



ANU LAW STUDENTS' SOCIETY

LAWS1204 Contracts 2nd Semester 2007

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Question 2

23/25

B = Bundy

R = Ruby

Is the initial contract binding?

There is mutual agreement as to the terms; the offer is made by B and accepted by R. Both parties signed the docs which makes the contract binding (*L'Estrange*). Though consideration of the canary is not (in monetary terms) adequate for the sale of the house, it need not be, so long as it's sufficient (*Nestle*). Therefore, there is a contract. [✓]

Are the terms promissory?

The terms (that B will transfer the house in return for the canary) are express and contained in writing; they also express the intentions of the parties as per prior negotiations; therefore they are promissory.

Therefore, in order for B to escape liability under this contract, he will need to prove that the dealing was unconscionable or made under undue influence. [✓]

Unconscionability

B would need to prove the 3 elements as contained in *Commonwealth Bank v Amadio*: [✓]

1: That he had a special disadvantage due to his old age; infirmities which led him to be unable to look after himself and emotional state after the loss of his canary.

Although "age" and "infirmity" constitute disadvantage in *Blomley*; R would contest that B was in fact of sound mind, This is a contentious point which requires more information regarding B's state [✓]. Regardless, B would be likely to succeed in proving that he had a special disadvantage in analogising with *Bridgewater v Leahy* and *Louth v Diprose*; where the disadvantages arose from relationships, rather than constituent disabilities (*Bridgewater*): just because B knew what he was doing doesn't mean he wasn't disadvantaged by the relationship. [✓ Good]

2: B needs to show that R had knowledge of his special disadvantage. As his nurse and carer for two years this would not be a difficult onus to discharge. [✓] And:

3: B would also have to show that with this knowledge, R exploited his disadvantage to her benefit. Again this is easily proved as she stood to gain so much, and he so little, from the bargain. [✓✓]

Conclusion

B has a strong case for Unconscionability and could rescind the contract if this claim succeeded. [✓]

Undue Influence

B also has a strong case for under influence as:

1: He could analogise his relationship with his nurse with a doctor/patient relationship under which undue influence is presumed (*Johnson v Buttress*)

2: Failing this, B could argue that as his nurse and someone he relied on for running errands and looking after him; R had undue influence over him as a matter of fact – similar to in *Johnson v Buttress* [✓✓ Good]

Therefore, as onus is placed on R to justify any transaction between the pair as fair and reasonable (*Johnson*) and to ensure that B's consent was given freely and willingly. R could easily have satisfied this by referring B to independent legal advice. [✓✓]

Conclusion

R and B's relationship was one of under influence and R did not discharge her onus as the stronger party to ensure B's consent was free and willing.

B is entitled to seek rescission; the initial contract is not binding. [✓]

Is the 'supplementary agreement' binding?

In order to escape liability under the supplementary agreement, I would advise b to argue that he signed it under duress. [✓]

Duress

1: B must show that there was a threat to exert illegitimate pressure – in this case, threatening to steal the canary is an illegitimate threat as theft is a crime. [✓]

2: B must prove that he had no practical alternative but to submit to this threat: it is likely that R would argue it wasn't a sufficiently serious threat or that there was only a canary at risk. However, in the context, R knew of B's deep emotional attachment to the canary and as his nurse (and due to his physical in capabilities_ there was no other way B could resist the threat other than to submit to it. [✓]

Duress only need be one reason that B entered the contract (*Barton*); here duress is proven and the contract is voidable. [✓]

Can B enforce the supplementary agreement against R?

If R wanted to escape liability under the supplementary agreement, she could argue that B gave no consideration. To rebut this, B could argue he gave consideration in two ways. [✓]

1: Forbearance to sue R for allegedly engaging in unconscionable conduct or exercising duress

Given that, as outlined above, B's claims regarding the enforceability of the initial contract have real legal basis (i.e. are not vexatious or frivolous) – his consideration to enter the contract can be by agreeing "there need be no further argument about our first agreement" with R. (*Wigans v Edward*) [✓]

The only way B's claim can be tested are if they are litigated but they are genuine claims with legal basis, thus agreeing not to sue on them is sufficient consideration. [✓]

2: Performance of B's existing contracting duty to transfer title of the house is good consideration as it provides practical benefit to Ruby. [✓]

This would be difficult to argue as, although R would suffer not gaining title of the property, this is not a loss to her current position. In *Williams v Roffey*, the transaction was commercial and D would have suffered penalties if P did not continue. R is likely to succeed in distinguishing the case on this basis: there was no 'practical benefit' conferred to her as per the test is *W v R* by B promising to honour his existing obligation. [✓]

This is a weak argument for B. I would advise B to argue point (1) in order to make the supplementary agreement binding on R as the other elements of a contract are present and uncontestable:

There is agreement as to the terms – offer and acceptance as to these terms evidenced by the signed document. This makes the contract binding. [✓] Due to this formal process of signing the documents, R could not argue there was no intention to create legal relations as this is clearly not a family or social context (*Rose v Frank*); it involves the serious and business-like process of the transfer of title of property. [✓]

Conclusion

B can enforce the agreement on Ruby as all the elements of a contract are present and there are no vitiating factors to be considered. [✓]
[Outstanding work, well done!]