[redacted] Business & Employment Law Coursework 1

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Question 1.1 Asad's potential liability to Poppy. (10 marks)

The issue is determining if a contract has been formed. Classification on whether a painting in a shop window is an invitation to treat (ITT) or an offer is essential.

ITT's are incapable of acceptance, but may open negotiations for offers.[1] Contracts are legally binding agreements between two parties formed verbally, through conduct or writing.[2] Agreements require matching offer and acceptance. [3]

Fisher v Bell established goods displayed in shops are generally invitations to treat.[4] Shopkeepers are not contractually bound to sell an item that a customer wishes to purchase.[5] Here, the painting was displayed in the window; therefore it was merely an ITT.

Asad has no liability to Poppy as no contract was formed.

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[1] Ewan MacIntyre, *Essentials of Business Law* (5th edn, Pearson 2015) 66.
[2] Lucy Jones, *Introduction to Business Law* (3rd edn, OUP 2015) 92.
[3] Ewan MacIntyre, *Essentials of Business Law* (5th edn, Pearson 2015) 78-79.
[4] *Fisher v Bell* [1961] 1 Q.B. 394; [1960] 3 W.L.R. 919.
[5] *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 Q.B. 401; [1953] 2 W.L.R. 427.

Question 1.2 Lovely Lighting Ltd's liability to Asad. (40 marks)

This answer will evaluate Lovely Lighting Ltd's (LLL) liability to Asad through examination of their exemption clause.

Firstly, Asad received an incorrect sign with the wrong name. The Sale of Goods Act 1979 (SOGA) implies terms into contracts. s.13 states if the good was purchased based on description the good should correspond.[6] Here, the sign was to be tailored to include "Artybarti", it is unreasonable to be wrong. *Beale v Taylor* established that if the good does not match description the seller is liable.[7] However, where many factors influence the decision the seller will not be liable.[8] Asad based his decision only on the sign containing his shops name. Due to this, LLL will be liable.

Secondly, the sign was unfit for purpose. s.14 SOGA states goods must be of satisfactory quality and fit for purpose.[9] *Ward v MGM Marine Ltd* established a link between poor quality and fitness for purpose when a defective engine was installed into a boat causing an explosion.[10] Here, the sign was dangerous and caused a fire damaging Asad's shop. A reasonable man would not expect this and find it unsatisfactory, thus LLL are in breach.

The next issue is whether LLL can rely on their exemption clause. Clauses must be incorporated, constructed and comply with legislation to be rendered effective.[11]

Asad signed the contract without acknowledging the clause, which excluded liability for statutory implied terms imposed by SOGA. Successful clauses must be incorporated. Established in *Chapelton v Barry DC* clauses must be within contractual documents.[12] *L'Estrange v Graucob* developed the general rule that regardless of the contract being read, if signed, the contract is valid.[13] Here, Asad did not read before signing but is still legally bound by the term present in the contractual document. Thus satisfying these principals.

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[6] Sale of Goods Act 1979, s 13.
[7] *Beale v Taylor* [1967] 1 W.L.R. 1193; [1967] 3 All E.R. 253; (1967) 111 S.J. 668.
[8] *Harlingdon and Leinster Enterprises Ltd v Christopher Hull Fine Art Ltd* [1991] 1 Q.B. 564; [1990] 3 W.L.R. 13; [1990] 1 All E.R. 737.
[9] Sale of Goods Act 1979, s 14.
[10] *Ward v MGM Marine Ltd* [2012] EWHC 4093 (QB).
[11] Lucy Jones, *Introduction to Business Law* (3rd edn, OUP 2015) 168.
[12] *Chapelton v Barry Urban DC* [1940] 1 K.B. 532; [1940] 1 All E.R. 356.
[13] *L'Estrange v F Graucob Ltd* [1934] 2 K.B. 394.

LLL's clause is broad and excludes numerous implied terms. The second criteria is the clause must be constructed. The language used must be clear and unambiguous. In *Hollier v Rambler* the clause did not satisfy this, the Court used *contra preferentem* ruling against the party seeking reliance on the term.[14] LLL's term is drafted widely, but *Photo Production Ltd v Securicor Transport Ltd* established widely drafted terms are effective.[15] Concluding LLL's clause may be found valid.

The final requirement involves compliance with legislation. Unfair Contract Terms Act 1977 (UCTA) and Unfair Terms in Consumer Contracts Regulations 1999 govern exemption clauses.[16] [17] UCTA seeks to declare clauses void or valid if reasonable. S.6(1A) states a party cannot exclude liability for breaching statutory implied terms unless the exclusion clause satisfies the reasonableness test.[18] Here, LLL are trying to do just this, so an assessment is critical.

Schedule 2 and s.11 UCTA provide guidelines on reasonableness assessments.[19] [20] One principle is, did the customer know about the term. The Court would evaluate similar firms to determine if it is common to include this term. If not, Asad should have been informed. But, for a company specialising in tailored, unique, one-off lighting it is unreasonable to exclude liability. From evaluating the criteria it is clear LLL's term would be rendered void.

The next issue is whether damage to Asad's shop was too remote. *Hadley v Baxendale* established two rules.[21] First, damages must be due for losses arising naturally from the breach. Second, special damages are awarded where both parties are aware of special circumstances. Applying the first rule it is plausible an electrical sign may cause a fire. Losses arising naturally may span to loss of stock and damages to the shop. Law also states the claimant has a duty to mitigate his losses. Asad used a fire extinguisher but this may be deemed inappropriate; a shop

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[14] *Hollier v Rambler Motors (AMC) Ltd* [1972] 2 Q.B. 71; [1972] 2 W.L.R. 401; [1972] 1 All E.R. 399.
[15] *Photo Production Ltd v Securicor Transport Ltd* [1980] A.C. 827; [1980] 2 W.L.R. 283.
[16] Unfair Contract Terms Act 1977.
[17] Unfair Terms in Consumer Contracts Regulations 1999
[18] Unfair Contract Terms Act 1977, s 6(1A).
[19] Unfair Contract Terms Act 1977, s 11.
[20] Unfair Contract Terms Act 1977, Schedule 2.
[21] *Hadley v Baxendale* 156 E.R. 145; (1854) 9 Ex. 341.

specialising in valuable paintings should have adequate insurance. The second rule does not apply as the sign held no special purpose. Taking a critical viewpoint, Lord Reid notably said, "different interpretations of the rule have been adopted by judges at different times".[22] This test is old, which questions has this test outlived its usefulness.[23] As it is still effective, damages will be recoverable under the first rule.

This concludes the legal position for Asad is to seek damages for the losses occurred that flowed naturally from the breach. LLL's legal position is weaker due to their ineffective exemption clause. They may be able to seek defence regarding Asad's lack of insurance.

[22] *Koufos v C Czarnikow Ltd (The Heron II)* [1969] 1 A.C. 350; [1967] 3 W.L.R. 1491.
[23] Remoteness of damage in contract revisited, Parker Hood, ELR 1996, 127-135.

Question 2 Advise Jasmine on any tortious claims she may have against Joe. (50 marks)

This answer will assess tortious claims Jasmine may have against Joe. Three elements are needed to successfully bring a tortious claim of negligence, these will be examined in turn.

The first element is to formulate if Joe owed Jasmine a duty of care. This is known as the neighbour principle established in *Donoghue v Stevenson*.[24] It is generally accepted road users owe a duty of care to other users.[25] Both parties were using the road amid the collision, thus a duty was present. If the Court had doubt they would apply a three-stage test developed in *Caparo v Dickman*.[26]

At the time of the accident Joe was driving the bus as part of his employment. Joe committed a tort, which means his employers could also be liable under vicarious liability principles shown in *Rose v South East London and Kent Bus Company*.[27] This means the bus company would be jointly and severally liable. This concludes a duty of care was owed.

The second element is whether Joe has breached this duty. *Blyth v Birmingham Waterworks Company* shows this is broken if the defendant has failed to show a standard of care that would be expected of a reasonable man.[28] The Highway Code recognises the vulnerability of cyclists.[29] Interestingly, Judge Mackie stated, "any breach of the Highway Code is relevant but not determinative".[30] [31] This means although breaches occur, this may not be applicable in Court. Here we can assume a reasonable man driving a long vehicle would be particularly vigilant when emerging onto a road, thus this is breached.

[24] *Donoghue v Stevenson* [1932] A.C. 562; 1932 S.C. (H.L.) 31; 1932 S.L.T. 317.
[25] *Boss v Litton* 172 E.R. 1030; (1832) 5 Car. & P. 407.
[26] *Caparo Industries Plc v Dickman* [1990] 2 A.C. 605; [1990] 2 W.L.R. 358; [1990] 1 All E.R. 568.
[27] *Rose v South East London and Kent Bus Co Ltd* [2004] EWHC 1106 (Qb) 2004 WL 741891.
[28] *Blyth v Birmingham Waterworks Co* 156 E.R. 1047; (1856) 11 Ex. 781.
[29] Highway Code Rules, ss 211-s 213.
[30] *Wakeling v McDonagh* [2007] EWHC 1201 (QB).
[31] Road Traffic Act 1988, s 38(7).

Miller v Jackson and *Bolton v Stone* developed the principle that where high risk is present further precautions should be taken.[32] [33] Joe was moving off from a stationary position. It is highly probable other vehicles would be passing, he should have forethought to make people aware of his planned manoeuvres. Thus proving Joes negligent behavior, has breached the duty of care.

The final element is establishing clear causation. The "but for" test assesses casual links between the breach and damages suffered.[34] Here, the accident would not have occurred but for Joes emergence without indication.

The *Wagon Mound* principle assesses if losses are too remote to be recoverable, stating the kind of damage must be reasonably foreseeable.[35] Possessions damaged would be accountable to the accident. Jasmines severe injuries would not be as she suffered far more injuries than an ordinary person due to medical conditions.
The *Thin Skull rule* is an exemption to this rule, stating the defendant must take his victim as found.[36] Joe did not intend to cause such severe injuries, yet he will be fully liable despite a normal person not suffering as greatly.

Joe may argue at the time of the accident Jasmine wore headphones, which could have contributed due to her lack of awareness. This means, it may be unreasonable for Joe to be held fully liable for all injuries incurred. Law Reform Contributory Negligence Act 1945 sets out where a claimant has suffered partly through their own negligence coupled with the defendants, damages will be reduced.[37] As demonstrated in *Froom v Butcher* due to the party not wearing a seatbelt more injuries were sustained.[38] Also *Clenshaw v Tanner*, which found both claimant and defendant had both equally contributed to the accident.[39] In both instants the Court balanced damages accordingly.

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[32] *Miller v Jackson* [1977] Q.B. 966; [1977] 3 W.L.R. 20; [1977] 3 All E.R. 338.
[33] *Bolton v Stone* [1951] A.C. 850; [1951] 1 All E.R. 1078; [1951] 1 T.L.R. 977; 50 L.G.R. 32.
[34] John Cooke, *Law of Tort* (12th edn, Harlow 2015) 168.
[35] *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co (The Wagon Mound)* [1961] A.C. 388; [1961] 2 W.L.R. 126; [1961] 1 All E.R. 404.
[36] *Smith v Leech Brain & Co* [1962] 2 Q.B. 405; [1962] 2 W.L.R. 148.
[37] Law Reform Contributory Negligence Act 1945.
[38] *Froom v Butcher* [1976] Q.B. 286; [1975] 3 W.L.R. 379; [1975] 3 All E.R. 520.
[39] *Clenshaw v Tanner* [2002] EWCA Civ 1848.

In *Hickman v London Central Bus Co* the driver was held more culpable as he was controlling a potentially dangerous weapon.[40] Joe was driving a large vehicle with potential to do serious harm. CTC, a national cyclist charity, want "presumed liability" introduced; this involves the defendant being presumed at fault unless they can prove otherwise.[41] The UK is one of five countries within Europe that has not adopted this.[42]

This answer concludes Joe is fully liable for the accident but may take defence due to Jasmine wearing headphones. Jasmines legal position is she can claim for ordinary damages for the suffering caused and special damages for her possessions.

[40] *Hickman v London Central Bus Co* Ltd [2013] EWHC 1703 (QB).
[41] Liability issues in cycling claims: a comparative analysis of civil liability in European jurisdictions, Paul Kitson, JPI Law 2014, 242-250.
[42] Liability issues in cycling claims: a comparative analysis of civil liability in European jurisdictions, Paul Kitson, JPI Law 2014, 242-250.

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