

LAWS1204

Contracts

Semester 2 2015

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

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***High Distinction (87/100)***

Question 1 [22/25]

(i) Did Tony act unconscionably?

Was it unconscionable for Tony to suggest a settlement agreement in an attempt to prevent Petra from sueing ABFA?

In order for unconscionable conduct to be found it must be established that:

1) Petra suffered from a special disadvantage; and

2) Tony had knowledge of her special disadvantage; and

3) Tony took unconscientious advantage of Petra.

1) Special disadvantage.

As established in Blomley v Ryan a special disadvantage may include “circumstances affecting [an individual’s] ability to conserve [their] own interests”. In this case, it could be argued that Petra suffered from a situational special disadvantage. As a detainee at a refugee centre Petra lacked adequate control over her freedom and rights, which affected her ability to conserve her own interests. Therefore this element is satisfied.

2) Knowledge

As established in Amadio for unconscionable conduct to apply, the other party must know that the special disadvantage exists. It is clear from the facts that Tony as an ABFA representative was aware that Petra may suffer from a special disadvantage as a detainee. Therefore this element is satisfied.

2) Advantage taken

As established in Louth v Diprose the other party must have taken an unconscientious advantage of the party with the special disadvantage. Tony did so by furthering ABFA’s ability to escape liability in helping Petra sign the settlement agreement.

Defences

Tony would be able to rebut unconscionable conduct if he could demonstrate that the transaction was fair, just and reasonable (Amadio). In considering this defence, a court would likely look at; independent advice and the ability of the weaker party to fully comprehend the transaction (Louth v Diprose). From the facts Petra did not receive objective independent advice and it is likely she did not fully comprehend the implications of signing the settlement agreement. Therefore this defence would be likely to fail.

Conclusion

Overall, it is likely that a court would find that Tony acted unconscionably and the contract would be voidable.

[9/10]

(ii) Did Michaela exert undue influence on Petra?

As a multi-faith spiritual advisor, the relationship between Petra and Michaela falls under the category of a relationship of presumed influence. Therefore it automatically gives rise to the presumption of unde influence (Jenyns v Pblic Curator).

It was established in Khan v Khan that spiritual relationships often result in situations where the leader places significant pressure on followers. Furthermore, although Michaela was not seeking personal benefit, Khan established that undue influence can include instances where influence comes from third parties.

Therefore this relationship is satisfied and could only be rebutted by a defence.

Defences

As the stronger party, Michaela would bear the burden of proof to demonstrate that Petra made an independent and fully informed decision (Union Fidelity Trustee v Gibson). This would be difficult to argue as Petra did not discuss the situation with any advisors independent of ABFA.

Additionally, from the facts it is unlikely that Petra’s decision was one of free will and was not influenced by any undue pressure (R v Attorney General). Therefore these defences are unlikely to succeed.

Conclusion

Overall, It is likely that a court would find undue influence in this presumed relationship of religious advisor and follower between Petra and Michaela. Therefore the contract would be voidable.

[9/10]

(iii) Would Tony’s threat to Petra to sign the Settlement Agreement be considered Duress?

Type of Duress

Although Tony’s threat to deny knee surgery is not directly violent, non-violent threats to another is still included as Duress to the person (Public Service Credit v Campion).

Universal Tankships established duress vitiates and destroys consent of Plaintiff. For duress to be established, three elements must be satisfied:

1. Illegitimate pressure
2. Causation
3. Plaintiff had no reasonable alternatives

1) Illegitimate pressure

a) Overborne will

Duress requires that the will of the affected party be overborne (Occidental). It could be argued that Petra’s independent will was overborne as Tony threatened that she would not receive medical help. Therefore her decision to sign the contract was not independent of her medical needs.

b) Nature of threat

It may be established that denying Petra medical care is an unlawful act. However, without further information this is unable to be established. As discussed in JBS Holdings v NRMA it is unclear whether lawful acts constitute duress.

This element may be satisfied.

2) Causation

As discussed in Crescendo Management, the illegitimate pressure exerted must be one of the reasons for the party to enter the agreement in order for it to be considered duress. It is highly likely that a court would find this element satisfied as the threat of no medical treatment was significant enough for Petra to subsequently sign the agreement in order to access it.

3) Reasonable alternatives

In establishing duress there must have been no reasonable alternatives available to the plaintiff (Universal tankships). As Petra was within a detention Centre it is reasonable to assume she did not have other alternatives for access to medical assistance to alleviate the pain of her injury without the help of ABFA employees, Tony in particular.

Therefore this element is satisfied.

Conclusion

Overall, Duress to the person is likely to succeed, depending on whether a court would accept that there was illegitimate pressure. This would rely on if Tony’s threat was unlawful and if Petra’s will was adequately overborne.

[4/5]

Question 2 [21.5/25]

(i) Can ANU terminate Professor Braveheart’s employment?

Is clause 6 a condition?

A condition is defined by Latham CJ in Luna Park as a term so important to the substance of the contract that if it is not performed the innocent party would lose the benefit of the contract. It could be argued that clause 6 is important as it is essential to the feasibility of coherency within the Biology department. However, in the absence or breach of clause 6, ANU would still receive the benefit of the contract, which is a capable professor teaching the course content to the students.

Test of essentiality (Arcos)

Where there is no express statement within the contract, courts rely on the process of construction. In determing the essentiality of the term it is possible to consider surrounding circumstances or entire contract to figure out intentions (DTR v Nominees).

a) Language of the obligation

Within clause 6, the language is quite vague in that it requires employees to follow ‘reasonable instructions’. This suggests that it is less likely to be a condition.

b) Contract as a whole

Although this information is not provided from the facts it would be relevant to examine whether teaching matters, and more specifically methods are a large part of the contract, or whether clause 6 is a brief segment.

c) Surround circumstances

PAROL EVIDENCE RULE

The parol evidence rule could be rebutted under the exception of clarifying an ambiguity. Codelfa established that extrinsic materials such as oral communication is then covered. In examining the interview between Professor Chandra and Professor Braveheart it would seem likely that “adopting the same teaching methods” was of considerate importance to the contract as it was “an important way to manage [their] high teaching load”.

Despite the importance of teaching styles as established in the interview, it is unlikely that clause 6 would be considered a condition of the contract, but an intermediate term instead.

Is the breach of intermediate term (clause 6) sufficiently serious?

As demonstrated by Koompahtoo breach of an intermediate term will occur if it is very significant. It could be argued that in breaching clause 6, Professor Braveheart deprivated ANU from the benefit (Hong Kong) of having a coherent teaching staff that had standardised methods. Without this, the very basic benefit of having a teacher, would not be adequate and the problems facing the Biology department would be of such a magnitude that the contract with Professor Braveheart would be only providing benefit to him.

It is possible that a court would define clause 6 as an intermediate term and see Bravehart’s conduct as a significant breach. Alternatively, ANU could argue repudiation.

[17.5/20]

Repudiation

Freeth v Burr established that when a party demonstrates unwillingness to perform it may lead to a right to terminate. Repudiation may be constituted through through conduct (Carr v JA Berrriman). Through failing to comply consistently from the years 2012-2015, it could be reasonably viewed that Braveheart manifested an unwillingness to perform under the terms of clause 6 (Carr).

Repudiation is likely to be established causing the contract to be voidable.

Notice

The response of Professor Chandra would not be considered sufficient notice as it did not specifically state the obligation to be performed and did not clearly indicate that Braveheart’s failure to comply would result in termination of the contract (Lauxinda). Chandra states “I’ll keep trying to work with you and I’m sure you’ll see reason” which does not comply with the requirements of a sufficient notice.

Limitations

Are there any limitations of termination that would give rise to a defence for Bravehart?

1) Relief against forfeiture

this restriction of termination prevents a party from terminating if to do so would be unconscionable (Tanwar enterprises v Lauchi). In Legione v Hateley the court considered a variety of elements including

i) significance of breach and if it was wilful

ii) Adverse consequences.

In relation to the facts it is evident that Braveheart’s breach was reasonably sufficient and wilful. Futhermore, as an adverse consequence of his behaviour and disputes with other teaching staff, ANU is suffering embarrassment and disrepute from the open letter.

This defence is unlikely to succeed.

[4/5]

Conclusion

Overall, it is likely that clause 6 of Braveheart’s contract would be considered an intermediate term and that his breach was significant enough to warrant ANU’s right to terminate. Additionally it is likely that repudiation would be found through Braveheart’s repeated conduct suggesting unwillingness to comply. Finally the limitation of relief against forfeiture would fail as a defence as the facts of the case are not adequate.