

Week 8

The law does not allow certain types of conduct, e.g. behaviour that is contrary to good conscience. If a legal transaction (including a contract) is entered into in such circumstances, it may be treated as void, or declared void by a court, even if the formal requirements of that transaction are satisfied.

Legal transactions can be contracts, transferring property, granting a power or right, giving consent...

Equity does not undermine the common law, it sets aside the transaction in special circumstances. Equity binds the conscience.

Behaviour Imperatives in Legal Transactions

Invalidating a transaction

- A legal transaction is '**void ab initio**' when attempt to create it has no legal effect from the very beginning, i.e. special circumstances prevent a valid transaction from coming into existence. e.g. fraud
- A legal transaction is '**voidable**' when a valid transaction is created but it may later be set aside by a court as invalid. Although they exist, they can be made void at the request of the disadvantaged party. e.g. duress
- The word **vitiated** is used to describe a contract that is made void -> same legal effect.

void = without any legal effect; not legally valid or binding

voidable = initially valid but subject to being made void

Outcome of voiding a transaction

If a legal transaction is void ab initio, parties must be **restored to pre-contractual position**.

This is done by **reversing any performance that was made**, so neither party retains any benefit or advantage from the vitiated transaction. Financial adjustments can be made if actual physical restoration is impossible.

This is called **restitutio in integrum**.

What circumstances might relief be refused?

1. If relief is not sought within **reasonable time**, court will treat delay as decision not to avoid transaction and will not assist
2. If party themselves have engaged in **improper conduct** - because rules of equity require party seeking relief to have clean hands
3. If party seeking relief has done something **inconsistent with intention to seek relief**
4. If a **3rd party**, in good faith, has already acquired legal rights that would be affected by invalidating the transaction.

Vitiating circumstances recognised by Australian law

Duress

= when consent to a transaction is obtained by the use or threatened use of unlawful force or harm.

Force or harm may be **physical harm, economic harm** or **illegal actions over goods** such as refusal to return goods.

Force or harm may be directed against:

- other party
- a person who is related or close to other party (e.g. family) (gorilla does not count)

Burden of proof: need to show the court the person who was harmed and the type of harm it was. Need to come to court within a **reasonable amount of time** to address the issue.

If illegitimate pressure is used to get consent, the consent is considered enough to give rise to **legally valid transaction**, but duress means that transaction is **voidable, even if** there are **more reasons** other than duress for giving that consent.

Barton v Armstrong

Infliction or threats of economic harm rather than physical harm can also constitute duress, but the court distinguishes carefully between illegitimate compulsion and behaviour within the normal business activity.

North Ocean Shipping Co v Hyundai

Infliction or threats of illegitimate harm to property in an attempt to compel person to consent to transaction e.g. threat of detaining property.

Undue Influence

= when, because of their relationship, one party necessarily places confidence and trust in the other and the dominant party may influence decisions of weaker.

If **improper influence** of stronger party is used to **obtain consent** of weaker party, contract can be declared void. Weaker party must act **reasonably soon** to have contract set aside, once the influence has subsided.

Presumption of general controlling influence - based on trust

- Parent and child
- Guardian and ward
- Doctor and patient
- Religious advisor and believer
- Solicitor and client
- Trustee and beneficiary

Courts **presume** that transaction between parties is made because of improper influence by stronger party, they do not start at a neutral mindset.

Onus is on **controlling party to rebut presumption** and show that other party made the decision independently, for example, obtained independent legal or financial advice. If they can't, then transaction is set aside as void
Allcard v Skinner

Proof of general controlling influence

Judge does not presume from the start. Both sides can present their argument and try to prove.

If weaker party can **prove** that relationship involved a general controlling influence, (i.e. they place trust and reliance to the other party and contract was made under the influence) a presumption of undue influence arises, and **stronger party** has **onus** to prove that weaker party's decision to enter transaction was made independently and not due to undue influence.

Such recognised relationships are:

- spouses
- principal and agent
- accountant and client
- banker and customer
- dentist and patient
- employer and employee

This list is not exhaustive

Johnson v Buttress

Undue influence affecting specific transaction

In cases where a general undue influence is neither inevitable nor proven, it is possible for weaker party to show that stronger party used improper controlling influence to bring about the particular transaction, difficult to prove.

Mistake

= when one or more parties to a transaction give their consent while holding a relevant belief that is not if fact true.

Law faces a dilemma

1. Should not be too easy to avoid legal consequences by claiming mistake
2. A mistaken belief might deprive transaction of essential requirement of validity, it is void ab initio

Mutual mistake: where **each party** makes a **different mistake** rather than share the same mistaken belief.

If a reasonable person made aware of the trust facts, infer that because of the mutual mistakes, there was **no objective agreement**, agreement is void ab initio - no agreement hence no contract.

(If despite each party being mistaken about some of their transaction, there was sufficient agreement for creation of a binding transaction, transaction is valid and will not be void.