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Title: Commercial Law

Name of Author	WSU's student
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Question 1:

Issue:

Should Mary arrange the tables and chairs, which have been told after disclosing the actual arrangements?

Law:

Under the Australian Consumer Law (ACL), it protects the interest of consumers of goods, services and land against unfair practices of traders, misleading or deceptive conducts, and specific false representation and provides enough remedies to protect the consumer in the event of breach of the ACL (Gibson and Fraser, 2012). In terms of prohibition of misleading or deceptive conduct, three factors must be recognized before concluding a contravention, which are 'conduct', 'the activity of trade or commerce' and a must of misleading or deceptive conduct, which is determined by an objective test of whether a reasonable person would be misled or deceived.

First, to explain what conduct means in ACL, it is the term, which is related to 'doing', refusing to do or any positive statements by sellers of goods or services. Additionally, it includes statement of opinion, puffs, broken promises, statements that are literally true, pre-contractual statements or silence.

To illustrate the conduct of silence, the case 'Henjo Investments Pty & Ors v Collins Marrickville Pty Ltd (1988)' was one of the outstanding cases. In this case, the vendor was disclosing merely a part of the actual situation and kept silence about the official number of seats approved. Consequently, the buyer made a wrong conclusion. This case has reflected the conclusion of silence, which can constitute misleading or deceptive conduct.

Application:

In this case, Mary is a consumer who bought a café shop; therefore, as discussed above, ACL, which can be applied in this case, is the misleading or deceptive conduct. As Mary counted before entering the contract, there

were twelve tables each with four chairs inside the café and six tables each with two chairs outside. However, AceX Pty Ltd did not tell Mary that the local council had not approved the tables and chairs on the footpath. This action leads to misleading or deceptive conduct of Mary. AceX Pty Ltd kept the silence, which constitutes the misleading conduct

Conclusion:

Because of the action of silence from AceX Pty Ltd, it leads to misleading conduct of Mary. This duty to disclose is not negated only because the inquiries would have disclosed the truth of arrangement of tables and chairs on the footpath.

Question 2:

Issue:

- i) Can Josh take any action against Cathy under partnership law?
- ii) Is Cathy liable for the debts of the partnership business with Josh?

Law:

A partnership is the relationship between people who carry on business in common with a view of making profit. This can be divided in three factors, which must be present altogether: Carrying on a business, Carrying on a business in common, and Carrying on a business with a view to making a profit.

In order to decide whether the partnership exists or not, all situations must be studied carefully. Firstly, intention must be considered. Secondly, sharing of profits and losses must be accompanied by state of agency. And finally, each party has their voice in the terms of management.

Taking liability of partners into consideration, under contract law, each partner is liable collectively for all debts and contractual obligations of the firm with the other partners. One more element needs to be concerned is

dissolution. The partnership is dissolved by the expiration of a fixed term; entering into for a single undertaking by termination of the undertaking; or entering into for an un-defined but giving notice by any partner (Gibson and Fraser, 2012)

Application:

As discussed above, in this case, the partnership was established because it met the requirements of existing partnership. Josh and Mary had an intention, then they had the sharing of profits and losses, and after that, they had voices in management although both of them made a big argument about who run the business. Therefore, they had to have contractual obligations for each other including liability of all debts. However, Cathy stepped out the business and opened her own business to compete with Josh on purpose. In this situation, she dissolved the partnership but under the contract law, she has to give a notice to her partner but she did not.

Conclusion:

As can be seen from the facts, there are enough evidences for Josh to sue Cathy under the partnership law and Cathy is liable for all debts with Josh under the partnership business.

Question 3

1. Explain the essential elements for a valid simple contract.

A contract can be referred to as a consideration between two or more parties wherein there is an intention of pursuing an agreement within the legal rights and obligations that both parties shall be enforceable with a court of law. In order to establish a valid simple contract, there are three essential elements to be taken into account, which are Agreement, Intention and Consideration (Gibson and Fraser, 2013). These three terms should always be asked before considering a contract: Was there an agreement between parties? Was there an intention to contract? And was there consideration? To be precise: An

agreement refers to involvement of a negotiating process between parties that traditionally contains an offer and acceptance. An intention refers to the purpose of agreeing to conduct a legally binding contract under the provision of law. Last, a consideration can be defined as an essential element wherein a value is determined and given by both parties to be able to enter a contract that will result in an agreement performed by the promisor and promisee.

2. **Issue:** Whether Doug has a binding contract for the sale of 'Gumleaves' with John.

Law:

As stated above, (Gibson and Fraser 2013) there needs to be three essential parts present to be able to conclude that a contract is valid. They are agreement, intention and, consideration. If the criteria of having all requirements are not met, it cannot be considered a contract under the provisions of the Commonwealth Law.

In order to conduct a contract, a minimum of two parties should be involved who will represent the "offeror," and another the "offeree." An offer will be conducted, together with acceptance. Followed by the intention of purchasing, and last, consideration being present. If everything is met, then it will be determined that an agreement is reached thus, satisfying the three essential requirements for a contract.

Application:

In application to the law (Gibson and Fraser 2013) the three requirements must be reached in order to have a contract. Taking the case *Masters v Cameron* (1954) 91 CLR 353 as an example, the high court held that the agreement was not in its final form as it had to be acceptable to Cameron's solicitors. Therefore there was no intention to be immediately bound, and so there was no contract in existence and Masters was entitled to the return of his deposit. Regarding the issue of Doug representing the offeree and, John the offeror, it is mentioned that Doug is selling his house to the public. Interested,

John contacted Doug to make an offer of \$ 1,500,000 in cash. Upon receiving this offer, Doug accepted. This concludes that Doug and John had in fact reached an agreement on the price of the house. However, John suddenly decided to withdraw the offer and would not proceed in purchasing the house anymore, terminating the previous agreement made earlier. Even though, there was an agreement on the price, John did not intend to create a legal relation to buy the house after receiving the respond from Doug. Therefore, there are insufficient requirements to be able to officially bind a contract under the provisions of law.

Conclusion:

This concludes that there is no simple valid contract between John and Doug because as stated, the agreement between the parties did not satisfy the completion of having the essential requirements of conducting a contract. So Doug does not have a binding contract with John for the sale of 'Gumleaves'.

3. **Issue:** Whether Doug has a binding contract for the sale of 'Gumleaves' with Bob.

Law:

A contract can be formed as valid based on three essential criteria, which are Agreement, Intention and Consideration (Gibson and Fraser, 2013). This traditional approach of forming a valid contract must occur between two or more parties, in order to make it become an enforceable agreement. Agreement is the result of negotiations between parties, which are the offeror, and the offeree. It can be formed when the offeree with exact correlations accepts the offer made by the offeror. However, agreement does not reach the final step, it can be recognized in this case *Tinn v Hoffman & Co* (1873) 29 LT 271. In this case, the defendant refused to sell the product to the plaintiff after several negotiation processes and at the same time that the price of product has gone up in the market. The court's decision over this case was that when a contract conducted between two parties, a promise made by one in consideration of the promise made by the other is an exchange of promise

present thus, is considered in fact a contract. Hence, if only one party disregarding the other and/or not including the other party's knowledge makes the promise, it is concluded that this agreement is not considered to be an acceptance.

Application:

As mentioned above, an agreement can be formed when there is an acceptance to an offer from the offeree to the offeror, respectively. Followed by intention and consideration. Take the case of *Ebenezer Mining Co P/L v Judith Seppanen & Anor* (2003) QSC 62 as an example, the Queensland Supreme Court held that the parties failed to reach agreement on the sale of the bentonite. There was neither a definitive offer, nor an unqualified acceptance in the correspondence. Commenting that there was nothing more than a process of negotiation, which had failed to achieve a consensus. Applying this to the case of Doug and Bob, Bob made an offer to Doug and Doug responded back that he was prepared to accept the price; however, he was asking for more information about the payment. So in this case, Doug has not established any formal agreement toward Bob's offer. In this way, there is no agreement between Doug and Bob thus, Doug has the right to reject the offer.

Conclusion:

Since there is no agreement between Doug and Bob negotiation, Doug does not have a binding contract with Bob for the sale of 'Gumleaves'.

Reference:

- Gibson, A & Fraser, D 2013, *Business Law*, 7th edn, Pearson.