

## CHAPTER 5: ENFORCEABILITY (CONTRACTS) p. 255

• Even if all three requirements are satisfied, a contract may not be enforceable in any of the following circumstances:

- Lack of consent (1)
- Lack of capacity (2)
- Lack of legality (3)
- Lack of formality (4)

### 1) **Lack of consent (p.255):**

A contract will only be enforceable if both parties have entered into the contract willingly.

- Examples:

- Jin made a mistake about a fundamental aspect of the agreement, and Johnny unfairly took advantage (mistake)
- Jin entered into the contract as a result of inappropriate pressure (duress)
- Jin entered into a contract because Johnny took advantage of his influence (undue influence)
- Jin entered into the contract because Johnny unfairly took advantage of a special weakness (unconscionability)

### • **Mistake:**

- The general rule regarding mistakes is that it is the buyer's obligation to avoid mistakes from occurring. This is known as 'caveat emptor', meaning, "let the buyer beware".

→ Exceptions to this rule:

- 1) **Unilateral mistake:** As a general rule, a unilateral mistake won't make contract void.

→ A contract will be void (unenforceable) due to unilateral mistake if:

- a) One party has made a mistake
- b) The mistake related to a fundamental aspect of the contract
- c) The other party has sought to take advantage of the mistake.

→ *Taylor v Johnson*: Court decided that although unilateral mistake about the terms of a written contract doesn't make the contract void, in these circumstances the contract could be set aside under equity because Taylor was aware of Johnson's serious mistake and had sought to take advantage unconscionably.

- 2) **Common mistake:** Both parties are mistaken as to a fundamental aspect of the contract.

→ A contract will be void/ unenforceable due to common mistake if:

- a) The agreement between the parties is conditional upon the truth of a belief held by both parties
- b) At the time the agreement was formed, the belief was incorrect

→ *Leaf v International Galleries*: Court stated that although both Leaf and IG had been mistaken about the identity of the painter, the contract wasn't conditional upon the truth of this belief: the contract was for the sale of 'this painting' not a painting by the painter, and therefore the contract wasn't void due to common mistake.

→ *McRae v Cth Disposals Commission*: Tanker never existed, so contract not void for common mistake.

- 3) **Mutual mistake:** The parties believe they have reached an agreement but in fact there has been no meeting of minds.  
→ A contract will be void due to mutual mistake if:
- The agreement between the parties is conditional upon the truth of a belief held by each party
  - The belief held by each party is different

**•Duress (p.260):**

•If one party compels the other to enter into the contract by expressly or impliedly threatening negative consequences, they have engaged in duress and the contract is voidable (still effective until terminated by other party).

→ *Barton v Armstrong*: Armstrong's threats and unlawful pressure contributed to Barton's decision to execute the deeds

•The following requirements must be met:

- One of the parties has expressly impliedly threatened the other party with harm
- The threat of harm contributed to the threatened party's decision whether or not to enter into the contract.

**•The threat may be:**

-To the personal safety of the other party or to that of their loved ones (*Barton v Armstrong*; *Seear v Cohen*)

-To the safety of the other party's good or property (*Hawker Pacific v Helicopter*)

-To the other party's economic financial wellbeing (economic duress) (*North Ocean Shipping v Hyundai Construction*)

**•Undue influence (p.262):**

-Unfair influence by one party to a contract over the other party, making the contract voidable by the other party: *Allcard v Skinner*; *Johnson v Buttress*

•The following requirements must be met:

- The parties to a contract are in pre-existing relationships such that one party has controlling influence over the other
- The stronger party takes advantage of that influence such that the weaker party isn't exercising their independent judgment when entering into the contract.

•Some relationships are presumed to be such that they recognize influence and are called fiduciary relationships (doc/patient, lawyer/client, trustee/beneficiary, parent/child, relig leader/ follower). In this case, undue influence is presumed and the onus is on the dominant position to disprove undue influence (*Allcard v Skinner*)

-Relationships not deemed by law to have an influence (spouses, principal/agent, accountant/client, bank/customer, employer/employee, carer/patient). In this case, undue influence won't be presumed and the onus is on the weaker party to show undue influence (*Johnson v Buttress*)

→ *Allcard v Skinner*: Court confirmed that because the relationship of parties was between religious leader & follower, there was a presumption of undue influence that the religious order would have to rebut

→ *Johnson v Buttress*: Where the relationship is not one of these recognised relationships of influence, it will be up to the party claiming undue influence to establish that the other party had a controlling influence over their decision-making.

**•Unconscionability (also see c8) p.263**

-A contract will be void if one party has unfairly taken advantage of a special weakness or disadvantage on the part of the other party: *ComBank v Amadio*; *Louth v Diprose*

•ACL s 20-22

•The following requirements must be met:

- a) One party has a special weakness or disadvantage
- b) The other party knows of this weakness or disadvantage
- c) The other party uses or takes advantage of the weakness or disadvantage

•Special disability defined as on which “seriously affects ability of innocent party to make judgment in own interests (*Amadio's case*):

- Inability to speak/read English
- Illiteracy
- Lack of education
- Poverty
- Sickness
- Youth or age
- Lack of intellectual capacity
- Ignorance of important facts
- Intoxication

→ *Commercial Bank of Australia v Amadio*: The bank knew about their disadvantage and should have taken steps to ensure that Mr and Mrs Amadio were better informed. The bank's failure to do so amounted to unconscionable conduct.

→ *Louth v Diprose*: Diprose's unrequited love for Louth put him at a special disadvantage, and Louth had unconscionably exploited Diprose's love for her to benefit herself.

→ *Bridgewater v Leahy*: Unconscionable transaction. Farmer didn't receive independent legal advice and relied on his nephew's advice. His nephew unfairly took advantage of the farmer's position.

**2) Lack of capacity (p. 266):**

•A contract will only be enforceable if both parties have the legal capacity to enter into contracts.

•As a general rule, a party will not have legal capacity to contract if they are:

- A minor, or
- A person lacking intellectual capacity.

### • Minors:

- Under s3 of the Age of Majority Act 1977 (Vic), a person under 18 is a minor
- The three types of contract that may be enforceable against minors are:

1) Contracts **for necessities**: Include food, clothing, accommodation, medical treatment, education.

- Goods Act 1958 (Vic) s 7: “necessaries are suitable to condition of life of minor and to his requirements at the time of sale and delivery”

→ *Bogczuk v Gregorcowicz*: B couldn't enforce G (a minor) to repay the money because the contract was for the provision of money for an international trip, something not capable of being classified as a necessary

2) **Beneficial contracts of service**: If the contract is one where the minor is engaged to provide a service but the contract is such that it is for the benefit of the minor, it will be enforceable against the minor.

→ *Hamilton v Lethbridge*: Court decided that the benefits to Lethbridge of receiving five years of legal training outweighed the inconvenience of being unable to practice in Toowoomba, and that the contract was therefore a beneficial contract of service and enforceable against Lethbridge.

3) **Continuing interest or obligation**: If a contract is one where a minor acquires a continuing interest in property, or undertakes a continuing obligation such as an obligation to repay money, then the contract is voidable by the minor.

→ *Corpe v Overton*: Corpe (minor) contributed \$100 in capital then changed his mind and withdrew from partnership. Court decided he was entitled to do so and also recover the money because business had not yet commenced.

### • Persons lacking intellectual capacity (p. 269):

- If a party lacks intellectual capacity and purchases goods that are necessities, they can be compelled to pay a reasonable price for those goods.
- If the contract is not for the sale necessities, the contract will still be enforceable against a person lacking intellectual capacity unless:
  - The person was not capable of understanding the nature of the agreement they were entering into, and
  - The other party knew or should have known of their lack of capacity.

→ *Hart v O'Connor*: A contract made by a party of unsound mind whose affliction isn't apparent and whose consequent incapacity isn't known to the other party will be judged by the same standards as a contract made by a person of sound mind.

### 3) Lack of legality (p. 270):

#### • Illegality under common law:

• Certain contracts are categorised by the common law as **illegal** and unenforceable, including:

- Contracts to commit a crime or a tort,
- Contracts that promote corruption in public office,
- Contracts intended to evade the payment of tax, and
- Contracts that prevent or delay the administration of justice.

- If illegality is established, the contract is void and unenforceable

→ *Public Service Employees Cred Union v Campion*: Court decided that the contract was illegal and unenforceable because it was an agreement to avoid the prosecution of an indictable offence and therefore an agreement to prevent the admin of justice.

**•Statutory illegality (p.270):**

- An agreement may be illegal because it breaches a statutory prohibition.
- The effect of breach of a statutory provision upon the validity and enforceability of the contract depends upon the wording of the statute itself. The statute may:
  - Penalise the conduct of the parties but not invalidate the agreement,
  - Invalidate the agreement but not penalise the parties, or
  - Penalise the parties and invalidate the agreement.

→ *Anderson v Daniels*: Daniel refused to pay for fertilizer, claiming that contract was illegal as the invoice failed to comply with legislation that required the seller to disclose certain info. Court decided the wording of legislation rendered the contracts made in breach of the legislation illegal and unenforceable; therefore Daniels didn't have to pay

→ *Fitzgerald v FJ Leonhardt*: L didn't have borehole-drilling permit (breach of Act). F refused to pay, arguing that the agreement was illegal. The court decided that the Act penalised the conduct of Leonhardt in drilling without a permit, but it didn't invalidate agreements made in contravention of the Act. The contract between F & L was still valid and enforceable.

**4) Lack of formality (p. 271):**

- There is legislation that requires certain contracts to be in writing and signed in order to be effective and enforceable, including:
  - Arbitration agreements,
  - Cheques,
  - Consumer credit contracts,
  - Real estate contracts, and
  - Transfer of shares
- Even when a contract is not required by law to be in writing or signed by the parties, such formalities may still be desirable:
  - To encourage deliberation and reflection and to emphasise that the transaction has significant legal consequences,
  - To ensure the availability of reliable evidence about the existence of the contract,
  - To ensure the availability of reliable evidence about the terms of the contract, and
  - To indicate that the agreement was intended to be legally enforceable.