



Hello,
Welcome to the Ortolan Legal Newsletter

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The virtual in-house solution... Ortolan Legal Limited

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Ortolan Legal Limited — all about us...

Ortolan Legal Limited is a radically different law firm which aims to provide pragmatic and commercially focused legal advice. Employing only experienced remotely based lawyers, overheads are kept to a minimum and pricing can be on a fixed, retainer, capped or hourly basis. We don't charge administrative costs, so clients can budget effectively. Dealing with ad hoc work or retainer work, we can assist where there is no in-house legal function and also provide holiday cover or to supplement existing legal teams. Our work covers non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support for a set number of hours each month.

For more information please call Claudia Gerrard on 0844 561 1638.

Contract formation: 'subject to contract' may be ineffective

FOS: Technical note may provide guidance on claims following volcano ash cloud.

The Supreme Court has held that a binding contract may arise, where negotiations were 'subject to contract'. In the case of RTS Flexible Systems Limited v Molkerei Muller GmbH & Co, the parties entered in a letter of intent which was stated to be 'subject to contract'. The letter contained all relevant terms, including the whole agreed contract price and a reference to standard construction contract terms. It also stated that the contract was not effective until executed but no formal contract was ever signed. The work resumed after the letter of intent expired.

The Financial Ombudsman Service ('FOS') has published guidance on goods and services bought with credit. The guidance centres on Section 75 of the Consumer Credit Act 1974 ('CCA'). Section 75 deals with transactions which involve three parties: a debtor, creditor and supplier. In certain circumstances, a debtor (or purchaser of goods or services) can claim against the creditor (bank or other organisation supplying credit), where the supplier is in breach of contract or where there has been misrepresentation by the supplier. Under Section 75, the creditor and supplier are equally liable.

The Court decided that, as work had commenced before the contract terms were finalised, there was a contract between the parties, despite the letter of intent. By their conduct, the parties had waived the need for a formal contract to be executed.

There are a number of basic rules in order for Section 75 to apply. The goods or services must cost more than £100 but less than £30,000 and the debtor must be acting as a "consumer" as defined by the CCA.

The case highlights that courts will look beyond the meaning of the words and treat the intentions and actions of the parties as paramount factors. This latest decision casts continuing doubt on use of letters of intent and means contracting parties should be wary of using them unless they have been very carefully drafted.

Whilst the FOS guidance does not contain a full explanation of the law, it identifies situations and transactions when Section 75 might apply. The note concentrates on hire-purchase, motor finance, holiday club membership and furniture and kitchens.

Continued unwanted conduct may be sexual harassment and constructive dismissal

Breakfast Seminars held.....

In employment law, there is an implied duty of trust and confidence between an employee and the employer. Breach of this duty may occur, for example, when an employer acts in a discriminatory manner. This entitles an employee to resign and claim constructive dismissal. However, an employee must resign within a reasonable period of time or they could be deemed to have affirmed the contract. Delay in resigning often proves fatal and tribunals have generally not accepted delays of more than a few weeks.

However, it has general implications for any goods or services purchased by credit card. This may give rise to a spate of claims against credit card companies where flights were cancelled because of the volcano ash cloud and the tour operators or airlines have since become insolvent.

The case calls into question the principle that an employee must always act quickly in response to a breach and failing to resign immediately will not necessarily constitute affirmation of the contract. The case could also therefore allow claims from employees whose resignation takes place a considerable length of time after the alleged breach of contract.

And finally..... key cases that changed Britain: Carlill v Carbolic Smoke Ball Company

This 1892 case forms one of the most cited in common law contract and is often one of the first cases law students encounter. It related to an advertisement which claimed that using a particular carbolic smoke ball would prevent users from contracting flu and anyone who used the smoke ball but contracted flu would be paid £100. Mrs Carlill used the smoke ball in accordance with the instructions and, when she contracted flu, she sued the Company for the £100 promised. The court found that the advertisement contained all the necessary elements of a contract: offer, acceptance, consideration and the like, and the Company was therefore obliged to pay Mrs Carlill £100. An interesting twist is that Mrs Carlill lived until 1942, when at the age of 96 she died, primarily of old age, although her doctor also cited as a cause of death: 'influenza'.

FEEDBACK FORUM

Your ideas are greatly appreciated...

We will be holding Breakfast Seminars throughout the year discussing a range of topical subjects. If you would like to attend a Breakfast Seminar or have an idea for future topics to be discussed or would like to simply talk to our team, please contact Claudia Gerrard by email or on 0844 561 1638.

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