

MARIO NARGI

BUSINESS AND COMPANY LAW

LEVEL 4

20 CREDIT POINTS

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Problem 1:

947 words

Alfie and the Local Garage

Intro:

Alfie needs a garage for a new clutch. For Alfie to know to take his car to this garage there must have been an invitation to treat by an advert of some sort displaying what the garage undertakes. Alfie decided to go in, he asked the garage to fix his car, an offer is on the table, the garage person accepts to fix the car and in return for the work of a new clutch, a sum of £400 is to be paid.

The first importance is establishing that a valid contract has been made between the two parties, Alfie and Garage.

These two parties have committed themselves to carry out specific terms; these are discussed when bringing the car into the garage. The garage has agreed to install a new clutch in the Jaguar XK8, and Alfie has agreed to pay the price given to him of £400. Alfie leaves the car, he has accepted the deal. It is later confirmed by paying the sum of money, even though the amount to be paid increases.

Usually when taking a car into a garage and leaving it to be repaired, a written contract is rarely, if ever drafted together. This is because the procedure is a common one and happens many times a day; it would be impractical to perform this everytime. A substitute for this however is in the form of an oral contract, which is evident in the case of Alfie and the local garage. This is legally binding, just as is a written contract. If problems arise, sometimes oral contracts are harder to prove what was said when or

how, but in this case, it is straightforward that the car was being left to be fixed, the fix being a new clutch.

Legal relations have been intended as soon as the offer was accepted.

Terms:

Alfie has **Express** terms in the contract which are basically as follows:

- 1/ that upon leaving the car for repair to be carried out, a new clutch would be fitted
- 2/ a sum of money would be paid for the work carried out

These two terms should be adhered to.

There are terms in the contract which are not written or verbally communicated, but as a general rule, one would expect the following terms to be always applied when taking a car in for a replacement part. These **Implied** terms are as follows:

- 1/ that when requesting a replacement clutch is this instance that the correct model of clutch would be fitted appropriate to the car

Having broken down later that evening, the clutch fitted was for a different model and the car has now sustained further damage. Alfie must look to be compensated for the repair work as not only has the 2nd hand clutch which was meant to be brand new broken, but other parts of the car have been damaged as a result of this malpractice.

Appeal Grounds:

The Supply of Goods and Services Act 1982, states that where the suppliers are acting as a business (the garage) they will exercise reasonable skill and care in carrying out the service required. So, if a new clutch is fitted then you can be expected to receive a fully working clutch, correct model as well (providing all else affecting its operation are in order). The garage fixing Alfie's car is in breach of **Section 13** of this act.

The Sales of Good Act Section 13(3), ensures to Alfie that the clutch which is to be fitted is reasonably fit for the purpose for which it is intended. It should be compatible with the model XK8 of a Jaguar. With a second hand clutch bound to have existing 'wear and tear', this has not been adhered to and is unacceptable.

Alfie may relate to this Act because a sum of money has changed hands for a product and he is not duly satisfied.

Similarly under **Section 14(2) (3)** the quality of the clutch is not durable enough as it is second hand. This act states it should be durable for its purpose. Having lasted only a few hours then this criterion has not been met. Should the clutch have lasted a fair while longer and then break, the durability being used as a fault could have been questioned as it lasted a long time, but this is not the case.

Remedies:

The expressed terms that money is paid for a clutch to be installed in working order, which turns out didn't work for long and was second hand, allows Alfie to pursue legal action for breach of contractual obligation and request a court for some form of remedy.

Alfie can now make an attempt to sue the garage for damages so he is compensated. The main legal remedy which might be imposed is where the court orders the garage to pay damages to Alfie.

Case of **Hadley v Baxendale**, this rule means Alfie could claim for loss arising naturally as a result of breach of contract. Other parts of his car suffered as a result of the careless installing of the wrong clutch. This would be a reasonable claim as Alfie cannot be expected to pay for other damages which were not already in existence until it had been through carelessness and negligence of the installer.

A claim for time off work or other things may be unreasonable as in this instance a car could be hired for work purposes and then the cost of hiring the car could be claimed for rather than anytime off work resulting in loss of earnings. As Alfie isn't physically injured then this would be the best way of claiming on that.

Problem 2

1219 words

Kat and Drinks Manufacturer

Intro:

Kat must consider all the information she has and the events which took place, before deciding the best avenue to go down to bring a case forward to seek compensation for her illness and loss of earnings. It would only be suitable to bring forward a case against Alfie if it can be proved that Alfie is in charge of the bottling of the product and if so the conditions of bottling must be discovered, otherwise, if this process was out of his responsibility then Kat only has grounds to make a claim against the public house for the cost of the drink (which is easily dealt with). Previous case law regarding **Donoghue v Stevenson (1932)**, the drinks contents wasn't the fault of the public house, but of the manufacturers. Alfie couldn't be expected to examine the bottle thoroughly. He would take it on trust that the contents of the bottle were to be as expected from a liquid drink.

Terms:

Kat has **Express** terms in the contract which are basically as follows:

1/ she will purchase an alcopop drink for a sum of money

There are **Implied** terms in the contract which are not stated but it would be expected:

1/ that the alcopop drink doesn't do anything other than what's it's meant to, i.e., it shouldn't make her ill (unless it makes her drowsy due to excessive drinking)

Appeal Grounds:

Alfie should be excluded of liability as the fault will most definitely lie with the drink manufacturers.

Negligence may have occurred here, this will need to be addressed as to whether the drinks manufacturer will be claimed against for negligence, breaching a duty of care, or both. **Payn** would say that *“a person is negligent when he or she fails to act like the standard "ordinary reasonable person". Of course the critical issue in many cases is just how an "ordinary, reasonable person" was expected to act in the particular situation that caused the injury”*

Kat must discover whether a breach of duty of care exists. The test for this arose from the case of ***Donoghue v Stevenson (1932)*** in which, according **Lord Atkins’s**, “you must take reasonable care to avoid acts and omissions which could reasonably foresee would be likely to injure your neighbour. This neighbour is anyone who could potential consume the beverage”

Negligence may not be able to be brought forward with a strong enough case for it to be accepted that a claim for a quantifiable loss due to physical injury to Kat. It may however, be proved that the bottle company are in a breach of duty to care for all potential consumers.

The typical tort of the law that could relate to this problem (as outlined at **law.freeadvice.com**) of *Kat v Drinks Manufacturer*, would look to establish the following:

- (1). The existence of a legal duty owed by a person to others
- (2) The breach of the duty by one person (negligence)
- (3) The breach of the duty being the "proximate cause" of damages suffered by a person
- (4) Damages incurred by a person

The legal duty of care is that the drinks company should be providing this care to all potential consumers. They should be expected to provide exactly what is described when the product is purchased. This right is stated in **The Sales of Goods Act 1979 s13**, in the case of the alcopop, Kat relies on the description of the drink given on the bottle, sale by description, that the drink is of 'x' flavour and of 'x' units. No other hidden bodies (snail) which are not mentioned would be expected in the bottle.

If the bottle said that there was a decomposed snail in it then that's acceptable, however this is not on the bottle. **Ashington Piggeries Ltd v Christopher Hill Ltd (1972)**, finds the question whether goods correspond to their description is a test of merchantable character, **s14(6)** of merchantable quality if fit for the purpose of which the good is usually bought. Kat bought a beverage to consume, this isn't safely consumable. The drinks manufacturer is in breach of the act and is liable for this breach; however, the effects are not only a replacement drink anymore.

If duty of care is to be the case, then causation needs to be established. This is Kats time off from work and illness, which has been derived from the decomposed snail which needed her to seek medical attention. If she had not consumed the snail, then Kat more likely than not wouldn't have needed any medical attention or needed time off work suffering illness by simply consuming an alcopop.

The drinks company should be liable for damages which are reasonably foreseeable, using *Wagon Mound No 1 (1961)*, that the effects of one party to the other relates to the foreseeable possibilities, Kat ate a decomposed snail could result in some form of illness which in turn leads to medical attention. A natural follow on when medical attention is needed, time of work becomes a possibility. Finally, loss of earnings for the period of time away from work is incurred. This is not always an affordable position to be put in, especially at the fault of another party.

Kat has become ill through the fault of the drinks company; Kat could now proceed in bringing an action of legal proceedings with all the necessary evidence and understandings collected to make a case for compensation.

Possible avenues to seek compensation on are as follows :

1/ medical expenses (this may include any doctor fees, prescription fees and hospital costing)

2/ loss of earnings (earnings she would have received should she have been able to work for the period of time that she has been out of work due to the illness suffered)

3/ pain and suffering (compensation for the hurt that Kat has been caused to endure as a result)

Remedies:

A remedy is orders which the court will make the offending party carry out. It can be in the form of a monetary payout, they may be asked to carry out the contractual obligations or to put the injured party back into the position they were before they became involved with each other.

It may be that Kat could claim compensatory damages. These can cover all economic losses which are incurred by the consumption of the decomposed snail. These could include future medical expenses if the illness proves to be more harmful and longer lasting.

A claim for a loss of earnings that Kat would have earned for the duration of time spent off from work and any future earnings which she cannot earn due to the illness, maybe to attend check ups or continued support.

Away from economic losses, Kat could try to claim for non-economic losses such as the pain and suffering that she has been caused and the continued pain and suffering she might endure. Emotional distress and discomfort anguish and the long lasting effect of not enjoying the social aspect of drinking with friends when she goes out could be a factor. She may always wonder what lies in the bottom of her next alcopop and can't enjoy her self as a shadow of worry could forever hang over her. She may be compensated for having to deal with this feeling all the time.

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Table of Statutes

The Sales of Goods Act 1979

The Sale and Supply of Goods Act 1994

Unfair Contract Terms Act 1977

Further Reading

Appeal Cases

Cases and Materials on the English Legal System

Casebook on Tort

Industrial Relations Law Reports

King's Bench Division

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