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Contract Law – Some Specific Issues

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We have seen in the previous chapter how parties seek to determine obligations via their voluntary agreements. There are, however, situations which may become problematic for the parties and will directly affect the validity of some contracts. The chapter also discusses the important topic of contractual terms, and the law relating to making contracts by electronic means, an area of growing importance.

Validity of contracts

■ Void, voidable and unenforceable contracts

- 1 Void contract.** Effectively these may be regarded as having been a nullity from the start. The effect of this results in the agreement having no legal effect. Significantly for third parties this also means that no rights can be transferred by a void contract.
- 2 Voidable contract.** These may be agreements which either one or both parties are entitled to have set aside. Please note however that the contract is valid and continues to be effective until this is done. Rights and obligations can be transferred under the contract before it is set aside.
- 3 Unenforceable contract.** As stated before, there may be circumstances in which contracts are legal and possible to perform, but which the courts will not allow for policy reasons.

■ Agreement improperly obtained

As discussed in Chapter 5, fundamental to the agreement is *consensus in idem*. In other words both parties must consent to the material terms of a contract. If however the consent of one of the parties has not been properly obtained, the contract may be void or voidable.

There are a variety of situations in which a court may find that the agreement has been improperly obtained. For example:

Facility and circumvention

When we consider this scenario we must understand the terms being used. *Facility* can be considered in terms of mental weakness, i.e. an individual may suffer from mental weakness making them vulnerable in their ability to provide consensus. *Circumvention* on the other hand can be seen as an action or set of circumstances which effectively allow one of the parties to persuade someone to act against their intentions or interests.

We can suggest that the contract may be voidable if one party can prove that when he consented to the agreement:

- 1 he was in a state of facility,
- 2 the other party took advantage of this to induce him to enter the contract and
- 3 he suffered some loss because of the contract.

Anderson v The Beacon Fellowship 1992 S.L.T. 111

Facts of the case:

The Fellowship, a religious association, rented a hall from Anderson and in 1985 entered into missives to purchase it. Representatives of the organisation visited Anderson and allegedly pressed their religious practice upon him. Anderson gave a number of donations to the association and he now sought to have them repaid, on the basis that they had been obtained by fraud and circumvention while he was in a weak and facile condition. He claimed that, at the time, he had been suffering from serious illness and depression, and that the fellowship had put considerable pressure on him.

Court decision:

This pressure was sufficient to amount to circumvention and, if proved, would invalidate the transaction.

McGilvary v Gilmartin* 1986 S.L.T. 89*Facts of the case:**

The pursuer disposed to the defender, her daughter, a house which she, the pursuer, had inherited from her own father and which she had always intended to give to her son. Mrs. McGilvary averred that in 1980, her daughter had come to stay with her and her husband, who died shortly afterwards. The death left Mrs. McGilvary in a weak physical and mental state. She claimed that, while she was in this condition, her daughter took her to a solicitor's office and persuaded her to sign over the property.

Court decision:

This was sufficient to amount to circumvention. There was no need to prove actual fraud.

Undue influence

This may arise where parties to contract are in a relationship where one naturally has trust and confidence in the other and the stronger party takes unfair advantage of this to obtain an agreement detrimental to the weaker party. Examples of this may be found within parent/child, doctor/patient, and solicitor/client relationships. A contract is voidable where undue influence is proved.

Gray v Binny* (1879) 7 R. 332*Facts of the case:**

Gray, who was aged 24 and heir under a deed of entail, executed a deed by which he parted with his rights in an estate for very much less than the true value. He was persuaded to enter the agreement by his mother and her legal advisor Binny, to whom she was deeply in debt. The mother died soon afterwards and Gray brought an action for reduction.

Court decision:

The court reduced the agreement on the basis that Gray had been unduly influenced by his mother. "It seems to me to be very clear that a deed so prejudicial to the granter, and obtained in such circumstances, cannot, when challenged, be allowed to stand". (Lord Shand).