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Topic 7 - Factors affecting the contract

factors	effects	
<ul style="list-style-type: none"> • Non est factum • Mistake • Misrepresentation • Undue influence • Unconscionable conduct • Duress 	Contract is void	Contract is voidable
	<ul style="list-style-type: none"> • contract does not exist and has no legal effect • contract ineffective with no need for parties to take any further action • No rights and obligations; neither party can recover damages for breach; neither party can enforce the promises • Alternative remedies may arise independently of the contract 	<ul style="list-style-type: none"> • contract does exist but one of the parties has the legal right to 'avoid' or not perform • contract is effective until one party takes action to terminate/rescind the contract • Timing of rescission may be important – right to rescind may be lost if innocent third parties affected • Other limits on right to rescind
About the innocent third party	<ul style="list-style-type: none"> • Title to property <u>cannot</u> pass from one party to another • 'A' sells a car to 'B' but contract is void. 'B' gets possession of car but does not acquire any rights (title to car remains with 'A') • 'B' sells car to 'C'. 'C' does not acquire any rights of ownership because 'B' had no legal rights to transfer to 'C' • 'A' can sue 'C' in tort action and 'C' would have to return car to 'A'. • 'C' is innocent 3rd party but loses out • 'C' may have rights against 'B' (of little value if 'B' has no assets) 	<ul style="list-style-type: none"> • Title to property can pass from one party to another • 'A' sells a car to 'B' but contract is voidable. 'B' gets possession of car and a 'voidable' title • 'B' sells car to 'C'. If this sale is BEFORE 'A' rescinds the contract with 'B', 'B' can transfer title to 'C' • If 'A' sues 'C' in tort action, 'C' would NOT have to return car to 'A' because 'C' has acquired title • 'A' may have rights against 'B' (of little value if 'B' has no assets)

Factors affecting the contract - *non est factum*

Non est factum: Party signing a document is mistaken as to the nature of the document

Effect: void

Must prove:

- s/he belonged to class of persons who **have to rely on others for advice** as to what they are signing (e.g. because illiterate or blind) so unable to read or understand the document
- Document actually signed was **radically different** from document s/he thought s/he was signing
- **Failure to read** and understand the document was **not due to carelessness** on part of claimant

Case: *Petelin v Cullen (1975) 132 CLR 355*

Fact: Petelin, who could not read English, signed a document believing it to be a receipt for \$50. In fact, the document gave Cullen an option to purchase Petelin's land which Cullen then exercised. Petelin refused to sign a contract of sale and Cullen sought specific performance.

Held: Petelin succeeded in his non est factum claim on appeal. The Court held that

- (1) Petelin believed that what he had signed was merely a receipt;
- (2) that Petelin was not careless in this respect (he could not read English and understanding the document was beyond his capacity) and
- (3) even if he had been careless, Cullen was not an 'innocent person without knowledge or reason to doubt the validity of the appellant's signature'.

Factors affecting the contract – mistake

Types of mistakes

- **Common mistake:** Both parties make the same mistake - **void**
- **Mutual mistake:** Both parties are mistaken but about different things; misunderstand each other and deal at cross-purposes
- **Unilateral mistake:** Only one party is mistaken and the other party is aware of the mistake and tries to take advantage of that mistake

Mistake – common mistake - void

No actual agreement. Not possible to bring legal action for alleged breach of contract.

- **Case: *Couturier v Hastie (1856) HL Cas 673***