchase ticket should waive Cypress Bowl's liability for the injuries experienced by the plaintiff.

Issues:

1. Did the defendant take reasonable care to inform the plaintiff of the exemption clause (or can we reasonably expect the plaintiff to be aware of this clause)?
2. Should the said clause exempt the defendant from liability to the plaintiff?

Decisions:

1. The defendants may all necessary efforts to inform the plaintiff; therefore, we can reasonably expect the plaintiff was aware of the clause.
2. The clause will apply, and the defendant is not liable for damages.

Reasons:

1. The clause was printed in bold letters directly on the front of the ticket. As well, numerous signs were placed throughout the ski area indicating that the defendant exempts itself from liability for any accidental injury (including one within the vicinity of the area in which the plaintiff himself was injured.) As well, since the plantiff is a learned individual who is clearly literate, we can definitely expect he would be aware of this clause.
2. Provided the defendant makes a reasonable effort to inform the plaintiff of the exemption clause, and the plaintiff agrees to continue the transaction/relationship, the plaintiff will assume all risks associated with the contractual activity. Continuing the relationship while being aware of the clause's existence equates to consenting to the exemption clause, whether or not consent is explicitly stated.

Legal Principles:

- If an exemption clause is communicated to a party, and the party consents to the clause (whether explicitly by acknowledgment or implicitly by continuation of the agreement) the party is bound by the clause and it will be strictly enforced in court
  - *Reasonable* attempt must be made to communicate the exemption clause
- If a plaintiff is aware that there is writing on a ticket/contract, and is able to read or comprehend this writing, he or she is bound by any conditions stated within this writing (whether he or she is actually aware of the implications or not)

Porelle V. Eddie's Auto Sales Ltd

Facts:

The plaintiff (Porelle) purchased a used 1987 Oldsmobile Delta 88 from the defendant. After a short period of ownership, the plaintiff experienced problems with the vehicle, requiring repairs to the amount of $2141.42. At the time of the sale, the plaintiff signed a contract with the defendant exempting himself from damages due to defects in the vehicle. At issue is whether the implied conditions in the "Sale of Goods Act," in reference to the sale of used goods, will override the explicit clause in the contract.

Issues:

1. Was there a breach in the "implied term as to fitness" condition?
2. Will the exemption clause in the contract negate all the implied terms of the Act?

Decisions:

1. The implied condition has not been breached.
2. The implied terms in the Act can be negated by the express terms in the exemption clause.

Reasons:

1. According to the Sale of Goods Act s. 16 (D) in reference to "the implied warranty as to fitness," if an express condition agreed to by the contracting parties is inconsistent with the implied warranty of the Act, the implied term is waived. As the conditions of the exemption clause were consented to by the plaintiff (by means of signature) the plaintiff effectively exempted the defendant from any liability for a lack of fitness for purpose. The courts must uphold this exemption.
2. In reference to the sale of used goods (as opposed to the sale of new goods) the warranties/conditions implied by the Act only apply when there are no express terms within the contract that come at odds with these implied terms. By seeing the exemption clauses printed clearly on the front and back of the written contract, and signing agreement to these clauses, the plaintiff waived his rights provided to him under the Act.

Legal Principles:

- Implied terms in the Sale of Goods Act are meant to protect the purchasers of new and used goods
- Terms agreed to in contractual negotiations (i.e.// exemption clauses) can alter or negate these implied terms, provided it is not during: a retail sale of new goods to an individual for non-business use.

RE: Collins

Facts:

After the divorce of Mr. Philip Collins and Ms. Andrea Collins, Mr. Collins has made annual spousal support payments and generous child support payments to their two children (Simon and Joely Collins.) Once Ms. Collins remarried to a Mr. Fleming, Mr. Collins ended the spousal support payments, thus relieving Ms. Collins from her state of financial security. Mr. Collins then subsequently purchased a property for his two children, to be held in trust and maintained by their mother until they reach the age of maturity. Ms. Collins, who had no ownership interest in the property, made the children aware of her discomfort with her current financial position. The children each agreed to sign over their ownership of the property to their mother, who would then have ultimate discretion as to the maintenance of the property and estate. Due to the infants act, neither title transfer offer was legally enforceable. Once Joely reached the age of majority, she confirmed her agreement (thus making it legally enforceable); this action is to grant a court order allowing the remaining infant, Simon, to officially transfer his ownership interest to his mother.

Issues:

1. Is the agreement to transfer title to Ms. Collins to Simon's direct benefit?
2. Does Simon Collins require the protection accorded by the Infants Act?

Decisions:

1. It is not for the child's direct benefit (or "best interest") to have the contract ordered enforceable.
2. Simon will be best served by the protection of the Act.

Reasons:

1. The proposed contract does nothing more than offer direct benefit to Ms. Collins at the direct expense of the children. Furthermore, granting such a request will not alter the contributions required by Mr. Collins to Simon, and will therefore provide any financial benefit whatsoever. As such, the proposed contract confers no direct benefit to Simon and should therefore not be ordered enforceable.
2. At this time, Simon requires the protection of the Infant's Act to maintain his vested interest in the trust created solely for his benefit. If at a later age he wishes to transfer these benefits to his mother he may do so, but if he changes his mind he should not be bound by an illegitimate agreement.

Legal Principles:

- The age at which a person reaches majority at common law is 21
- Contracts entered into by those under this legal age are considered unenforceable against the minor (though they may be enforced by the minor against the other party)
- Courts can order contracts enforceable against a minor provided that: a) The contract directly benefits the minor, and b) The minor does not require protection under the "Infant's Act"

Poole V. Shanks

Facts:

The defendant, due to a terminal illness, was forced to sell his business and retire early. The plaintiff, who was employed by the defendant for the majority of her career, had her employment terminated effective on the date of the defendant's retirement (for the purchasers of the business made no agreement to continue the employment contracts of the existing staff.) In lieu of proper notice, the plaintiff was paid eight weeks worth of salary and her 4% vacation pay owing. The plaintiff argues that, since she does not have the skills or qualifications necessary to find employment elsewhere in the industry, or in any other industry for that matter, she should be entitled to a more generous severance package.

Issues:

1. Did the defendant breach any terms (explicit or implied) in the employment contract?
2. Did the defendant's illness constitute a frustrating event, thus terminating the existing employment contract?
3. If no such frustration is evident, was adequate notice of termination provided?

Decisions:

1. There was no breach of the employment contract.
2. The defendant's illness and retirement does not constitute a frustrating event.
3. Adequate notice of termination was not provided. The court awards 7.5 months of pay in lieu of notice, less the ten weeks previously provided.

Reasons:

1. Since nothing more than an "agreement to agree" on retirement benefits at a later date was provided, the defendant's lack of providing such benefits did not constitute a breach of warranty or condition. The court will not add terms to the contract that were not explicitly agreed upon by the two parties.
2. The defendant could reasonably foresee the development of this terminal illness, and as such it cannot be construed as a frustrating event.
3. Given the length of employment with the defendant's firm, along with the clearly presented lack of employable skills on the part of the plaintiff, adequate notice was calculated as 7.5 months. The damages awarded are this amount net any payment already provided by the defendant.

Legal Principles:

- The Parol Evidence Rule: Courts will not read into contracts terms that were not expressly agreed to at the time the contract was formed
- Frustration: Events can only frustrate a contract if they are supervening and uncontrollable that render performance impossible or fundamentally different from that agreed upon in the contract, and are not reasonably foreseeable at the time the contract was formed

Westcoast Transmission V. Cullen

Facts:

Kato engineering, the supplier of power generators to Cullen for assembly into "genset" power units for sale to Westcoast Transmissions, was found liable to Cullen for the sale of unmerchantable (non-workable) products in reference to the Sale of Goods Act. This liability, which Cullen was then liable to Westcoast Transmissions for, was calculated as the purchase price of the defective units. Westcoast Transmissions appeals this decision to include the costs of replacement power generation (i.e.// alternate power generators) required to maintain operations, as well as the purchase price of the units, in the calculation of damages.

Issues:

1. Does Cullen's liability to Westcoast include the costs of backup/replacement power generation?

Decisions:

1. The trial judge's ruling that Cullen is held liable only for the sale price of the "gensets" is upheld.

Reasons:

1. Presumably even if the power generators provided by Cullen worked, Westcoast Transmissions would have to incur the costs of backup generation in order to reduce the risks of operating on only one source of power. Since the injured party should take all reasonable steps to minimize the extent of their injury, we should have expected Westcoast to invest in backup power generators and cannot hold Cullen responsible for their mismanagement.

Legal Principles:

- Damages are meant to be equal to the amount that would return the injured party to the position they would be in presuming the other party performed their contractual obligations; damages are limited to the amount the offending party should reasonably expect the injured party to incur in costs as a result of their breach
- The injured party has the obligation to take all necessary steps to minimize their injury due to the breach of the other party

Black Comb V. Schneider

Facts:

The defendant (Darwin Schneider) submitted a deposit for the option to purchase land from the plaintiffs at a later date. After several written exchanges over the year since the option was purchased, the defendant's solicitor informed Black comb's representatives that Mr. Schneider could not close on the deal (due to financial difficulties.) The plaintiff offered the defendant a final extension on the agreement, at which point the defendant would be considered in breach and have his rights to purchase and deposit forfeited to the plaintiff. This action is brought by the plaintiff to receive a court order for the amount of the deposit (plus applicable interest) provided for the plaintiff.

Issues:

1. Did the plaintiffs breach the agreement by not clearing encumbrances on the property prior to closing?
2. Will the 10% deposit provided by the plaintiff be interpreted as a deposit or a penalty?

Decisions:

1. The plaintiffs were not in breach of contract.
2. The fee is considered a deposit, and not a penalty. As such, it must be forfeited to the plaintiffs.

Reasons:

1. The agreement specified encumbrances must be clear before the effective closing date. As the first closing date listed was June 14th of 1999, and the encumbrances were removed well before this date, there was no breach of contractual term.
2. A cash outlay is considered a penalty at the time of contract formation, and not at the time of dissolution. Since the plaintiff (Black comb) only stands to gain by the discharge of contract, as they can then sell the property for a significantly greater market price, they would have no motivation to penalize the defendant for not closing on the agreement. Since the fee was calculated as a genuine pre-estimate of damages at the time the contract was formed, it is considered a deposit regardless of the ensuing events.

Legal Principles:

- If a party foresees that breach of the contract may cause them to suffer harm, they may include these foreseen consequenes in the contract in the form of mandatory deposit
- If the clause is perceived to be a genuine attempt by the firm to pre-estimate damages, the courts will hold that it is a deposit; if it is interpreted as punitive in nature, it will be construed as a penalty and declared invalid
- If considered a deposit, the clause will remain enforceable even if the party does not suffer the damages it genuinely expected to incur in breach

General Tire Canada V. Aylwards Ltd

Facts:

The plaintiff seeks summary judgment for money payable to the company under a loan guarantee. The defendant agrees on the principle debt outstanding, but argues against its liability on the debt due to collateral agreements of the debt structure that did not occur. Thus, the defendants argue, the guarantee was contingent upon conditions that were not met and is therefore legally unenforceable.

Issues:

1. Should the alleged misrepresentations of the plaintiff automatically discharge the defendant's liability?

Decisions:

1. The defendant is liable to repay the debt outstanding.

Reasons:

1. The court finds the collateral representations to be "vague, non-specific, and incompatible with the guarantee." Where ambiguous agreements made between parties come at odds with the express terms of a written contract, the terms of the contract will stand. Therefore, the collateral agreement receives no consideration, and the defendants remain liable for the balance of the debt outstanding.

Legal Principles:

- "Parol Evidence Rule": When terms of a written contract are clear and unambiguous, the parties are not permitted to introduce evidence outside of the contract to alter its fundamental meaning
- Exceptions to this include: a) subsequent oral conditions; b) collateral oral agreements; c) written documents not meant to be the final form; or d) an oral condition precedent (subject to…)
    - In A, B, and C above consideration must be proven to exist for both parties to the agreement, such that it is clear that the intentions of the parties are markedly different from those implied in the written form

Collins V. Dodge City East Ltd

Facts:

The plaintiff purchased a used motor vehicle from the defendant. The defendant's agent purported that the vehicle would be "fully equipped," including an Air Conditioning (AC) feature that the agent himself actively demonstrated to the plaintiff. Several months after the plaintiff owned the vehicle (and during the season in which the AC was first needed to be and was used) the plaintiff realized that the AC was not actually installed. Subsequently, the plaintiff had AC installed by a certified mechanic, and brought this action to seek the damages equal to the costs of AC installation.

Issues:

1. Did the agent engage in misrepresentation?
2. Should the court award the damages sought by the plaintiff?

Decisions:

1. Both the agent's words and actions are construed to be misrepresentation.
2. The court will award the damages sought by the plaintiff.

Reasons:

1. Whether or not the agent knowingly made the misrepresentation, the agent's words and action lead the plaintiff into a false assumption that AC would be included in the vehicle. This was a material misrepresentation, as it altered her incentives and ultimately to purchase the vehicle that she otherwise would not have.
2. The purpose of damages is to rectify the injury party and return them to the position they would be in if performance was adequately provided by the offending party. In these circumstances, the plaintiff should be awarded the costs required to install the AC so that she would be in the same position as if the AC was installed at the given purchase price.

Legal Principles:

- Remedies for Misrepresentation: A person need only show that he or she was misrepresented about a material aspect of the contract in order to receive the appropriate remedy

Crozman V. Ruesch

Facts:

The appellants (the Crozmans) completed the purchase of a home with the assistance of their father (a trained realty professional.) At the time of inspection and purchase, the appellants noticed several imperfections in the leveling of the home that caused them some concern. On inquiring as to these imperfections, the respondents informed them that these have been there since the home was first purchased and will not cause a problem. After purchasing the property, the appellants noticed several other imperfections which required significant costs to repaid (in the total of $12,000.) The trial judge found that the defendants have made no fraudulent misrepresentations as to the state of the property, and as such should not be liable for the damages. The appellants here seek a motion to retry the case in provincial trial court.

Issue:

1. Did the trial judge err in his initial conclusion?
2. Is there any evidence of fraud or misrepresentation?

Decisions:

1. The trial judge was correct in his conclusion and his judgment is upheld.
2. The appeal court had confirmed the trial judges findings, and the case of fraud/misrepresentation is rejected.

Reasons:

1. Nothing in the appellant council's argument was persuasive enough to conclude that the trial judge erred in coming to the correct conclusion. As such, the appeal court determined that the facts of the case, and the conclusions drawn from them, were correctly stated by the trial judge (and the decision is upheld.)
2. As the respondents did act with honest intent and merely conveyed the state of the property, as they knew it, they shall not be held fraudulent or misrepresentative. The respondent's notice to the appellants of the existence of these defects suggests that there is neither "fraud by half truth" nor "fraud by concealment"

Legal Principles:

- Contracts regarding real property: It is difficult in relying on misrepresentation for a remedy, even where the buyer can prove misleading statements were made by the seller
- Misrepresentation: award the injured party the right to rescind the contract; however, the right to rescind is typically not provided in the sale of land
- Exemption clauses in land deals typically exempt previous/subsequent/collateral statements that are made by either party from being given consideration

Buckwold Western Ltd. V Sager:

Facts:

Ms. Collyne Sager (the defendant) signed a loan guarantee on June 27, 1991 on a loan from the plaintiff (Buckwold Western Ltd.) to her husband's company (London Carpets.) Ms Sager was a principal owner of shares in her husband's company, and maintained (unbeknownst to her) a substantial equity position in the company at the time of signing. As a condition of extended credit being provided by the plaintiff to London Carpets, both Mr. Sager and his wife were required to provide personal guarantees of repayment. Mr. Sager presented the documents to his wife without consultation of a legal professional, and after some debate she signed the documents. Ms. Sager raises the defense that, due to signing under duress or undue influence, she should not be required to repay the outstanding loan balance.

Issues:

1. Is this case an example of duress or undue influence?
2. If not, is the creditor entitled to enforce the guarantee?

Decisions:

1. This is not a case of duress or undue influence.
2. The creditor has all rights to legally enforce the guarantee.

Reasons:

1. No improper pressure (duress) was ever placed upon Ms. Sager to sign the documents. Any pressure that was implied by Mr. Sager to sign the documents was purely commercial, and did not influence her ability to make a sound and reasonable judgment free of pressure from a party to the contract. The argument of undue influence is also not applicable, as Ms. Sager was given sufficient time to consider the consequences and signed the documents based on her independent judgment.
2. Since the creditor supplied the goods in reliance on the guarantee, they are entitled to legally enforce this document.

Legal Principles:

- Where there is a special relationship resulting in domination, the contract is voidable for undue influence
- Threats of violence/imprisonment to force individuals into contracts are considered duress; the contract is voidable at the option of the injured party

Maksymetz V. Kostyk

Facts:

Masymetz (the plaintiff) seeks an accounting of the value of shares owing him in a settlement reached during a prior legal action. This ownership interest in the firm (the Gateway Hotel Ltd.) was to correlate to Masymetz's interest in a partnership that managed the hotel (and which subsequently obtained an option to purchase the hotel.) However, due to legal and regulatory requirements the purchase was denied by a governing body (the Manitoba Liquor Board), which declared the option to purchase illegal and thus "void ad initio." The plaintiff wishes to have the court enforce compensation for the value of the interest in the hotel owing from the settlement. The defendants argue that, since the contract was illegal to begin with, it is "ultra vires" for the court to order such an accounting.

Issues

1. Was the original contract (that the settlement was based on) legal?
2. If not, can the court enforce a settlement based on the breach of an illegal contract?

Decisions:

1. The original contract was not legal and was therefore invalid.
2. The court will not force an order upon the defendants based on an illegal contract.

Reasons:

1. As the proposed division of ownership interest within the option to purchase did not comply with legislated standards (namely that a non liquor-license holder cannot hold more than 10% of the company) the ownership agreement was deemed illegal and therefore invalid.
2. Regardless of the circumstances, the court cannot force an order upon parties who are knowingly in breach of an illegal contract (as the illegal contract is ultimately unenforceable.)

Legal Principles:

- Legality: A contract that involves illegality cannot be enforced by a party that knowingly agreed to the illegality

Rhino Freight Systems Ltd. V McTaggart:

Facts:

The plaintiff (Rhino Freight Systems Ltd.) employed the defendant (Daniel F. McTaggart) as a general manager for a period of five years, commencing March 1st, 1998. The employment contract stipulated that the defendant would be terminated early if stated sales targets were not met. In the case of early termination, the clause in the contract provided that the defendant could not: (a) solicit business from clients within one year; (b) work for/manage/own any similar business within a 100 mile radius of Greater Vancouver; and (c) argue that such restrictions are unreasonable, given the signed acknowledgment of this clause and the nature of the business. On December 1st, 1998, the plaintiff terminated the employment relationship due to the defendant's inability to meet his stated sales goals. Since this date, the defendant has worked for two competitors well within the geographic limitations of the restrictive covenant. The plaintiff seeks an application to enforce the restrictive covenant against the defendant.

Issues:

1. Is the covenant a fundamental term of the agreement?
2. Does the covenant meet the necessary criteria to be enforceable?

Decisions:

1. The covenant is considered a fundamental term to the agreement.
2. The covenant meets all necessary criteria and is therefore enforceable.

Reasons:

1. If the covenant is breached, the firm will expect to lose sales, profits, and competitive position (thus eliminating the initial purpose to hire, namely the ability of the defendant to grow the plaintiff's business.) As such, the covenant is considered a fundamental term.
2. In order to be enforceable, a restrictive covenant must be reasonable and not contrary to the public interest. The covenant is within reasonable geographic limits (the firm's general area of business) and does not infer any negative impacts upon the public at large (as the industry is sufficiently competitive); it is therefore enforceable.

Legal Principles:

- Courts will void restrictive covenants unless the party enforcing the agreement can prove that it is reasonable and not contrary to the public interest
- Restrictive covenants must contain: (i) reason for restriction, (ii) scope of restriction (i.e.// which practices will be restricted); (iii) time limit, and (iv) geographic limit

Peacock V. Esquimalt & Nanaimo Railway Co.

Facts:

Plaintiff put up a deposit on a land purchase on behalf of a syndicate of buyers (Wessex Management, West Steel Corp, Darrell Brown, and Alan Parkin) from the defendants (Esquimalt & Nanaimo Railway Company.) As a condition of the purchase agreement, if the contract is breached the purchasers are entitled to a refund of deposit (net the necessary costs of clean-up.) A fire occurred which rendered the land non-manageable for the purchasers (a subsequent frustrating event,) thus discharging the contract. The plaintiff pursues a claim to the value of the deposit, claiming that an oral agreement between itself and the defendants obligates the firm to return the deposit in the event the purchase is not completed. The defendants claim the plaintiff has no privity to the contract (as a third party) and has no title to repayment of the deposit.

Issues:

1. Was the plaintiff a contracting party to the defendants for the purchase of property (subject to the balance of probabilities?)?
2. Are the defendants liable to the plaintiff for the amount of the deposit?

Decisions:

1. The plaintiff does not satisfy the court that he is a contracting party.
2. The defendants have no liability to directly repay the deposit to the plaintiff.

Reasons:

1. There is no established truth to the claim that an oral agreement existed between the plaintiff and the defendants. The signing over of the deposit obligation to the plaintiff acts as a creation of a contract between the purchasers and plaintiff (as the purchasers will be liable to repay the deposit if the purchase does not complete) but does not act to bring the plaintiff into the contract between purchaser and seller (in this case the defendants.)
2. Since the plaintiff is not a contracting party to the defendants, they have no financial or legal obligation in the courts to repay any charges that are components of the contractual agreement.

Legal Principles:

- Outsiders to a contract cannot enforce any promises made between contracting parties to which the outsider does not have privity
- To succeed in an action in contract law, the plaintiff MUST prove that he/she has privity [is a contractual party] to the agreement

Bank of Nova Scotia V. Rock Corp of Canada

Facts:

The defendant (The Rock Corp of Canada) drew a cheque on RBC payable to the order of Bruno Tessoni. Tessoni took the cheque to BNS and cashed it, without endorsing it in any way. By the time the cheque made its way to BNS, a stop order had been placed on the cheque and it was dishonoured. BNS claims that it was a "holder in due course due" to the provisions of the Bill of Exchange Act (s. 165[3]) and therefore is due the face value of the cheque from the drawer. Whether or not the bank is considered a holder in due course is the sole issue brought before the court.

Issues:

1. Is the Bank of Nova Scotia a "holder in due course" as specified in the Act?

Decisions:

1. The Bank of Nova Scotia is not a holder in due course

Reasons:

1. The relevant section of the Act, s. 163(5), states that: "where a cheque is delivered to a bank for deposit to the credit of a person and the bank credits him with the amount of the cheque, the bank acquires all the rights and powers of a holder in due course." Since the bank did not actively deposit the funds to the credit of Tessoni's account, or make any dealings with the subject's account whatsoever, the transaction in question does not infer such rights to the bank as specified in the Act. By not having the subject endorse the cheque in any manner when cashing it, the bank waived its rights to assume the role of a "holder in due course."

Legal Principles:

- The rights of a holder in due course (of a negotiable instrument) are superior to those of a regular assignee of contractual rights
- In order to receive these superior rights, the holder must satisfy the court that it has accepted an endorsed negotiable instrument from the designated payee and is completely ignorant of any stop payments or fraudulent causes of payment that would render the instrument void
- A bank may acquire the rights of a holder in due course if it meets all of the above conditions except endorsement, and in the absence of such endorsement credits the payee's account for the face value of the instrument

2203850 Nova Scotia Ltd. V. Sarkar

Facts:

The appellant (the Money Mart) brings an action against the respondent (Dr. Sarkar) that the respondent should be held liable for the face value of an instrument to which the appellant alleges he is a holder in due course of. The appellant effectively cashed a cheque post-dated by the respondent for a client of the Money Mart (for services rendered.) Prior to cashing, the respondent placed a stop payment for the amount at its financial institution, thereby dishonouring the cheque. In trial court, the adjudicator ruled that, in reference to "the Bank of Commerce v. Burman et al," the appellant was not a holder in due course since the instrument was post-dated at the time of cashing. The appellant brings this action to establish that it is in fact a holder in due course, and is subject to the appropriate equities provided by this role.

Issues:

1. Is the appellant (Money Mart) a holder in due course?
2. Does the appellant run the risk of countermanding (not receiving payment of funds) from the honouring of a post-dated instrument?

Decisions:

1. The appellant is found to be a holder in due course
2. The appellant shall not be countermanded and shall receive payment for the honouring of the instrument

Reasons:

1. A holder in due course must meet the necessary criteria, namely that it: (a) Became a holder prior to the complete and regular instrument becoming overdue and without notice of it being previously dishonoured; and (b) Took the bill in good faith at face value and had no notice of defect in the title of the person who negotiated it. Since post-dating a cheque does not render it less than complete or regular on its face, the action of the appellant do not bar it from being considered a "holder in due course."
2. A holder in due course has the right to enforce payment against all parties that are liable on the face of the bill. Since it was established that the appellant is in fact a holder in due course, they may enforce payment against the respondent and his financial institution unencumbered.

Legal Principles:

- A holder in due course acquires the rights of the payee without having to be concerned with the elements of the transaction for which the rights arose
- In the case of a holder in due course of a cheque, the drawer (writer of the cheque) cannot subsequently revoke the obligation provided by the instrument

Campbell Estate V. Peterson

Facts:

The plaintiff in this case is the estate of deceased parents (representing their orphan children) who were the innocent victims of a traffic accident. Originally, the plaintiffs filed an action against the driver of the truck (Mr. Peterson) that, due to a waste disposal bin falling from his truck and fatally injuring the defendant's parents, is alleged to be negligently liable for their deaths. This action is brought by the defendant to name the manufacturer of the bin (Universal Handling Equipment) partially liable for improper manufacturing, which allegedly resulted in the dislodging and falling of the bin (thus causing death.)

Issues:

1. Was the manufacturer of the bin negligent in their actions?
2. To what extent is the co-defendant liable for damages in tort?

Decisions:

1. The manufacturer is held to be negligent in their construction/installation of the subject disposal bin.
2. The manufacturer is 80% responsible for liability of damages in tort.

Reasons:

1. Due to the actions of the assembly workers to construct and install bins that did not conform to the engineering department's specifications, as well as an absence of appropriate standards for testing the bins to ensure their safety, the manufacturer is held negligently liable for their actions.
2. The risk Universal took in installing bins that are not properly configured for use in the truck, and which might not be detected by Mr. Peterson, is far greater than the risk Mr. Peterson took in assuming the bins were properly configured and fit for use. As such, Universal would have more reason to expect injuries to a third party as a result of their actions than Mr. Peterson, and should be held to be negligent to a proportionally greater extent.

Legal Principles:

- When a defendant is sued in negligence, they can attempt to establish a complete or partial defense based on negligence of a third party who can be joined as a co-defendant to the action
- If the plaintiff is successful in their action, damages will be apportioned based on the relative liability of each defendant in tort
- Third party negligence must be based on a breach of the party's "duty of care"; established only by proving: a) a breach of a reasonable standards; b) that the breach caused harm; and c) that the damages/harm were reasonably foreseeable

Hollis V. Dow Corning

Facts:

Ms. Hollis was prescribed plastic surgery from her doctor to correct breast defects she naturally developed. After the surgery, and as a result of her line of work, the implants ruptured within her body, causing the silicon capsule to become lost within her chest. Ms. Hollis brought an action before trial court indicted the manufacturer of the implants (Dow Corning), the surgeon who conducted the implants (Dr. Birch), and the surgeon who removed the ruptured remnants (Dr. Quayle), all on counts of negligence in tort. The trial judge found the firm liable for negligence, while all other parties were cleared of their respective convictions. In appeals court, this decision was overturned on the grounds that the rupture could not be casually connected to faulty manufacture; however, the court did find that the firm was negligent in its failure to inform a "learned intermediary" (in this case the surgeon.) Dow Corning brings this case to the Supreme Court as a final appeal to clear itself of negligent liability.

Issues:

1. Does a manufacturer have a liability to inform the end-user of risks inherit in the product when no direct communication link is expected?

Decisions:

1. The manufacture is ultimately liable to inform the end-user (or a learned intermediary where no such direct communication is possible) of all risks associated with the product.

Reasons:

1. Where the manufacturer cannot directly communicate with the consumer of the product, there is no manner in which to expect the customer will be fully aware with the risks associated with product usage. When the manufacturer has no liability to inform the administer/agent of the product, and they in turn have no source of information with which to warn the customer, the customer will have no recourse against damages resulting from using the product (as both parties can escape negligent liability.) Therefore, in the absence of a direct communication link between manufacturer and customer, the Supreme Court of Canada established a liability of the manufacturer to inform some "learned intermediary" that will administer the product.

Legal Principles:

- The responsibility of a manufacturer is to warn a learned intermediary of risks associated with the products usage where warnings are unlikely to reach the consumer directly

Rangen Inc. V. Deloitte & Touche

Facts:

The plaintiff provided aqua culture products to a fish farming business based on audited financial statements conducted by the defendant. Subsequently, the fish farming business defaulted on its trade credit, inflicting an economic loss on the plaintiff of several hundred thousand dollars. In trial court, the judge found that there was not an acceptable proximity of closeness between the defendant and plaintiff with which to establish a duty of care. The plaintiff brings this action to the appeal court claiming that such a duty of care should exist and be enforced against the defendant.

Issues:

1. Is there a substantial proximity of closeness between the defendant and plaintiff?
2. Should the defendants owe the plaintiff a duty of care, and be held liable for the plaintiff's purely economic losses.

Decisions:

1. There is no substantial proximity of closeness between the parties.
2. The defendants owe no duty of care to the plaintiff, and as such are not liable for the losses.

Reasons:

1. A substantial proximity exists where the defendant is aware of the parties that will make use of the information provided, or the precise purpose of the information when the names of the parties are not available. Since Deloitte & Touche could not reasonably foresee that the plaintiff would make use of the statements for this precise purpose, there is no substantial proximity established.
2. The main determinant of liability in cases of negligence causing purely economic losses is that a close proximity exists between the plaintiff and defendant. As discussed in (1), the facts of the case do not establish such proximity and thus do not provide awards for Rangen Inc. Given the case at hand, awarding damages to the plaintiff would constitute imposing liability of an indeterminate amount for an indeterminate time to an indeterminate class.

Legal Principles:

- An auditor's duty of care in cases of misstatement has been limited to those parties it can reasonably foresee will use the prepared statements, and only for those purposes the auditors expect the statements to be used for at the time of preparation (or more accurately the risks the auditors expect to incur.)
- Auditors do not owe a duty of care to any parties that the auditors do not expect to directly prepare the statements for

Hercules Managements Ltd. V. Ernst & Young

Facts:

The plaintiffs in this case were investors in a firm (Northguard Acceptance Limited, or NGA) that was regularly audited by the defendants. The plaintiffs used the audited financial statements provided by the defendants to guide their investment decisions, thereby leading them into investing in the firm before it went into receivership. The plaintiffs charge that the defendants negligently prepared the audited statements and as such should be held liable for the economic losses they suffered. This case is a summary judgment on the court's finding that the defendants weren't in fact liable for these damages.

Issues:

1. Is there a real or substantial relationship between the defendants and the plaintiffs (or were the auditors aware that the plaintiffs were using their audited statements)?
2. Do the defendants owe the plaintiffs a duty of care for the purposes in which the statements were used?

Decisions:

1. A real/substantial relationship exists between the auditors and Hercules Managements.
2. The defendants do not owe a duty of care to the plaintiffs for the purposes in which the audited statements were used.

Reasons:

1. It was earlier established that the defendants (E&Y) were well aware of the plaintiffs (Hercules Management) and were aware that the plaintiffs were making use of their audited financial statements. As such, a relationship between the two parties is implied.
2. The purpose of the audited financial statements was to provide investors with an overview of management's performance and suggestions for retaining or removing management from office. However, the purpose of the statements was never to guide investment decisions, and therefore no duty of care is established for this purpose of usage.

Legal Principles:

- Auditors owe the users of the statements they prepare a duty of care where the injured party makes use of the statements for the purpose in which the statements were prepared, and the auditors are aware of this party's usage prior to preparing the statements.
- When the users of the statements are not made apparent to the auditors prior to the audit being prepared, no duty of care is established for the auditors to the users.

Hodgkinson V. Simms and Waldman

Facts:

The plaintiff approached the defendant with the objective of receiving independent financial advice. After an initial consultation in which the plaintiff explained his circumstances and investment objectives, the defendant made the suggestion that Hodgkinson purchase a stake in "Multiple Urban Renewal Buildings" (or MURBs.) Subsequently, the real estate market collapsed, and the plaintiff lost a substantial portion of his investment funds ($350,507.62 in total.) What the plaintiff did not know at the time, however, was that the defendant also acted on behalf of the firm the plaintiff invested in. As such, the plaintiff argued, the defendant should be held liable for his damages suffered due to the breach of fiduciary duty. This is a summary judgment of the Supreme Court's finding that the defendant is in fact liable for breach of duty.

Issues:

1. Should the defendant's failure to disclose his relationship with the MURB firm constitute a breach of fiduciary duty?
2. If such a breach does exist, should the defendant be liable for the plaintiff's losses due to market movements?

Decisions:

1. The defendant is found guilty for a breach of fiduciary duty.
2. The defendant is ultimately liable for the losses suffered by the plaintiff.

Reasons:

1. The defendant went out of his way to represent himself as an **independent** advisor. Since the objective of the plaintiff was to secure independent advice, and his reliance on the defendant caused him to suffer harm, the defendant's actions constitute breach of fiduciary duty.
2. If the plaintiff were aware of the relationship between the defendant and the MURB firm, he would likely not have invested in this industry. As such, the losses suffered by the plaintiff were contingent upon the breach of fiduciary duty conducted by the defendants, and liability should be assigned accordingly.

Legal Principles:

- Advisors run the risk of liability where they try to marry the interests of two clients
- "Fiduciary Duty": Financial advisors are burdened with the duty to act in the best interests of their clients (specifically by avoiding "conflicts of interest")
- Breach of fiduciary duty exists where the plaintiff can establish a reliance was made upon the party giving advise, which lead to losses being suffered by the plaintiff

Douglas, Symes, and Brissenden V. CM Oliver & Co

Facts:

An employee of the defendant, Mr. Moss, solicited advice from the plaintiffs regarding how best to approach a legal matter. The defendant's firm was taken for a bath by a trading scheme in which the defendants lost some $800,000; Mr. Moss then inquired to the plaintiffs how they would proceed to recoup some of these losses. It is established that Mr. Moss is not an actual agent of the defendant's firm, and as such does not have the power to request services on behalf of CM Oliver. However, the solicitation of advice was given in the presence of an authorized officer who does have such authority to contract services. Therefore, the plaintiffs argue, apparent agency (or agency by estoppel) should be enforced to allow them to claim their bill for services from the defendant firm.

Issues:

1. Should an authority for Mr. Moss to contract on behalf of the defendant firm be implied?
2. Will CM Oliver be obligated to pay for the legal services?

Decisions:

1. An authority to contract on behalf of CM Oliver is implied.
2. The defendant is obligated to pay for the legal services.

Reasons:

1. Mr. Robson (the party with the authority to contract) attended the meeting between Mr. Moss and the plaintiffs with full knowledge of the purpose for the meeting. As such, Mr. Robson's attendance is taken to be a representation that Mr. Moss could retain the plaintiffs for services on behalf of CM Oliver.
2. Since there was no evidence that Mr. Moss, Mr. Robson, or the company did not have the capacity to properly retain the solicitors, the conditions for implying apparent authority are met. As such, CM Oliver inherits the obligations consistent with the contractual authority granted to Mr. Moss.

Legal Principles:

- A principal is liable for contracts made on its behalf by a representative if this agent was granted the powers to contract on the principal's behalf, or if it put the agent in a position where it appears to have such authority
- Apparent authority exists where the principal (knowingly or otherwise) creates the impression that the agent has the authority to act on its behalf

Lanz V. Lanz

Facts:

The plaintiff (Robert Lanz) associated himself with the business of his father, the defendant. After fifteen years working together, the pair had a falling out and left the business. The son's interest in the firm was a claim to 40% of the profits, with no obligation for debts and no clear title to assets. The son charges in this action that, since their arrangement was a partnership, he is entitled to an equal share in the returns of the business upon its dissolution in 1990. As a cause of action, he refers to income tax returns claiming the business as a partnership, and his father's reluctant acknowledgment that he "though it was a partnership."

Issues:

1. Should the firm be considered a partnership as described in "the Partnership Act?"
2. Is the plaintiff entitled to any past proceeds in the firm?

Decisions:

1. The firm will not be considered a partnership, as it does not meet the definition as described in "the Partnership Act."
2. Since the son is not considered a partner to the firm, he has no claim to the firm's past proceeds.

Reasons:

1. The plaintiff did not actively engage in any management of the firm, and made no more contribution than the driving of a truck in exchange for 40% profit compensation. As well, the plaintiff assumed no liability for the risks of the business and could not establish any title to any of the firm's assets. As such, the courts cannot imply that the plaintiff is a partner, as that would not meet the criteria of one who "carries on the business 'in common' with a view of making a profit.
2. The son received his fair share in compensation for his contributions to the business. Accounting records do not indicate that he made any financial contributions to the success of the firm, or roll back any of his earnings into its operations. As such, his compensation will be limited to that which he has received from the defendant.

Legal Principles:

- A partnership is essentially two or more persons acting in common for a business purpose with a view of making a profit
- The fact that owners of the business alone make comments indicating an individual is a partner will not make them a partner in the eyes of the court
- "The Partnership Act" incorporates not only profit sharing, but also joint risk taking (in debt obligations) and degree of managerial influence in its assessment of whether the firm is indeed a partnership

Foothills Dental Laboratory V. Naik & The Apple Dental Group

Facts:

This case centers on the definition of "partner" as it related to the relationship between the defendants and a third party ("Goldstein".) The agreement between the latter two parties was for the defendants (Naik, and the Apple Dental Group) to purchase Goldstein's dental practice, and retain Goldstein to continue services for his regular clients. As stated in section 3(f) of the purchase agreement, Naik would receive all laboratory fees and 60% of Goldstein's billings, with Goldstein to receive the balance in "net billings." Furthermore, representations made by Naik to the plaintiffs suggested all debts of Goldstein would be covered by the defendants should non-payment occur. Prior to the purchase of his practice, Goldstein developed a relationship with the plaintiffs whereby the plaintiff would conduct services on his behalf on credit. The association between Naik and Goldstein lasted until April 1994, at which point he left the Apple Dental Group. At this point, the outstanding balance on Goldstein's credit remained at $2,535.99, which the plaintiffs wish to recover in this action.

Issues:

1. Does the agreement between Naik and Goldstein constitute a partnership?
2. Did an apparent partnership exist in respect to the representations of Naik?
3. Will Naik be held liable for Goldstein's obligation to the plaintiffs?

Decisions:

1. The agreement is not considered an express partnership.
2. A partnership between Naik and Goldstein was implied through their representations.
3. Naik is found liable for the debts of Goldstein.

Reasons:

1. The agreement does not expressly provide that Goldstein and Naik would share in the profits of the Apple Dental Group, and is therefore not an express partnership.
2. Naik and Goldstein represented, on several occasions, that Naik would fulfill Goldstein's obligations should Goldstein not be able to make payments. As well, Naik had the power to persuade Goldstein to alter his predetermined payment method (of monthly Visa payments), thus implying that a significant relationship existed between the two beyond mere employer/employee. As such, a partnership relationship is implied in the Apple Dental Group.
3. As the courts inferred partnership status upon the Apple Dental Group, the business (and Naik as a joint partner) is held liable to fulfill the debts of the other partner, Goldstein.

Legal Principles:

- Each partner acts as an agent of the partnership and can thus bind the partnership in dealings with third parties (if partner appears to be carrying on business in "ordinary course")
- Verbal or other representations between the firm and another party suggesting that the firm is a partnership can convert the firm into an implied partnership, where all debts and obligations outstanding by one of the agents of the firm to the other party are automatically associated directly to the firm

Punjab Foods Centre Ltd V. Bailie

Facts:

The claimant (Punjab Foods) supplied goods to Tandoori Taj Restaurant, an incorporated company, for many years. During this relationship, a Mr. Bailie (the appellant) took over ownership of the corporation from its previous owner, Mr. Bill Tandoori Taj. Subsequent to this takeover, the owner (Bill Bailie) made one single payment to the supplier company, by way of personal cheque. As of February 1998, the restaurant closed and ceased operations; at this time the appellant had an outstanding balance of credit of $6,023.64 with the claimant. In trial court, the appellant was ordered to repay this credit balance for goods purchased, and this action was brought before the court to establish that the debt belongs to the corporation rather than to Mr. Bailie himself.

Issues:

1. Should the courts imply that Mr. Bailie acted on behalf of the corporation, and therefore not be made personally liable?

Decisions:

1. Mr. Bailie acted on his own behalf and therefore will be held personally liable.

Reasons:

1. It is the responsibility of Mr. Bailie to inform the claimant, Punjab Foods Centre Ltd., that he is making purchases on behalf of the company rather than for himself. Mr. Bailie made payments via personal (rather than corporate) cheque, and by not indicating that the debts belong to the company he bestowed the credit risk upon himself. Therefore, Mr. Bailie is made liable for all debts owing to the claimant.

Legal Principles:

- In order to avoid personal liability, the owner of a corporation must ensure the corporate name is used in connection with all business dealings
- The corporate form of business ownership is legally advantageous because the owner’s liability is limited to their investment in the firm, and creditors to the corporation have no claim to the owners’ assets in bankruptcy/default

Universal Property Management V. Westmount

Facts:

A third party to this action, Centennial Management Ltd., maintained a debt obligation outstanding with the defendant that had yet to be repaid. Patrick Copeland (a co-defendant) owned a majority stake in the defendant firm (Westmount Windows and Door Ltd.) At one meeting between managers of these two firms, Copeland was offered a sum from a third party (the plaintiff, Universal Property) as an assignment of the debt owed by Centennial. The reason that this offer was made was in large part due to the closeness of Universal and Centennial, with the owners of both firms being from the same family. The defendant declined to accept this offer, and continued to hold Centennial's debts on its ledger without conducting any business with the plaintiff. By mistake, the plaintiff sent a cheque to the defendant meant for another firm, "Westmount Draperies", totaling $30,635.41. The defendant's accountants immediately applied the funds to the credit of Centennial's account (which at that time stood at $20,154.46) for which they assumed the funds were meant for. When the plaintiff firm informed Copeland that the funds were sent in error, Copeland refused to repay the funds to Universal. This action is brought by Universal to seek remittance of funds by Westmount for the $30,635.41, along with punitive damages to Copeland for his disregard in refusing to repay the balance.

Issues:

1. Is Westmount liable to return the funds to Universal?
2. Should Copeland be held liable for punitive damages based on his actions?

Decisions:

1. Westmount is liable, and is ordered to remit the funds to Universal.
2. Copeland reacted in a reasonable manner, and thus should not be charged with punitive damages.

Reasons:

1. The offer to extinguish Centennial's debt by the plaintiff was never accepted by the defendant, and thus the defendant should not have expected that funds sent by the plaintiff should be applied to the Centennial account. Furthermore, since the amount of the cheque bore no resemblance to the balance owing from Centennial, the courts will not imply a claim by the defendant to the balance of the funds. As such, Westmount is liable to remit all funds to the plaintiff.
2. A reasonable bystander would expect (given the extenuating circumstances of the case) that Copeland would react in a similar manner to that which he had. Given the poor credit quality of Centennial, and the request of the plaintiff's management to provide funds on Centennial's behalf, Mr. Copeland should be expected to hold onto the funds until the matter was formerly determined. As such, the courts will not charge Copeland with any counts of fraud or unconscionability, and accordingly no punitive damages are awarded.

Legal Principles:

- Shareholders of a corporation are not liable for the company's debts or obligations, with the exception that shareholders may be ordered to repay the firm's obligations (known as "lifting the corporate veil") where some form of fraud or unconscionability is committed by this shareholder