

LAWS1204

Contracts

Semester 2 2015

**Contracts – Final Exam – Semester 2 2015**

**How to Use this Script:**

These sample exam answers are based on problems done in past years. Since these answers were written, the law has changed and the subject may have changed. Additionally, the student may have made some mistakes in their answer, despite their good mark.

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***High Distinction (80/100)***

1. Is the contract voidable for unconscionable conduct?

The elements of unconscionable conduct are:

(i) That one party was at a special disadvantage (Louth v Diprose).

(ii) The other party knew that the special disadvantage existed (Louth).

(iii) One party took unconscientious advantage over the other (Louth).

Was Petra at a special disadvantage?

A special disadvantage may be a circumstance affecting the person’s ability to conserve their own interests (Blomley). It is possible that the circumstances of being a refugee in a detention centre, likely inexperienced and possibly with little knowledge of legal rights in a new country might constitute a special disadvantage. Also, having a severe injury requiring urgent attention and possibly great pain might constitute a special disadvantage.

ABFA were aware of these circumstances.

Did ABFA take unconscientious advantage?

The doctrine of unconscionable conduct has narrowed in scope in recent years. In ACCC v CG Berbatis, the defendants refused to sign a lease unless a separate case against them was dropped. Harsh dealings do not necessarily constitute unconscionable conduct. However, the court may find that it existed in this case, as this was not a commercial contract and factually it was different.

Defences

ABFA must prove the contract was ‘unfair, just and equitable’ (Louth). The actual elements of the agreement- dropping a case in exchange for $1000- would make it difficult to prove unconscionable conduct. Petra had no independent advice as Michaela was associated with ABFA. Petra may have understood the transaction.

On balance, unconscionable conduct may be found.

Good 8

Is the contract voidable for undue influence?

The relationship between Petra and Michaela is that of a spiritual advisor and disciple. This gives rise to a presumption of undue influence (Allcard). In Khan v Khan, the plaintiff sold property to the defendant for a very low price after being told by a spiritual advisor that she would be blessed if she did so. This was considered undue influence. Likewise, Petra signed an agreement not to sue ABFA in relation to Malcom’s conduct and agreed not to speak publicly. Michaela, a spiritual advisor strongly advised her to sign the contract. In Khan the spiritual advisor was a third party, yet, their influence caused the contract to be voidable. Therefore, it is likely that Petra’s contract would be voidable also.

Defences

On the facts, Petra did not have independent advice. ABFA may argue that she was exercising her free will however this is harder to rebut when the plaintiff has given away almost all their property (Inche Noriah). Likewise, it is possible that Petra has given up several significant rights, and this may cause the defence to fail.

On balance, it is likely that the contract would be voidable for undue influence.

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Is the contract voidable for duress?

The elements of duress are:

(i) Illegitimate pressure exercised by one party to another; which

(ii) Caused the party to enter a contract

(iii) Absence of reasonable alternatives

(Universe Tankships)

Was there illegitimate pressure?

Tony’s statements ‘either sign this agreement properly or I won’t let you have the surgery’ would likely classify as duress to the person. Threats of violence may be duress (Barton). Denying medical treatment is similar to violence.

Did the threat cause Petra to enter the contract?

For duress to be made out, the illegitimate pressure must have acted on the mind of the victim in some way (Crescendo). Causation may be difficult to prove because Petra had already signed the contract (albeit incorrectly) before the pressure was exercised. In crescendo, the court found no duress because the pressure was exercised. In Crescendo, the court found no duress because the pressure was applied after the mortgage was executed. Likewise, causation may not be found here.

Were there reasonable alternatives?

Petra required urgent medical attention, therefore there were no reasonable alternatives.

On balance, it is likely that the court would find duress and the contract would be voidable.

4 good, if brief, work

2. Can ANU terminate Braveheart’s employment?

Is the requirement to adopt standardised teaching practices a term of the contract?

Where a document appears to be a complete contract, it may be inferred that it contains all the express terms that bind the parties (Barnir). On the facts, the AEC makes no mention of standardised teaching practices. The parole evidence rule excludes extrinsic evidence terms that ‘subtract from, add to or otherwise alter the terms of the contract’. The requirement to teach according to standardised teaching practices is inadmissible because it adds to the terms of the contract.

ANU may argue that Chandra’s statements were a collateral contract., a promise made in consideration of a party’s entry into a contract (Hoyt’s). However, the statements did not convey a clear requirement that Braveheart teach according to standardised methods.

In Peppers Hotel, it was stated that where words are unambiguous, the courts must give effect to them. Clause 6 is unambiguous (really?) therefore pre-contractual evidence is inadmissible.

However, Clause 6 requires Braveheart to follow reasonable instructions from supervisors, therefore after the commencement of the contract Braveheart would be required to teach according to standardised practices if requested to do so.

Has Braveheart breached the contract?

By continuing to teach according to his own methods against the instructions of his supervisors, Braveheart has breached clause 6.

Can ANU terminate the contract?

A right to terminate conferred by law may have arisen.

Has Braveheart repudiated the contract?

The test for repudiation is whether the conduct of one party is such as to convey to the reasonable person in the situation of the other party, renunciation either of the contract as a whole or of a fundamental obligation under it (Koompahtoo). Successive breaches of combined significance may constitute repudiation (Carr). Braveheart repeatedly refused to comply with instructions therefore repudiation may be made out.

In Laurinda, a ‘contemptuous’ letter and the attitude of the defendant constituted repudiation. Likewise, Braveheart’s contemptuous attitude towards following clause 6 and his open letter criticising his colleagues may constitute repudiation of the contract. Is it a condition?

Has Braveheart severely breached clause 6?

Severe breaches of an intermediate term may give rise to a right to terminate (Koompahtoo). On the facts, Braveheart’s breaches did have severe repercussions for the university. They caused difficulties for his colleagues. Although his students received good marks, his methods were inappropriate for the department and caused some disruption.

Is ANU precluded from terminating the contract?

It is possible that by permitting Braveheart to continue working in spite of his breaches of clause 6, Chandra has waived the right to terminate for this conduct. In Tropical Traders, the court found that acceptance of some late payments did not convey that all late payments would be accepted. Likewise, allowing Braveheart to continue working for four years despite requesting each year that he comply might not necessarily convey that they would not terminate for breach in the fifth year.

Breach of good faith

The open letter may also breach an implied duty of good faith.

On balance, ANU would likely have the right to terminate the contract for repudiation, and possibly for severe breach of an intermediate term.

Contruction 2

Termination 3

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