

The Law of Contract

MGT388 Lecture 3

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Objectives

1. Understand how a contract can be discharged (comes to an end)
2. Determine when a breach of contract has occurred and what remedies are available.
3. Appreciate the doctrine of frustration and how it is dealt with in practice.
4. Explain what is meant by a misrepresentation, how it arises, and what remedies are available.
5. Explain the concept of arbitration and appreciate its practical importance



1. How a contract can be discharged

- Performance of contract
- By agreement of contractual parties
- Breach of contract
- Frustration of contract
- Contract is voidable due to conduct of a contracting party



2. Breach of contract

- Repudiatory breach?
 - Can wronged party choose to terminate?
 - Breach of condition/primary obligation – Yes
 - Breach of warranty – No
 - Breach of innominate term – Maybe
- Anticipatory breach
 - Party indicates that it will not/cannot perform obligation in advance
 - Other party can choose to terminate



Remedies for breach of contract

- Claim for a debt
- Specific performance
- Injunction
- Damages (most common remedy)



Damages for breach of contract

- Punitive/exemplary damages
 - not available for breach of contract (Addis v Gramophone)
- Restitutory damages
 - Possible but highly exceptional and will only be awarded if other remedies are inadequate and claimant has a legitimate interest in depriving the defendant of his profit (AG v Blake)
- Compensatory damages
 - Aim is to put wronged party in position they would have been in had contract been performed/completed
 - Reflects expectation interest or reliance interest



What can claimant be compensated for?

- Cost of replacement performance
- Lost profits
- Damage to property
- Personal injury
- Damages payable to customer
- Damage to commercial reputation
- Emotional distress
- Loss of pleasure



Limitations on compensation

- Causation ('but for' test)
- Remoteness
- Mitigation
- Non-pecuniary losses
- Liquidated damages and penalty clauses



3. Frustration of contract

- Legal device that serves to terminate a contract due to the impossibility of performing it or another frustrating event that was extremely difficult to foresee
- “not lightly to be invoked to relieve contracting parties of the normal consequences of imprudent bargains” (*Pioneer Shipping Ltd v BTP Tioxide*)
- Fault acts as a barrier
- Requires a lack of foreseeability



Frustrating events

- Impossibility
- Illegality
- Frustration of purpose
- Impracticability
 - *but* must be extreme



Consequences of frustration

- Law Reform (Frustrated Contracts) Act 1943
 - Section 1(2)
 - Section 1(3)



4. Voidable contract due to improper conduct

- Where one party has acted improperly, the court may deem the contract 'voidable' (innocent party can choose to terminate)
- i) Misrepresentation
- ii) Duress & Economic Duress
- iii) Undue Influence



Misrepresentation

- A false statement of fact which induces the other party to enter into a contract
- Representation must be:
 - Statement of fact (not mere opinion) – though can include conduct
 - Material
 - Known
 - Intention
- 3 types of misrepresentation
 - Fraudulent misrepresentation
 - Negligent misrepresentation
 - Innocent misrepresentation



Duress & Economic Duress

- Duress
 - Violence or threat of violence
 - Violence must be unlawful (Williams v Bailey, 1866)
 - Causation
- Economic duress
 - Pressure must amount to coercion of will (vitiates consent)
 - Pressure or threat must be illegitimate
 - Causation



Undue Influence (U.I)

- Class 1: Actual undue influence
 - Claimant must prove (i.e. burden of proof on claimant)
 - Existence of a relationship of trust or confidence between the victim and the wrongdoer
 - Pressure that the wrongdoer exerted led to the victim entering into contract
 - No 'special relationship' exists between parties (as with Class 2)
- Class 2: Presumed undue influence
 - Class 2A: Relationship exists which automatically gives rise to presumption of U.I.
 - Parent/child, doctor/patient, solicitor/client, religious advisor/member of flock
 - Law will presume UI - burden of proof on defendant to rebut
 - Class 2B: Relationship exists which does not give rise to automatic presumption of U.I. but in which trust and confidence is placed in another
 - e.g. employee/employer, cohabitants
 - Claimant only needs to show relationship was one where trust/confidence placed in wrongdoer
 - Where this is shown law will presume UI - burden of proof on defendant to rebut

Remedies for improper conduct

- Misrepresentation - Misrepresentation Act 1967 Section 2
 - Rescission - voidable contract
 - Damages (but not for innocent misrepresentation)
- Duress & economic duress – common law
 - Rescission - voidable contract
 - Damages
- Undue influence – equity
 - Rescission - voidable contract
 - Damages



5. Arbitration

- Bypasses the courts' jurisdiction
- Arbitration Act 1996
 - S1 - The parties should be free to agree how their disputes are resolved
 - S33 - Arbitrator must act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matter falling to be determined.



Practical advantages of arbitration

- Arbitrator is an expert
- Outside of state system – speed & control
- Outside of public eye - privacy
- Less confrontational - more likely to maintain business relationship
- Cheaper than going through the courts - but still expensive!

