

LAWS1204 CONTRACTS – FINAL EXAMINATION STUDY NOTES

PROPRIETARY ESTOPPEL

- Proprietary estoppel is a primary type of equitable estoppel, which occurs where the relying party acts to his detriment on the faith of an assumption that the relying party will be granted an interest in land (*Sidhu v Van Dyke*).
- Estoppel evolved 'to avoid or prevent a detriment to the party asserting the estoppel' where consideration has failed to recognise this reliance (*Grundt v Great Boulder Mines Pty Ltd, Priestly*).

Elements of Estoppel

- In *Waltons Stores Interstate Ltd v Maher*, Brennan J outlined six elements (+ representation) essential for estoppel which have subsequently been commonly applied by the courts (e.g. *Mobil v Wellcome*). It is possible for this test to be applied in cases of proprietary estoppel as well, with amendments to representation.
- 1. **Representation** – Usually, the representation may be express or implied (*Legione v Hateley*), but must not be highly ambiguous or unclear (*Australian Crime Commission v Gray, Cosmopolitan Hotel*). However, it has been suggested that proprietary estoppel does not require certainty of the representation, and 'vague and imprecise conduct is often enough to give rise to an equitable proprietary estoppel' (*Westpac v Bell*).
- 2. **Assumption** – The relying party must have adopted an assumption that the representor will act in a particular way in the future. This assumption must relate to a legal relationship (*Waltons, Mobil*).
- 3. **Inducement** – The assumption adopted by the relying party should have been induced (causation) by the express or implied representor (*Waltons*). The representation may not be unequivocal (*Legione*).
- 4. **Detrimental Reliance** – The relying party must have acted on the assumption in such a way that she will suffer a detrimental change of position (*Australian Financial Services v Hills*) if the representing party is able to depart from the representation, as is the key function of estoppel (*Thompson v Palmer*). Detriment must be substantial, however not financial (*Australian v Hills, Ashton v Pratt (No 2), Sidhu*).
- 5. **Knowledge** – The representor must know that the relying party has/will act to their detriment (*Waltons*).
- 6. **Reasonableness** – The reliance must be reasonable, in adoption of the assumption and detriment (*Cosmopolitan Hotel v Crown, Sullivan v Sullivan*). This may exclude some family matters.
- 7. **Unconscionability** – Unconscionable conduct is the justification for granting relief (*Commonwealth v Verwayen*).

Cases of Proprietary Estoppel

- **Giumelli v Giumelli**: Parents made promises to a son that if he gave up his career and moved onto their property that they would give him some of the property at a later stage. The son later married a woman of whom his parents disapproved. The parents retracted their promise. The son successfully sued.
- **Sidhu v Van Dyke**: A man made promises to his brother-in-law's wife during their affair. She relied on these promises to her detriment and later successfully sued him.
- **Priestley v Priestley**: A family has a series of rural properties. One of the properties is promised to the son, who continuously works on the property. The father changes his will and doesn't tell the son, after the son has done a large amount of work. He successfully sues in the NSWCA.
- **Waaka v Francois**: A couple move to an apartment, of which they tell the tenant that they will raise enough money to buy the property, and in the mean-time will rent it. They do not raise it in time, and she moves on and sells. They sue, however are unsuccessful.
- **Behman v Behman**: The son starts working and pays a part of his family's house's mortgage. He has a falling out with his father, and is told he no longer is part of the family and has no ownership of the house. He successfully sues.

UNCONSCIONABLE CONDUCT

- Equity will intervene where one party to the contract has taken an unconscientious advantage of the special disadvantage of another party (*Blomey v Ryan*).
- Unconscionability does not exist simply due to harshness in the bargain (*Australian v CG Berbatis*).
- Unconscionability can only exist where there has been some moral turpitude in taking advantage of the disability of the other party.
- The focus is on a specific transaction, rather than an ongoing relationship (See *Amadio*).

Elements of Estoppel

- In *Amadio*, Deane J formulated a two-part test (disability and sufficient evidence) to find unconscionable conduct. Since, the element of unconscientious advantage has been added.
- 1. **One party must be at a special disadvantage** (*Louth v Diprose*; *Bridgewater v Leahy*).
 - *Blomey v Ryan*: The High Court held that a sale of land procured from a drunken landowner was unconscionable, after the buyer had the owner sign a contract whilst intoxicated.
 - Special disadvantage categories: Poverty/need, sickness, age* (*Permanent Mortgages*), ~~sex~~, infirmity of body or mind, drunkenness, illiteracy, lack of education, lack of assistance or explanation where necessary.
 - *Luong & Anor v Du*: The disability must result in real disadvantage.
- 2. **The other party must know that the special disadvantage exists** (*Amadio*).
 - *ACCC v Radio Rentals*: Knowledge cannot be aggregated.
 - *Kakavad v Crown Melbourne*: Knowledge must be actual, and not constructive.
 - *Amadio*; *Lee v Ah Gee*: Actual knowledge encompasses 'wilful blindness'.
- 3. **The other party must have taken an unconscientious advantage of the party with the special disability**, consisting of a predatory state of mind and victimisation (*Louth v Diprose*; *Virginia v Australian Litigation*; *Gel Custodians v Dyer*).

Defence

- The primary defence to a claim of unconscionability is to show that the transaction was fair, just and reasonable (*Commercial Bank of Australia v Amadio*). The burden of proof falls upon the stronger party.
- *Amadio* established the relevant considerations for this defence: **(i)** the amount paid, **(ii)** independent advice, **(iii)** comprehension and understanding of the transaction, **(iv)** no knowledge of the disadvantage.

Cases of Unconscionable Conduct

- **Commercial Bank of Australia v Amadio**: An elderly couple with little understanding of English and little formal education, and some business experience were convinced by their son to provide guarantee and mortgage for one of their properties. Unconscionable conduct was established.
- **Louth v Diprose**: A lawyer, Diprose, was infatuated with Louth, an unskilled young woman with significant mental health issues. Louth threatened suicide, and Diprose bought her house for her, and paid some of her bills. Unconscionable conduct was established. The case is, however, controversial.
- **Bridgewater v Leahy**: A (sexist) land owner sold a parcel of his property to his nephew, disadvantaging the owner's wife and daughters in inheritance. The High Court found that unconscionable conduct did exist, and the special disadvantage was emotional dependence.
- **ACCC v Berbatis**: A couple who wished to sell their business after their daughter fell ill were made to drop a lawsuit against the centre's owners in order to sign a lease with the company and go on to sell. The High Court found that unconscionable conduct did not exist.
- **ACCC v Samton Holdings**: A landlord requested \$70,000 from a lessee to renew a lease. The landlord knew that the lessee was in a vulnerable financial position. No unconscionable conduct.
- **Kakavas v Crown Melbourne Limited**: The plaintiff loses a large amount of money gambling and sues. Unconscionable conduct is not found.
- **Mackintosh v Johnson**: A young lover asks for gifts and money from her partner during moments of reconciliation. Unconscionable conduct was not found.
- **Wu v Ling**: Wu borrowed money from Ling to spend on a Nigerian investment scam. Ling warned her against it. Unconscionable conduct was not found.

Statutory Unconscionability

- It has been made clear in trade and commerce areas that a degree of morality lies within the word 'unconscionable', and it is a value laden concept (*Paciocco v Australia & NZ Banking Group Ltd*).
- There are a number of ACCC cases on statutory unconscionability.
 - *ACCC v Zanok Technologies*: Zanok made a job and visa promises to a number of international students for internships. No such employment was established. Unconscionability established.
 - *ACCC v Lux*: A handicapped and mentally ill woman was approached by a vacuum cleaner salesman while at home. He accidentally scared her, and she only contracted so he left.
 - *ACCC v Keshow*: Salesman put disadvantaged Indigenous women on a direct debit payment plan for encyclopedias. Direct debits continued after books were fully paid for. Unconscionable.
 - *ACCC v Simply No-Knead*: Actions of a franchisor in selectively denying advertising and supplies to a 'disliked' franchisor was found to be unconscionable.

UNDUE INFLUENCE

- Undue influence is concerned with the exploitation of a relationship of influence, which may result in a transaction being set aside or the gift repaid.
- A party to a contract is alleging that prior to making the contract the other party exerted undue influence, which prevented the plaintiff from exercising independent judgement (*National Westminster Bank v Morgan*; *Johnson v Buttress*, *Royal Bank of Scotland Plc v Etridge*).

Categories of Undue Influence (*Daunt v Daunt*)

1. **Actual undue influence**: Situations in which there is no special relationship between the parties to the contract, but where the plaintiff affirmatively proves that the defendant exerted influence (*Farmers Co-operative v Perks*; *In re Craig*).
 - The evidentiary onus lies with the affected party to prove that the other has unfairly taken advantage. A high degree of trust and confidence between the parties (*Johnson v Buttress*).
 - Where a presumption doesn't exist, the existence of undue influence is determined on the facts.
 - Whilst the transaction must be manifestly disadvantageous in the UK (*National Westminster Bank v Morgan*), it need not in Australia (*Farmer's Co-op v Perks*).
 - In *Farmer's Co-op v Perks*, the wife transferred property to the husband as a result of a long history of violence in their relationship.
 - See also *Louth v Diprose*, in which both parties were capable of unduly influencing the other.
2. **Presumed undue influence**: Situations where the relationship between the parties is such that a presumption of undue influence arises where a contract is made.
 - The onus of proof lies on the receiver/benefiter to prove that there was no undue influence.
 - A. **Relationships that automatically raise the presumption**:
 - (i) Parent and child
 - ▶ *Lancashire Loans Ltd v Black*: A young daughter signed a joint promissory note with her mother, who had come under financial strain.
 - ▶ *Grace v Grace*: A son inherits shares from his father at 14 years old, which are transferred to his mother and sister without consultation.
 - ▶ *Walton v Walton*: Undue influence failed due to lack of evidence where a transaction was done by a parent discharging debt owed to them by the child for their benefit.
 - (ii) Guardian and ward
 - ▶ *Powell v Powell*: A step-mother and her solicitor (who acted for both) convinced the plaintiff to share her inheritance with the step-mother's children.
 - (iii) Religious advisor and disciple
 - ▶ *Khan v Khan*: A religious advisor was brought in at the signing of a contract, convincing one party to sell her house. She later recanted.
* Undue influence can be procured by a third party who derived no direct benefit from the transaction.
 - ▶ *Hartigan v Krishna*: A woman made multiple donations to the Krishna movement, after which she ceased donating and sought to claim back.
 - (iv) Doctor and patient, (v) Solicitor and client, (vi) Trustee and beneficiary.