BUSINESS LAW

NAME

INTRODUCTION

A contract can be defined as a voluntary accord between two or more entities or individuals that a court will execute. The obligations and rights by a contract would be relevant only to the involved parties (those who have accepted the contract) only. A contract can also be termed as a promise or agreement between two groups or individuals that wish to be lawfully bound and can be executed by the court. A contract can be in both forms written as well as oral. Oral contracts are made frequently by people. Every time a person purchases something such as a ticket to watch cinema, that individual is making a contract. Specific features segregate a non-legal agreement from an obligatory (binding) contract. Following are the major elements of a contract:

- Offer
- Acceptance
- Consideration
- Certainty of terms

As the term suggests, a written contract is an agreement whose words have been decreased to writing. They are also generally signed or accepted. A written contract, however, may comprise of an exchange of communication, a letter prepared by the promisee and agreed by the promisor devoid of signature or a memo or printed text not signed by any group. Statutes pertaining to written contracts are mostly particularly limited to agreements signed by both or any one group. Whether such a restriction can be entailed when not open depends on the aim and the background. Groups or individuals mostly have long negotiations prior they write the final contract. Several pledges and accounts are created and based on during these negotiations. It becomes important to integrate all critical elements and pledges into the final contract. If a dispute arises later about the results in the proceedings regarding the written contract, the judiciary is not likely to permit group to show

proof of pledges or accounts that are not expressed in the written contract. This paper will discuss the given statement of whether Australian courts should not provide remedies for failure to fulfil verbal promises made during contract negotiations, unless those promises are included in the written contract.

WRITTEN CONTRACTS: PARTLY WRITTEN/PARTLY ORAL

The inefficiency to commit to writing, clearly and completely, the phrases of a contract may give rise to litigations being followed by a group trying to implement what that group may claim is the contract and in situations where the other group argues such a claim.

Case Study Example

In a letter offered to Henry Owen, George proposed to work for Owens as an accountant for the period of six months, given that Owen wanted George's services. There was no statement regarding the salary George will take. Two days later, George made a personal call on Henry who asked to begin the job from the following week. When George joined the duty in the following week, he was told by Owens that he was no more wanted on the job. Thereupon George brought suit for losses and contract breach. There was a question about his recovery[1].

Ruling Case

The defendant and the claimant were brothers and their mother was a farm owner. The defendant (in charge of the farm), borrowed it in written phrases to the claimant. By the clause of the charter the defendant was to get one half of the yield (corn) produced on the farm. In return, he accepted to pay his brother for all the important repairs for the farm and for caring and board for their mother.

After a period of time, the claimant rejected to follow the agreement and sued for the assistance of the mother along with the money he had spent for the important repairs at the farm. To this conduct, the defendant reacted as a defense as the written accord had nothing expressing the duration of the contract, the form and the degree of repairs

[1] William Kixmiller and William H. Spencer, *Business Law - Case Method* (Commerce Clearing House, 1915).

or the compensation to be offered or compensation for the care and help for the mother[2].

Decision & Ratio Decidendi

The agreement was not inclusive as in a written contract, the agreement between the groups here was partly oral and partly in writing. This is regarded as an oral agreement. Whereas the obligation to work on the farm, carry out repairs or care for the mother, the phrases of their contract were presented in writing however the manner of offering repairs, caring for the mother or the amount of money for the repairs of for the support of the mother were not mentioned in writing and the groups were agreed orally over them.

The decision made that the claimant might recuperate on this agreement even though all the phrases of it were not offered in writing.

Case Answer

Where there is no statute condition that a provided agreement shall be in the form of a written contract, the contract may be made partly oral and partly in writing. An individual may accept in writing to work for the next six months while the other individual may orally accept to pay a specific wage against the job. Such an accord is partly oral and partly in writing, however it is binding for both the groups. Nevertheless, it is always preferable to include every important term of the contract in writing. In the example case presented above, there is an effective agreement between Owens and Jackson entailing the letter which became the binding pledge when Henry Owens offered his oral agreement. Even though, no wage was specified, the court would suppose that a suitable salary was deliberated, based on custom, potential of George and the previous stipend he used to get.

George could revive in losses not the whole salary for six months; however the disparity between what he could get like job anywhere else, also this salary which Henry Owens accepted to offer[3].

---

[2] William Kixmiller and William H. Spencer, *Business Law - Case Method* (Commerce Clearing House, 1915).

[3] Kenneth W. Clarkson et al, *Business Law: Text And Cases* (South Western Cengage Learning, 11th ed, 2009).

PAROL EVIDENCE RULE

The majority of the contractual disputes relate the groups' obligations and rights under the agreement. In order to solve this sort of conflicts the courts generally consider the phrases or clauses of the agreements. In other terms, they attempt to define what promises were proposed by groups to each other during the time when agreement was created and accepted. Although, once a court acknowledges that a contract is totally in written context, it is assumed that the writing have all the clauses. This is known as parol evidence rule[4]. Furthermore, the parol evidence rule is a principle which considers the written agreements or the written components of partly written, partly oral agreements[5]. Nevertheless, there is no compensation if groups committed a fake declaration in the contract. This directs to the creation of collateral contract as a means of coping up with this issue[6].

The rule offers that where an agreement is decreased into writing and seems in the writing in order to be whole, it is assumed that the writing has all the phrases of it and proof will not be presented of any past or simultaneous contract which would have the impact of adding additional phrases or terms to the contract, inserted into the written accord in any manner, or alter its clauses[7].

However, it is not important that contracts between groups are always or should be in written format. Nevertheless, if the groups accepted that the agreement to be completely in written context, parol evidence is not permissible to vary or add to or contrast the written document. The rule rejects evidence of extrinsic phrases merely where the agreement was accepted to be an entire record of the whole agreement, therefore does not implement where the contract is partly oral and partly written[8].

Exceptions

As it has been perceived in other conditions a range of exceptions to the principle have evolved over time and they have been approvable by courts. Yet, of both groups accepted that other oral or unwritten features would impact the agreement in the

---

[4] *The Parol Evidence Rule* (Manitoba Law Reform Commission, 2010).

[5] Brian A. Blum, *Contracts: Examples & Explanations* (Aspen Publishers Online, 2007).

[6] Adam Rose, David Leibowitz and Adrian Magnus, *Getting Out Of A Contract: A Practical Guide For Business* (Gower Publishing, 2001).

[7] Brian A. Blum, *Contracts: Examples & Explanations* (Aspen Publishers Online, 2007).

[8] Martin F. Scheinman, *Evidence And Proof In Arbitration* (Cornell University Press, 1977).

future, in that case, the parol evidence need to be aligned to accept that situation[9]. Subsequently, there are six conditions in which the rule is not applicable. These include:

Usage or Custom

In contracts where the language utilized has a specific meaning such as by the usage or custom in a specific region, industry or trade, proof of that meaning is permissible.

Verbal Condition

If the groups have created a contract and have also a comprehensive agreement that is not deliberate to be live until an external event happens. This exception is depicted in the case story of Pym v Campbell[10].

Partially written contract

The time when an agreement is created, it is presumed that all the phrases are present however, if there are clauses missing and not present in the agreement then, it can permit the groups to offer verbal proof in court. Van Den Esschert v Chappel's case illustrate this exception where the facts that Ms Chappell wished to buy a home from Van Den Esschert and prior she accepted the agreement, she inquired him if there were any ants in the house, the seller guaranteed her that there were no ants. After some time she found white ants and she sued Esschert and won the case and court ordered Esschert to pay the amount of rectification[11].

Confusing clauses

External proof may be permissible to solve confusion in the agreement. Vagueness evolves not merely uncertainty-language that can be understood in more than one potential meaning or made vague by other language use in the contract[12].

Mistake

In a contract where a clause is wrong by mistake and the groups' intention was not recorded precisely in the agreement, then the contract may be corrected by offering oral acceptance[13].

---

9 Steven Emanuel, *Contracts* (Aspen Publishers, 2006).

10 William Kixmiller and William H. Spencer, *Business Law - Case Method* (Commerce Clearing House, 1915).

11 Adam Rose, David Leibowitz and Adrian Magnus, *Getting Out Of A Contract: A Practical Guide For Business* (Gower Publishing, 2001).

12 Peter Gillies, *Business Law* (Federation Press, 2004).

Original Groups' Identity

Oral proof is permissible where there is vagueness relating to the identity of the groups in the contract. This is particularly present where external proof is required to recognize the agreement's subject issue[14].

COLLATERAL CONTRACTS

A collateral contract is a preliminary agreement within which the principle agreement is followed, breach of which will cause in the damaged groupd being capable to utilize. Although, sometimes a conflict may emerge between groups, as to whether a phrase is pertaining to the collateral agreement or to the original contract. As a result, collateral contracts can emerge from a statement presented during the time of negotiations, however on this situation the statement functions as an individual agreement. Nevertheless, if a conflict is proceeded to the court of law and it found that…….

An example of a court case that depicts the concept is present in De Lassalle v Guildford. This collateral conflict is quite alike to the third exception which was in the parol evidence rule as observed in Van de Esschert v Chappell. Court cases that show these restricting aspects on collateral contracts are J.J. Savage & Sons Pty Ltd v Blankey and Hoyts Pty Ltd v Spencer[15].

A promise or pledge which is not a phrase of the original agreement could potentially be implemented as collateral contract. Whereas, collateral refers to 'by the side of' and was a critical creation employed to elude:

- The parol evidence rule
- The earlier inadequate remedies used for misinterpretations
- Contract privity

The idea of collateral contract can be precisely depicted as an evident on rules and power, that there may be an agreement the contemplation for which is the creation of some other agreement. For example, if a person says to another that if he will create a

---

[13] Peter Gillies, *Business Law* (Federation Press, 2004).

[14] Peter Gillies, *Business Law* (Federation Press, 2004).

[15] Adam Rose, David Leibowitz and Adrian Magnus, *Getting Out Of A Contract: A Practical Guide For Business* (Gower Publishing, 2001).

specific contract, he will offer hundred dollars. This example in every sense is the statement of a complete lawful agreement and is collateral to the original agreement, however each has an individual presence, and they do not deviate with regard to their possessing to the complete status or character of an agreement[16]. Explanation of the use of collateral contract after the implementation of Misinterpretation Act 1967 can be stated as when an individual offers a promise or a surety to another person, deliberating that he should perform according to it by following the agreement, and he does perform on it by following the contract, it is called as binding. There are several cases in which oral agreements have been termed as binding despite of written excepted stipulations.

MISINTERPRETATION

The law is a field of words and with words, agreements are made, constitutions are written and statutes are passed. Still, despite of all well wishes, the meanings of terms found in texts are not always precise and clear. They may be confusing, ambiguous in various meaning, they may be uncertain or dubious and they can present as varied interpretations to varied people. When such disparities in understanding are not soluble, the groups having curiosity regarding what is actually meant can end up in law proceedings and ask the law to offer its interpretation. According to law, this type of situation generally referred to as ambiguous[17].

CONCLUSION

When groups step into an agreement it is assumed by the law that all the clauses are included in the agreement and thus the groups are bound to that agreement, however if the groups later on contradict with what they previously accepted and signed, and a conflict emerge the law will allow no oral proof that would alter the meaning of the agreement. Although, few exceptions are presented and are permissible by law where groups are permitted to offer verbal proof in circumstance where there is uncertainty or mistake. A collateral agreement is a second contract to the original, the first, contract created by groups. Once the clauses of the agreement have been defined,

[16] Peter Gillies, *Business Law* (Federation Press, 2004).

[17] Roger LeRoy Miller and Gaylord A. Jentz, *Cengage Advantage Books: Fundamentals Of Business Law: Excerpted Cases* (Cengage Learning, 2009).

their interpretation must be defined objectively. The development of the agreement must be elaborated by what a reasonable individual in the situation of a group to the agreement would have realized them to understand. That needs contemplation, not merely for the phrases of the texts, but also to the encompassing situations known to the groups, and the object and aim of the dealing. This paper has attempted to discuss the given statement by means of explanation and discussion of important concepts in business law and contracts.

References

Blum, Brian A., *Contracts: Examples & Explanations* (Aspen Publishers Online, 2007)

Clarkson, Kenneth W. et al, *Business Law: Text And Cases* (South WEstern Cengage Learning, 11th ed, 2009)

Emanuel, Steven, *Contracts* (Aspen Publishers, 2006)

Gillies, Peter, *Business Law* (Federation Press, 2004)

Kixmiller, William and William H. Spencer, *Business Law - Case Method* (Commerce Clearing House, 1915)

Miller, Roger LeRoy and Gaylord A. Jentz, *Cengage Advantage Books: Fundamentals Of Business Law: Excerpted Cases* (Cengage Learning, 2009)

Rose, Adam, David Leibowitz and Adrian Magnus, *Getting Out Of A Contract: A Practical Guide For Business* (Gower Publishing, 2001)

Scheinman, Martin F., *Evidence And Proof In Arbitration* (Cornell University Press, 1977)

The Parol Evidence Rule (Manitoba Law Reform Commission, 2010)

The Parol Evidence Rule (Manitoba Law Reform Commission, 2010)