

# EQUITY AND TRUSTS SUMMARY

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# UNDUE INFLUENCE

Equity may set aside a transaction if there is a breach of an equitable duty (*Nocton v Ashburton*) irrespective of intention to cheat. The relationship between X and Y may be classified as (actual/presumed) undue influence (*Allcard v Skinner*). However, a court will not set aside any unfair contract (*Bruzewitz v Brown*).

## **CLASS 1) ACTUAL**

It appears that undue influence has been expressly exercised to procure the transaction (*Allcard v Skinner*). The elements of *Aboodi's Case* must be satisfied to successfully argue a case of actual undue influence. The balance of probabilities rests of the P to prove that the D exercised actual undue influence.

1. **Dominant party has the capacity to influence the other**
2. **Influence is actually exercised**
3. **The exercise of influence is undue**
4. **Transaction is a result of the influence**

## **CLASS 2) PRESUMED**

The relationship between X and Y gives rise to the presumption of undue influence as (it falls within a recognised relationship of influence/appears to be a relationship of trust and confidence and it was of influence, dominance and control) (*Allcard v Skinner*).

### **CLASS 2A) RECOGNISED RELATIONSHIPS**

The relationship between X and Y is of a

- Parent v Child (*Lamotte v Lamotte*)
- Solicitor v Client (*Verduci v Golotta*)
- Doctor v Patient (*Bar Mordecai v Hillston*)
- Spiritual Adviser v Worshipper (*McCullough v Fern*)
- Trustee v Beneficiary (only if there is a personal relationship)

The P need only prove the existence of the relationship. The onus then falls on the D to rebut the presumption.

### **CLASS 2B) OTHER RELATIONSHIP OF INFLUENCE**

The relationship between X and Y may be classified as a relationship of influence giving rise to a presumption due to the nature of trust and confidence between X and Y and the dominance and control that the X had over Y (*Janson v Janson*). P only needs to prove that such a relationship existed and the burden then lies on the D to disprove that the result was procured by the presumed undue influence (*Johnson v Buttress*)

Maliciousness need not be proved to have transaction set aside (*Bester v Perpetual Trustee*)

## **REBUTTING THE PRESUMPTION**

The D may attempt to disprove the effect of the presumption by arguing the transaction was entered into without any influence (*Johnson v Buttress*)

- **Independent advice:** May be a valid defence even if advice ignored (*Inchie Noria v Shaik*), unless ignored by reason of undue influence. Must be substantial and adequate, which is contextual (*Bester v Perpetual Trustees*)
- **Adequacy of consideration** for the benefit conferred under transaction
- **Yerkey v Jones:** Special Wives' Equity (*Garcia v NAB*)

## **THIRD PARTIES**

**A) VOLUNTARY TRANSFER: GIFT**

Equity will not assist a volunteer (*Bridgeman v Green*) and third parties benefitting from gifts infected with undue influence may be liable even without knowledge of its defect

**B) CONTRACT**

If for consideration, 3<sup>rd</sup> party will only be liable where

- i) Donee was an agent for the 3<sup>rd</sup> party (*Bank of NSW v Rogers*)
- ii) 3<sup>rd</sup> part had actual or constructive knowledge of undue influence

**DEFENCES AND REMEDIES**

- D: Laches – undue delay by the plaintiff in bringing the case
- D: Acquiescence – knew of the breach but let it slide for a long time
- R: Rescission of contract
- R: Equitable compensation
- R: Constructive trust over property

# UNCONSCIONABLE DEALING

Equity may set aside a transaction where one party to a transaction is at a special disability or disadvantage, which is sufficiently evident to the other party, and makes it prima facie unconscionable for the other party to take the transaction (*Amadio*)

The elements of *Amadio* must be satisfied to establish unconscionability

1. **Special disability leading to no equality of bargaining power**
  - a. Poverty or need of any kind, sickness, age, sex, infirmity of the mind or body, long-term drunkenness, illiteracy, lack of education, or lack of assistance where necessary (*Blomley v Ryan*)
  - b. Emotional dependence, infatuation and love, superficial conditions of stress (*Louth v Diprose*)
2. **Disability was sufficiently evident to the other party (knew or should have known)**
3. **Stronger party proceeded to exploit the disadvantage by procuring the transaction**
4. **Actual and constructive knowledge**

## REBUTTAL

On proof of a special disability and knowledge, the presumption of unconscionable conduct arises – the defendant can then rebut this presumption by proving they did not exploit the disadvantaged to procure a benefit (*Amadio*)

- Gift was not improvident (i.e. there was a sufficient reason for it)
- Adequacy of consideration for the benefit
- The contract gave rise to an equal benefit for the plaintiff
- Independent advice
- Steps taken to remedy the disadvantage (i.e. if the disadvantage was that the plaintiff did not speak English, that the defendant hired a translator)
- Presumption that you cannot exploit a disadvantage without knowing about it (*Hart v O'Connor*)

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