## LIST OF ABBREVIATIONS

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| ARL | Adam Ranch Ltd |
| FML | Farm Machines Ltd |
| PER | Parol Evidence Rule |
| SF555 | Super Farmer 555 |
| ACL | Australian Consumer Law |
| APL | Apple Pty Ltd |

## PROBLEM SOLVING QUESTION

### Case 1: Timothy v Adam

**Legal Issues:**

The primary legal issues are [1] whether Timothy and Adam entered a valid contract, [2] whether Adam breached the contract, and [3] whether the contract can be negated by either party. While sub-issues concern validity of express terms and whether they were conditions or warranties.

**Application:**

- **Contract formation**

For issue [1], contract validity is evaluated based on three factors. The agreement was valid as offer and acceptance were clear and communicated through a written contract without additional requirements.[1] The consideration was sufficient as both parties agreed to pay something of legal value.[2] Finally, despite domestic context, it is evident that both intended to establish legal relations by forming a written document.[3] Therefore, a valid contract existed between parties.

- **Contract breach**

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[1] *Mildura Office Equiment & Supplies Pty Ltd v Canon Finance Australia Ltd* [2006] VSC 42; *R v Clarke* [1927] 40 CLR 227; *Hyde v Wrench* (1840) 49 ER 132; *Scammell and Nephew Ltd v Ouston* [1941] 1 AC 251; *Felthouse v Bindley* [1862] 142 ER 107.

[2] *Biotechnology Australia Pty Ltd v Pace* (1988) 15 NSWLR 130.

[3] *Wakeling v Ripley* (1951) 51 SR (NSW) 183.

For issue [2], express term must be evaluated first. During contract formation, Timothy made a verifiable-promissory statement to exchange $100,000 for 80% of ARL.[4] Furthermore, this statement is included in written contract signed by Adam.[5] Consequently, the statement is a valid express term. Secondly, "Essentiality Test" is applied to determine whether this term is a condition or warranty: Timothy would not have entered the contract if he knew the term would be breached.[6] This term is hence a consideration. By failing to transfer 80% ownership to Timothy after signing the contract, Adam violated agreement's condition and breached the contract.

- **Contract negation**

For issue [3], Timothy has no qualified requirements to negate the contract. In Adam's case, however, there is a lack of consent considering unconscionability and undue influence. First, Timothy acknowledged Adam's arthritis and deteriorating health.[7] Second, both parties evidently shared a special parent-child relationship. Since Adam was afraid of abandonment, Timothy had dominant position and influenced his father to sign an unfair contract, as evidenced by Adam's accountant's reluctance.[8] Therefore, Adam can terminate the contract.

**Conclusion:**

Timothy can sue Adam for breach of contract and claim rescission/damages because a valid contract existed between them.[9] However, Adam can negate the contract for lack of consent.

## Case 2: Adam v Timothy

**Legal Issues:**

The primary issue is whether both parties entered a collateral contract, and sub-issue is whether this contract was breached.

**Application:**

Regarding Case 1, PER applied since Adam and Timothy signed a written contract.[10] However, exception exists as there was evidence of a breach of a collateral contract established prior to formation of written agreement. Specifically, it was the promise of Timothy's permanent move to

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[4] *Chandelor v Lopus* (1603) Cro.Jac 4; *Handbury v Nolan* (1977) 13 ALR 339; *Oscar Chess Ltd v Williams* [1957] 1 WLR 370.
[5] *L'Estrange v Graucob* (1934) 2 KB 394.
[6] *Tramways Advertising v Luna Park* (1938) 61 CLR 286.
[7] *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447.
[8] *Johnson v Buttress* (1936) 55 CLR 113.
[9] *Gold Coast Oil Pty Ltd v Lee Properties Pty Ltd* [1985] QSC 416; *Koufos v Czarnikow (The Heron II)* [1969] 1 AC 530.
[10] *Skywest Aviation Pty Ltd v The Commonwealth of Australia* (1995) 126 FLR 61.

Adelaide that prompted Adam to enter the main contract.[11] Consequently, there is an independent collateral contract, yet Timothy violated it by returning to Alberta.

Timothy can argue that Adam's suggestion to leave Adelaide prevented him from fulfilling contractual obligations. However, this defense is unsatisfactory as the contract had not lapsed when Timothy returned to Alberta.

**Conclusion:**

Adam can sue Timothy for breaching collateral contract and claim damages/equitable remedies.[12]

## Case 3: Adam v Thomson

**Legal Issues:**

The main issues are [1] whether Adam and Thomson entered a valid contract, [2] whether there was a contract breach, and [3] whether either party can negate the contract. Sub-issues include whether outside statements can be incorporated into the contract, whether terms were conditions or warranties, and whether disclaimers are effective.

**Application:**

- **Contract formation**

A valid contract exists because three essential elements—agreement, consideration, and intent to be legally bound—are satisfied and communicated through a standard model contract in a business context.

- **Contract breach**

For issue [2], all established statements' validity must be determined. During contract formation, Thomson made a verifiable promise to exchange his seeding services for $38 per acre (a), which was then included in a written agreement signed by both parties. Consequently, this statement is a valid express term.[13]

Besides, two additional verbal statements were discussed, in which Adam requested that Thomson complete the work within a month (b) and use appropriate German equipment for seeding process (c). By verbally confirming Adam's request, Thomson reassured that both statements were a promise, which was independently verifiable and provided before contract

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[11] *De Lasalle v Guildford* [1901] 2 KB 215.
[12] *Koufos v Czarnikow (The Heron II)* [1969] 1 AC 530.
[13] *L'Estrange v Graucob* (1934) 2 KB 394.

formation.[14] Hence, reasonable notice was given, and these statements can be incorporated into the written contract as express terms.[15]

Next, terms (a), (b), and (c) are deemed fundamental by applying "Essentiality Test": Adam would not have entered the contract if he knew the terms would be breached, indicating that all three are conditions. Therefore, while PER applied due to a written contract, an exception exists since incorporated terms were proven very important to the agreement as conditions.

Finally, two disclaimers were a part of written contract as being disclosed to Adam in advance and included in the contract, which was signed by both parties. Therefore, Adam was legally bound by Thomson's disclaimers, regardless of whether he had read or understood them.[16]

Accordingly, Thomson allegedly violated contract terms (b) and (c) by failing to complete the work within a month and use German equipment, respectively. Regarding breach of term (b), disclaimer is ineffective since the phrase "reasonable adjustment" was ambiguous; therefore, it is inadequate to determine whether the breach fell within disclaimer's scope. While in violation of term (c), disclaimer remains effective because Hugo's hospitalization led to worker shortages that caused work delays. In conclusion, Thomson breached term (b); however, an effective disclaimer protects Thomson from contractual liability for breaching term (c).

- **Contract negation**

For issue [3], there is evidence of a lack of capacity. Specifically, Adam was in an abnormal state due to sedative medicine. Moreover, Adam's deteriorating health was noticeable when he asked Thomson to prepare the contract unilaterally, and the contract was not for necessities.[17] Therefore, Adam can void the contract due to his intellectual incapacity when he entered it.

**Conclusion:**

Adam can successfully sue Thomson for breaching contract term (b) and claim rescission and damages.[18] Also, Adam can negate the contract for a lack of capacity.

## Case 4: Thomson v FML

**Legal Issues:**

The main issue is whether there was a breach of contract between Thomson and FML, sub-issues examine effectiveness of disclaimers, and whether misrepresentation exists.

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[14] *Chandelor v Lopus* (1603) Cro.Jac 4; *Handbury v Nolan* (1977) 13 ALR 339; *Thornton v Shoe Lane Parking* (1971) 2 WLR 585; *Olley v Marlborough Court Hotel* [1949] 1 KB 532 Ltd.
[15] *Causer v Browne* [1952] VLR 1.
[16] *L'Estrange v Graucob* (1934) 2 KB 394.
[17] *Hart v O'Connor* [1985] 1 AC 1000.
[18] *Gold Coast Oil Pty Ltd v Lee Properties Pty Ltd* [1985] QSC 416; *Koufos v Czarnikow (The Heron II)* [1969] 1 AC 530.

**Applications:**

- **Contract breach**

Thomson and FML formed a valid written contract with satisfied agreement, consideration, and intent to be legally bound, and PER thus applies.[19] However, an exception exists by examining misrepresentation made by sales staff during contract formation. Specifically, the statement that SF555 can work under any weather condition is considered a representation as it was a statement of fact that persuaded Thomson to enter the contract. Given that SF555's driver experienced electric shocks under rainy conditions, the statement was therefore false and considered a misrepresentation.[20] Besides, misrepresentation can be enforceable under ACL s18 for deceptive conduct, despite whether Thomson is a consumer or non-consumer.[21]

- **Disclaimer**

A disclaimer was provided at the bottom of the website, indicating that it belonged to an external document rather than a written contract.[22] Moreover, there was insufficient notice because disclaimer's small print and improper placement made it difficult for a reasonable person to notice and understand. Consequently, disclaimer remains ineffective, and FML must bear liability for misrepresentation.

**Conclusion:**

Since disclaimer is ineffective, Thomson can sue FML for misrepresentation or deceptive conduct and claim damages.[23]

## Case 5: Hugo v FML

**Legal Issues:**

The legal issue considers whether there was a violation of ACL s38 regarding defective goods between the parties.

**Application:**

Firstly, FML is considered a manufacturer as it imported SF555 from China and supplied them for profit under its brand name.[24] Secondly, based on objective standards, a reasonable person would not expect to be electrified by using a farming machine, especially when Hugo used

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[19] *Skywest Aviation Pty Ltd v The Commonwealth of Australia* (1995) 126 FLR 61.
[20] *Derry v Peek* (1889) LR 14 App Cas 337.
[21] *Competition and Consumer Act 2010* (Cth) s 18.
[22] *L'Estrange v Graucob* (1934) 2 KB 394.
[23] *Koufos v Czarnikow (The Heron II)* [1969] 1 AC 530.
[24] *Competition and Consumer Act 2010* (Cth) s 7(1).

SF555 in a reasonably-expected way for seeding.[25] Moreover, there was no evidence that SF555 was equipped with adequate warnings for malfunctioning under rainy condition. Therefore, the machine was defective, and FML held strict liability for Hugo's injuries.[26]

FML could argue that the defect did not exist at the time of delivery and was caused by use in rainy conditions, but no evidence regarding product's condition was presented.

**Conclusion:**

Hugo can sue FML for defective goods under ACL s138.

[25] *Competition and Consumer Act 2010* (Cth) s 9(1).
[26] *Competition and Consumer Act 2010* (Cth) s 138.

## CASE NOTE QUESTION

### Introduction

The case note examines the case titled Acuna v Apple Pty Ltd, delivered by judge D Moujalli on April 29, 2022. In the sections that follow, I will identify legal issues, evaluate the judge's application of legal rules, and determine whether the judgment was persuasive.

### Identification of Legal Issues

The applicant was Christian Acuna, a consumer who entered a commercial contract with the respondent, APL, to acquire a new iPhone 13. However, the incident occurred when Mr. Accuna contacted APL for assistance in transferring data from an old-to-new phone. Following the advisor's instructions, the applicant used "iOS support" software, which caused a complete breakdown of his phone and computer, resulting in a loss of income and time. In court, Mr. Accuna sued APL for errors in the given instructions. Therefore, main legal issues are whether ACL s18 and s60 were violated, and sub-issue is whether the compensation was reasonable.

### Critical Analysis

The judge first established the consumer-supplier relationship between the applicant and respondent. Considering ACL s23(3), since APL is an ongoing business that supplies electronic goods and related-services under $40,000 for domestic use, a consumer contract exists between parties, and the judge's decision is therefore convincing.[27] Moreover, I agree that the claim should be evaluated in relation to respondent's services for two reasons: there was no complaint about the phone, and it was the service, not the hardware, that allegedly caused the phone to malfunction. However, instead of only considering ACL s18 and s60, the judge should also consider s62 as no timeframe was specified for service completion, implying the necessity to consider how long is considered reasonable for "data uploading" service to be completed given its nature and relevant factors.[28]

According to s60, to conclude whether the respondent failed to exercise due care and skill, it is necessary to identify which actions are deemed reasonable that were disregarded in the respondent's position.[29] However, the applicant's allegation was too generalized, without factual matters to pinpoint which part of the recommendation caused the incident, indicating a failure to identify the skill level or actions a reasonable advisor would be expected to perform. A counterargument might arise that APL was obligated to inquire about the applicant's computer's characteristics before suggesting the best-suited instructions to avoid loss or damage. Nonetheless, it is essential to note that Mr. Acuna eventually restored all data with the respondent's assistance, and there was no evidence of a more beneficial or less disruptive

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[27] *Competition and Consumer Act 2010* (Cth) s 23(3).
[28] *Competition and Consumer Act 2010* (Cth) s 62.
[29] *Competition and Consumer Act 2010* (Cth) s 60; *Pyrenees Shire Council v Day* [1998] HCA 3.

alternative way of uploading data that would have been given. Therefore, I agree with the judge's conclusion that APL did not breach ACL s60, as the applicant failed to provide sufficient evidence.

Regarding s18, I am only partially convinced that the advice provided to the applicant was considered an opinion rather than a statement of fact. As APL supplied the applicant's devices, it must establish standardized and well-tested instructions for common cases, including data transfer. Moreover, the advice was given by a "senior advisor," which can be interpreted as an expert with relevant expertise. Therefore, even if the advice was considered an opinion, it was held upon rational grounds. Nonetheless, I agree that APL did not violate ACL s18 since no evidence was presented that the respondent provided an opinion without a reasonable basis or committed misleading conduct.[30] Moreover, the applicant failed to prove any opportunity costs incurred following the misleading conduct, as there was no evidence of an alternative solution that would have been to his advantage.

The judge concluded that APL did not violate ACL s18 and s60 and that considering the applicant's compensation, therefore, is unnecessary, to which I agree. Besides, I am convinced with the judge's assessment of the applicant's loss calculation, which appears to include both overcompensation and double-compensation. This is because the applicant failed to provide credible evidence that he would earn $4,515 per week if his phone and computer were operative, especially given the absence of financial statements.

**Conclusion**

Overall, judge D Moujalli's conclusion on the main and subordinate legal issues was convincingly decided. Regarding provision of services, I believe APL did not violate ACL s18 and s60; therefore, no compensation was required. However, with further consideration of ACL s62, the case would have become less controversial.

[30] *Competition and Consumer Act 2010* (Cth) s 18.

# REFERENCES

## A. Case law


*Biotechnology Australia Pty Ltd v Pace* (1988) 15 NSWLR 130

*Causer v Browne* [1952] VLR 1

*Chandelor v Lopus* (1603) Cro.Jac 4

*Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447

*De Lasalle v Guildford* [1901] 2 KB 215

*Derry v Peek* (1889) LR 14 App Cas 337

*Felthouse v Bindley* [1862] 142 ER 10

*Gold Coast Oil Pty Ltd v Lee Properties Pty Ltd* [1985] QSC 416

*Handbury v Nolan* (1977) 13 ALR 339

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*Hyde v Wrench* (1840) 49 ER 132

*Johnson v Buttress* (1936) 55 CLR 113

*Koufos v Czarnikow (The Heron II)* [1969] 1 AC 530

*L'Estrange v Graucob* (1934) 2 KB 394

*Mildura Office Equiment & Supplies Pty Ltd v Canon Finance Australia Ltd* [2006] VSC 42

*Olley v Marlborough Court Hotel* [1949] 1 KB 532 Ltd.

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*Thornton v Shoe Lane Parking* (1971) 2 WLR 585

*Tramways Advertising v Luna Park* (1938) 61 CLR 286

*Wakeling v Ripley* (1951) 51 SR (NSW) 183

## B. Legislation

*Competition and Consumer Act 2010* (Cth) s 138

*Competition and Consumer Act 2010* (Cth) s 18

*Competition and Consumer Act 2010* (Cth) s 23(3)

*Competition and Consumer Act 2010* (Cth) s 60

*Competition and Consumer Act 2010* (Cth) s 62

*Competition and Consumer Act 2010* (Cth) s 7(1)

*Competition and Consumer Act 2010* (Cth) s 9(1)