**CONTRACT LAW**

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# Question 1

**Issue**

The present case is Linda who is managing stock replacement of John’s Supermarket is bound with some legal obligations regarding her responsibilities. As evident from the fact, according to the company rules and regulations, if sufficient stock is being ordered, then, one cannot again order for further stock. In this context, it has been revealed that prior to visit overseas, Jon Miley has ordered sufficient stock in his retail store. However, a critical situation arises when John went for a two weeks overseas visit without prior notification. Moreover, no contact details were being provided to store manager Linda for emergency purposes. Easter occasion was approaching nearly where lucrative trade opportunities are lying for John’s Supermarket. However, due to unavailability of John Miley, Linda was in going through a dilemma whether she should place orders for more stocks in the store so that Easter trade opportunities can be grabbed. Linda was also confused and worried about whether the competitors would get favor under this condition. Under such unavoidable circumstances, Linda has placed an order of 45,000 AUD for increasing their stock without notification to the proprietor of the store. Unfortunately, Linda was unaware that order was placed from the arch rival group of John’s Supermarket namely AFS Grocery Wholesalers Co Pty Ltd. In fact, after returning from overseas, John became aware about that fact and deliberately refused to pay the contracted amount to his rival company. Under such circumstance, AFS group can surely sue John’s Supermarket for breaching the contract that has been provided with the order placement document forwarded by Linda, the manager of John’s store[[1]](#footnote-1). However, John has provided an excuse for non-payment of the amount of 45000 AUD and subsequent breaching of contract according to which Linda has neither any authority nor any requirement to place further order.

**Legislation**

In this context of breach of contract in between John’s Supermarket and AFS group, Australian contract laws as well as Australian common laws would be exclusively handful for AFS group to deal with that controversial situation. *Contracts Review Act 1980 (NSW), Fair Trading Act 1987 (NSW) No 68 as well as Australian Consumer law and Fair Trading Act 2012 (Vic)* would be extremely supportive for AFS group to claim the amount of 45,000 AUD from John,s Supermarket [[2]](#footnote-2). The manager of AFS group may also consult subsequent part of Australian common law known as Competition and Consumer Act 2010 (Cth). In addition to the, *Frustrated Contracts Act 1978 No 105* may be a potential legal tool for AFS group. Manager of AFS group can approach section 12 of Sales of Goods Act 1923 since this legal legislation has provisioned avoidance of an agreement deliberately as frustration[[3]](#footnote-3). However, Consumer Protection Laws of Australia are of foremost priority for AFS group in this situation.

**Application**

As evident from facts, this case is related to actual breach of contract where the party namely John’s Supermarket has deliberately refused to abide by the rules of the contract along with a sure denial to pay the amount of 45,000 AUD to AFS group. In this context, it can be arguably mentioned that by going through the Frustrated Contracts Act 1978 No 105, the legal solicitor of AFS Group Pty Ltd would be able to get an agreed return of money from the John’s Supermarket to whom orders has been supplied. Sales of Goods Act 1923 No 1 are a viable legal application for AFS group[[4]](#footnote-4). According to subsection 13 of this act, ascertainment of price may be assured for the AFS group. Section 4 of Sales of Goods Act 1895 may also be handful in this context according to which John Miley cannot reject their ordered goods without there is any faulty representation of the goods regarding goods quality.

According to this particular law of NSW, price in a contract sale has to be fixed and agreed upon between the contracting parties. Needless to mention, since Linda has forwarded an order of 45000 AUD, thus, there is a clear notification being mentioned about the price of the order, which has been agreed upon mutually by both parties. Some legal instances can be forwarded herein that can reinforce that if legal solicitor of AFS group approaches through this legislations, they would be surely able to comply with their requirements[[5]](#footnote-5). As for instance, ***Petelin v Cullen* (1975) *132 CLR 355*** or ***Thornton v Shoe Lane Parking Ltd* *[1971] 2 QB 163*** would be sufficient to propose that Australian Consumers Law would be reasonable enough for AFS group for selecting as helping hand override the challenge of John Miley[[6]](#footnote-6). In this concern, Competition and Consumer Act 2010 would be a viable legal tool for AFS group to override the challenges being imposed by John Miley. This law is particularly favorable for protection of consumer rights in Australian territories[[7]](#footnote-7). Apart from that, Independent Contractor Laws of Australia namely Commonwealth Independent Contractor Act 2006 may also be approached by the AFS group.

However, *Trade Practice Act 1994* states that if there is internal authorization issue prevalent in this case, then the AFS group would not be able to get the required amount of 45000 AUD from John Miley. However, a contradictory situation may arise if the employment contract of John’s Supermarket has clearly entailed the stockiest manager Linda has no any provision to place further stock orders without written or verbal consent of the proprietor[[8]](#footnote-8). John has clearly refused to pay the amount by saying that Linda has no authority to place orders with approval of John Miley. Under such circumstances, manager of AFS group may demand to show the legal authority from Linda, the stockiest manager of the John’s Supermarket. Nevertheless, if Linda is unable to show the legal authority to the AFS group, then the AFS group may sue her and demand the payment of 45000 AUD[[9]](#footnote-9). Under such circumstances, John Miley may sue Linda in light of breaching the Fair Work Act 2009.

**Conclusion**

From the above discussion, it can be concluded that in order to fulfill the requirement of ending a legal and written up sales agreement with Moreslybo Pty Ltd, Mr. Bruno may go for mutual settlement. In this concern, Australian common laws and Australian contract laws has provisioned two legal tools namely Waiver Deed and Repudiation. Both these tools would be effective to end this contract mutually without prior intervention of court. As well as, these tools would be suitable for getting rid of any monetary compensation that may the property developer can demand from Mr. Bruno.

# Question 2

**Issue**

In the current case, Bruno who is a peasant farmer having migrated in Australia from Italy has entered into a legal contract in written format with a property developer of New South Wales namely Moreslybo Pty Ltd. Bruno has an intention to sale that property and get back to Italy to join his wife there. In fact, Bruno purchases the property that has been agreed to sale at a cost of 220,000 AUD. However, situation as originated that has compelled the proprietor to sale that property at a loss. After several conversations followed by negotiations regarding that property, selling price of that property was finalized at 160,000 AUD only. In the meantime, wife of Bruno has returned to NSW to join his husband as well as to settle there with a long term planning. She pleaded as well as forced her husband to keep the property intact with them. Under such circumstances, Bruno has changed his mindset and has intended to get out of the contract. Nevertheless, in order to fulfill his desire, Bruno has to go through breaching of the already signed up contract with the property developer Moreslybo Pty Ltd that is obviously going to make him legally liable under the Contract Review Act 1980 of Australia.

**Legislation**

At the time of entering a contract, it is obvious that the concerned parties has to be aware about legal systems that are actually governing that contract. In this context, it is worthy of being mentioned contract breach is observable when legal obligations adhered to the contract agreement is not at all fulfilled by the concerned parties entered into that contract. In this regard, it can be said without ambiguity that Australian Contract laws are exclusively unique to deal potentially with such conditions[[10]](#footnote-10).

The basic principle that has made the Australian Contract Law unique is nothing but freedom of the contract under which the respective parties entering into contract hold the sole liberty to strike whatever they have chosen through bargaining. Some important legislations are in vicinity that can have a profound impact on Australian Contract Law. In this context, notably to mention, *Competition and Consumer Act 2010 (Cth)* is a premier one that can govern the direction of cases attached with *Contract Review Act 1980[[11]](#footnote-11)*. Under certain circumstances, it can be viewed that legislative rights being prevalent to this acts are overriding contractual rights. In the present context, the property developer Moreslybo Pty Ltd that entered into contract with proprietor of that property Mr. Bruno is the sole consumer in that case. However, legislation namely *Corporations Act 2001 (Cth)* is also viable in the present case study in the sense that by means of this it can be investigated whether the Moreslybo Pty Ltd is a registered company according to *Corporations Act 2001 (Cth)*.

Nevertheless, in present case, the contract that has been arranged and signed between the two parties can be recognized as general commercial contract[[12]](#footnote-12). Thus, general commercial laws, as for example, independent contractor laws are also applicable to this current business dealing. In this concern, it can be arguably stated that *Commonwealth Independent Contractor Acts 2006* may be suitable one that can govern in lawful dealing with that particular case. As a matter of fact, since the property that is relevant to that controversial contract is belongs to the territory of NSW, thus, it can be forwarded that some specific legislations related to contract laws of NSW would be of much application in that defined case[[13]](#footnote-13). As for example, both the parties that have entered into that contract can consult *Fair Trading Act 1987 (NSW), Frustrated Contracts Act 1978 (NSW) or Sale of Goods Act 1923 (NSW)*.

**Application**

 Getting rid of any legal contract would bring some adverse consequences and that presents relevancy in the present case of contract between Mr. Bruno and Moreslybo Pty Ltd. Needless to mention, a contract is synonymous to a binding agreement[[14]](#footnote-14). As evident from the facts, a contract is basically constituted of three elements. Firstly, an agreement has to be existed and in the present case an agreement is existing where the property developer namely Moreslybo Pty Ltd has offered an amount of 160,000 AUD which is accepted by the seller Mr. Bruno. Secondly, each party associated with contract must provide something of valuable. In the present context, the valued subject matter involved in this contract is a small firm worth 220,000 AUD valuations which is intended to be sold[[15]](#footnote-15). Thirdly, each party has to be willing enough to enter legally binding agreement. The present case is satisfying all these three aspects of lawful contract. Under such circumstance, the best-possible advice would be to consult a legal solicitor. In this context, it is worthy of being mentioned that Australia has not provided with any cooling-off period in favor of the seller. Thus, in this case, Mr. Bruno would not be able to get the benefit of a cooling-off period in his favor. In this case, since Bruno has signed the contract after much conversation and negotiation with the property developer, thus, it can be stated that he is legally obliged to sale that property. Since in spite of that standpoint Mr. Bruno is wanting to back out of that contract, thus, speaking to a solicitor by specifying the options would be a viable choice for him. Nevertheless, the buyer here Moreslybo Pty Ltd can definitely go for monetary compensation from Mr. Bruno.

However, it may also be possible that the buyer is ready to cancel the agreement. Thus, as a first standpoint, Mr. Bruno has to approach humbly to the property developer. In this concern, a mutual agreement between the two for cancelling the contract would be a suitable choice that can end through a mutual rescission agreement. However, that choice may not work at all for Mr. Bruno due to legal obligation being entered by him with singing up a property-selling contract with Moreslybo Pty Ltd. Moreslybo can potentially file a lawsuit for receiving a judgement for breaching of contract. Under such circumstances, Mr. Bruno is compelled to show a valid reason for getting out of that contract until and unless of which he would be sued legally. In such situation, contract repudiation would be a definite legal tool by virtue of which Mr. Bruno can show his unwillingness to render performances of contracts.

As mentioned earlier, this case is an instance of anticipatory breach and in Australian common law; this can happen if any party involved in the contract repudiates that contract[[16]](#footnote-16). However, in such cases a notice period of minimum 230 days has to be provided by the individual who is unwilling to continue a contract. As for example, ***Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd (2007) 233 CLR 115***is able to provide sufficient standpoint in favor of Mr. Bruno by virtue of which he can opt for repudiation[[17]](#footnote-17). A similar standpoint can be arrived from the case ***White and Carter (Councils) Ltd. v. McGregor[[18]](#footnote-18)*.** In this concern, Mr. Bruno may also go for Deed of Release or Waiver Deed so that any legal liability that may create adversity for Mr. Bruno may be resolved without intervention of court. Mr. Bruno along with Moreslybo Pty Ltd can utilize this succinct and confidential document for mutual releasing of the liabilities[[19]](#footnote-19). After going through this Waiver Deed, both the parties involved in this contract would be able to release each other from future demands, claims, actions and debtsso that commercial and confidential settlement can be agreed upon.

**Conclusion**

From the above discussion it can be concluded that in order to fulfill the requirement of ending a legal and written up sales agreement with Moreslybo Pty Ltd, Mr. Bruno may go for mutual settlement. In this concern, Australian common laws and Australian contract laws has provisioned two legal tools namely Waiver Deed and Repudiation. Both these tools would be effective to end this contract mutually without prior intervention of court. As well as, these tools would be suitable for getting rid of any monetary compensation that may the property developer can demand from Mr. Bruno.

1. 13stjames. (2018). *Termination of Contract: A practical guide on when and how to terminate a contract and common mistakes*. Retrieved on 23 July 2018. Retrieved from http://13stjames.net.au/wp-content/uploads/2010/10/Termination-of-Contract-v2.pdf [↑](#footnote-ref-1)
2. McKendrick, E., & Liu, Q. (2015). *Contract Law: Australian Edition*. London: Macmillan International Higher Education. [↑](#footnote-ref-2)
3. McKendrick, E. (2014). *Contract law: text, cases, and materials*. UK: Oxford University Press. [↑](#footnote-ref-3)
4. Goh, Y., & Yip, M. (2016). Rationalising Anticipatory Breach in Executed Contracts. *The Cambridge Law Journal*, *75*(1), 18-21. [↑](#footnote-ref-4)
5. Fischer, M. (2017). Cancellation and anticipatory breach of contract. *South African Law Journal*, *134*(3), 543-575. Retrieved on 14 July 2018. Retrieved from <https://journals.co.za/content/journal/10520/EJC-8ff96e53d> [↑](#footnote-ref-5)
6. Australiancontractlaw. (2018). *Home*. Retrieved on 20 July 2018. Retrieved from https://www.australiancontractlaw.com/cases/petelin.html [↑](#footnote-ref-6)
7. Andrews, N. H. (2018). Breach of Contract: A Plea for Clarity and Discipline. Retrieved on 15 July 2018. Retrieved from <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3198563> [↑](#footnote-ref-7)
8. Acc.com. (2015). Australian Contract Law. Retrieved on 18 July 2018. Retrieved from <https://www.acc.com/legalresources/quickcounsel/australian-contract-law.cfm> [↑](#footnote-ref-8)
9. business.gov.au. (2018). *Laws affecting contracts.* Retrieved on 19 July 2018. Retrieved from <https://www.business.gov.au/people/contractors/understanding-contracts/laws-affecting-contracts> [↑](#footnote-ref-9)
10. Austlii.edu.au. (2016). *CONTRACTS REVIEW ACT 1980.* Retrieved on 19 July 2018. Retrieved from <http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/cra1980201/> [↑](#footnote-ref-10)
11. Legislation.nsw.gov.au. (2016). *Contracts Review Act 1980 No 16.* Retrieved on 19 July 2018. Retrieved from <https://www.legislation.nsw.gov.au/#/view/act/1980/16/full> [↑](#footnote-ref-11)
12. McKendrick, E., & Liu, Q. (2015). *Contract Law: Australian Edition*. London: Macmillan International Higher Education. [↑](#footnote-ref-12)
13. McKendrick, E. (2014). *Contract law: text, cases, and materials*. UK: Oxford University Press. [↑](#footnote-ref-13)
14. Goh, Y., & Yip, M. (2016). Rationalising Anticipatory Breach in Executed Contracts. *The Cambridge Law Journal*, *75*(1), 18-21. [↑](#footnote-ref-14)
15. Fischer, M. (2017). Cancellation and anticipatory breach of contract. *South African Law Journal*, *134*(3), 543-575. Retrieved on 14 July 2018. Retrieved from <https://journals.co.za/content/journal/10520/EJC-8ff96e53d> [↑](#footnote-ref-15)
16. Austlii . (2018). *Some Problems Of Anticipatory Breach*. Retrieved on 25 July 2018. Retrieved from http://www.austlii.edu.au/au/journals/MelbULawRw/1974/1.pdf [↑](#footnote-ref-16)
17. Eresources. (2018). *Koompahtoo Local Aboriginal Land Council v Sanpine Pty Limited [2007] HCA 61*. Retrieved on 12 July 2018. Retrieved from http://eresources.hcourt.gov.au/showCase/2007/HCA/61 [↑](#footnote-ref-17)
18. ####  Netk*.* (2018). *White and Carter (Councils) Ltd v McGregor [1962] 2 AC 413, House of Lords.*

 Retrieved on 12 July 2018. Retrieved from http://netk.net.au/Contract/White.asp [↑](#footnote-ref-18)
19. Andrews, N. H. (2018). Breach of Contract: A Plea for Clarity and Discipline. Retrieved on 15 July 2018. Retrieved from <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3198563> [↑](#footnote-ref-19)