

1 TOPIC 2: UNDUE INFLUENCE AND UNCONSCIONABLE TRANSACTIONS

1.1 OVERVIEW

Equity has jurisdiction to relieve a party from a transaction, such as a contract or gift, in certain situations. In this topic, we consider two of the equitable doctrines which a plaintiff may rely upon to seek relief from a transaction: undue influence and unconscionable dealing. These doctrines may overlap in particular cases, but despite their similarity, have distinct features and a different focus.

Undue influence deals with the effect of a relationship of influence, often described as an 'ascendancy' by one person over another person, so that the latter's act in entering into a transaction cannot be considered free or voluntary. The second person's judgment is regarded as impaired by the influence of the first. Some types of relationships are presumed at law to give rise to influence; other types can be proved by evidence. Not all influence in a relationship will result in a transaction being set aside. The influence must be 'undue' within the meaning of the term derived from the cases. Actual undue influence can also be proved outside of a relationship of influence.

Unconscionable Dealing is a doctrine, which focuses upon the existence of a special disadvantage in one party to a transaction. If the other party to the transaction takes 'unconscientious' advantage of that special disadvantage, the transaction may be set aside. It does not turn on any pre-existing relationship between the parties, but looks at their personal characteristics and the bargaining process between them.

- What is equitable fraud - what is fraud

1.2 INTRODUCTION

1.2.1 Fraud at Common Law, Broader Concept of Fraud in Equity

- *Derry v. Peek (1889) 14 App Cas 337* –
 - High burden of proof on plaintiff who wished to prove fraud at common law that they had to prove the other person knew that it was false dishonesty which is not easy to prove due to the narrow scope and high burden placed on plaintiff.
- *Nocton v Ashburton [1914] AC 932* –
 - Judge made observation of common law fraud and equitable fraud. When fraud referred to in wider sense it is a mistake that an actual intention to cheat must be proven. In equity you don't need to prove that they actually intended to defraud you, all you must prove is that they owed you an equitable duty, any, and that they breached it. Significantly different and broader definition at equity of fraud.
- The equitable concept of fraud and fraud at common law.
- Policy of the common law and the policy of equity is directed to holding and maintaining free made dispositions made between two capable adults subject to certain exceptions - assuming that valuable consideration is passed, the

required formalities are passed, and requisite intention of parties is existing then it will be binding.

- Common law focus is to uphold the binding agreement and preventing parties from rescinding from the agreement. It has recognised retain deliberate fraud as a vitiating factor of otherwise valid contracts. That vitiating factor of contractual agreement is common law fraud and is a narrow concept when comparing to equitable concept. Common law fraud requires proof of dishonest representation made whilst knowing it was false - Derry case.
- Equitable fraud is significantly broader concept than intentional design to defraud someone in Nocton see more notes above.
- Equity has developed several doctrines to prevent equitable fraud - undue influence and unconscionable dealing

1.2.2 Equity does not intervene to relieve against mere unfairness or pressure in commerce

- *Barton v Armstrong* [1976] AC 104 at 121 per Lord Wilberforce and Lord Simon
- *Bruzewitz v Brown* [1923] NZLR 1106 per Salmond J –
 - Mere fact that transaction is based on inadequate consideration isn't means to set aside the transaction. There must be additional elements recognised from the doctrines of equitable fraud?
- *Hartigan v International Society for Krishna Consciousness Inc* [2002] NSWSC 810
 - Equity won't intervene for more unfairness, it is a principled intervention based on principles under the two doctrines below.

1.3 UNDUE INFLUENCE

1.3.1 General Principles

Aims are mainly directed to transfer of property, cannot be explained on grounds of friendly charity or other ordinary motives. The doctrine is not concerned about whether the transaction was intended or not. It examines how intention was produced in the transaction. Transfers of personal property can be set aside whether they have been made as gifts or of money

Whether those transactions are voluntary is irrelevant if the equitable principles of undue influence or unconscionable dealing are established to exist in the facts.

TEXTBOOK

Where one person is in position of influence over another, equity will presume that any transfer from the subordinate to the dominant party has been brought about by exercise of undue influence by the latter, and will strike the transaction down unless the dominant party can show that it was a product of free and independent will of the other.

The doctrine rests on two bases –

- Equity seeks to prevent relationships which give rise to influence from being abused, as a matter of public policy
- That no person should be allowed to retain profit arising from his or her own fraud

Allcard v Skinner (1887) –

- Cotton LJ attributed these two principles to two different types of cases found in this area. The first involves cases where the relationship between the donor and donee is sufficient to raise a presumption that the donee possesses influence over the donor. Second occurs where the court is satisfied that the gift resulted from influence expressly used by the donee for the purpose.
- Doctrine of undue influence is thus an example of a particular application of the equitable concept of fraud
- Historically this doctrine also provided some relief from the inadequacies of the common law principle of duress, under which a contract could only be avoided if it was induced by some physical threat to the person of the plaintiff such that the will of the plaintiff was overborne