

Unconscionability and Contract Enforceability Legal Analysis

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The concept of Unconscionability and why it may mean that a contract is not enforceable. What are the leading cases on this? Why do we have such principles in our commercial world?

Introduction

The concept behind the term unconscionably otherwise known as unconscionable conduct or dealings. This term is widely used in Australia and provides a reference to the contract law stating the exclusion of any such terms, policies, or conditions that favor one side over the other or just appear to present an unjust advantage to someone. This is usually when one party gains a superior advantage over the other, in terms of bargaining power (Wooler 2017).

These terms in the contract present a contrary approach toward the conscience from the perspective of good or bad. A situation like this normally arises when one party, gaining an advantage in terms of a certain policy, fails to inform the other party about the existing law in the contract and makes the addition anyway. This gives rise to a one-sided win in terms of these contract breaches and allows them to take full advantage of it while denying any possibility of being fair or just to the other party. Practices such as this disregard the basic principles to contract formulating policies. Such kind of behavior is unfair and unjust for the affected party who wishes to avail the benefits of the contract in a fair and equal manner.

Description

The concept of Unconscionability and why it may mean that a contract is not enforceable. What are the leading cases on this? Why do we have such principles in our commercial world?

During the formation of the contract, both parties need to consider a few points. These points elaborate on the importance given to power, mental capacity, and age. Among the other issues related to unconscionability are factors such as a lack of superior understanding and the

requirements/skills needed to perform proper bargaining. The scenario for fraud comes into play if an individual from one party misinterprets the terms included in the contract and causes a commotion for the other party since it denies any assistance in bargaining (Poole 2016). It poses a threat to the individual's possession that can be useful in the contract. All of these situations and errors can make a contract null or void, and this criterion gives birth to the contract being credited as fraud or actions being carried out against the policies of public deceit.

Unconscionability has various cases, one by *William v. Walker-Thomas Furniture Co*, and notably a famous case. The details of this case involve the inclusion of two parties that mentioned the purchase of furniture items from a shop owner, but one of the items included in that purchase breached the validity according to Unconscionability standards. This breach can cause the whole shipment of purchase to be considered unpaid, and the customer will be required to return all of the items back to their previous owner (the shopkeeper in this case). The items were delivered to the customer, but since they were unaware of the last item and didn't pay for it, they could not fulfill the condition. This allowed the shopkeeper to use it to his advantage and asked for the return of all of the sold items. The Columbian court reviewed this case and made the judgment of holding the shopkeeper accountable for setting a condition that was neither known by the customer nor did the customer hold a sound bargaining power in this matter.

Another case that makes it a leading case is *Harris v. Blockbuster Inc.*, where a contract was formulated that allowed one party to make amendments to the contract's terms without the other party's consent. The other party had little to no clue about this contract term, and due to this, the court deemed this contract null and held the accused party convicted of misusing the other party's lack of understanding.

Reasons behind the formulation of these principles are due to undue influences which include the customer not having enough authority or the power needed to make decisions by themselves and can come under the influence of another party quite easily (Corones 2011). The second reason included the scenario where one party holds an unfair and unjust advantage over the other party and as such can make ill use of this point to benefit themselves during the contract formulation.

What are the characteristics of an unequal bargain that must or might be demonstrated to indicate Unconscionably? Refer to appropriate cases.

There are some obvious factors that include some prime facts that credit the contract to be illegal but place it under unconscionable, in such a situation, the court releases parties from the duty of fulfilling the terms of the contract (Alavi 2016). In some situations, the undue influence is graded as a pressure that the dominating party imposes on the secondary party to provide themselves with benefits. For instance, in situations where the customer needs to provide their signatures and is denied any possibility of taking an action by themselves, such mandatory actions are deemed as unjust (Macneil

1977). The second form of unjust behavior is availing the winning end to bargaining power, otherwise stated as the secondary party having less information regarding the terms of the contract. A scenario such as this is created when one party fails to inform the other party or considers it unnecessary to inform the other party about the contract terms they are forming. This can lead to undesirable situations and can assist one party in having a dominating hand over the decisions of the party, using it to their advantage at any given time in the life of the contract. The third characteristic includes the criteria of limited warranty, including the practice of limiting one party's benefits while increasing the liability of the other party.

An example of this can be seen in the case of *Fry v Lane*, in which one party exploited the contract conditions for their sole benefit and availed of the contract terms that permitted them to avoid liability. The major miscommunication gap that occurred was during the process in which the original worth of the property was not properly informed, and this resulted in awarding Lane more than the value the two parties bargained for. This case is a prime example exhibiting the situation where complexities in a term awarded Lane with the opportunity to avoid liability. Another notable example is *Commercial Bank of Australia Ltd v Amadio*. This case includes the bank releasing a loan to Amadio but later on mortgaging the property. Amadio failed to pay the loan fully, and the bank demanded immediate property transfer to them. The Court reviewed the case and ruled it in favor of Amadio due to term unawareness on Amadio's part regarding ownership transfer to the bank in case he failed to repay the full loan amount, as well as complexity in the contract language used by the bank along with providing no assistance.

Is there any legislation that similarly supports the principle that a contract may be so unfair that it is unenforceable?

The case of *Commercial Bank of Australia Ltd v Amadio* which was presented earlier brought about a change in the legislation on the grounds of cases having similarities and ones that enforced means that were unjust and unfair in nature. The new changes in the legislation brought about two main points, which included situations to decide whether a contract included situations that enforced certain conditions. This kind of enforcement is deemed to be unconscionable (Martimort, Semenov, and Stole 2017). These two points have been recognized and properly placed in the legislation by the first point being titled *Contract Review 1980*, and the second point under the title *Consumer Act 2010*. Further elaboration of the points highlights some key features,

- The *Contract Review* reviews the conditions where certain points of pressure, influence, or conditions are placed to intimidate the customer into agreeing to the formed contract. This clause will refer to and analyze the criteria for the customer who is unable to take decisive action on their own regarding their business due to the other party's intimidation. Influencing or pressuring them during the contract formation.

- This clause also relates to being attentive and alert to avoid conditions that give rise to a lack of knowledge, generally being unaware of the terms or the mere lack of understanding of the presented terms and conditions in the contract. A situation like this arises when the seller fails to convey proper instructions or information to the customer. A situation like this becomes ideal for the seller since they can easily dodge the liability. This will also inflict further liability on the customer and will force them to abide by the rules of the contract and hidden terms.

A successful execution of the contract is split into two parts. The first part deals with the consideration of deciding whether the contract is enforceable, meaning if it is legally backed by law, whereas the second part deals with the unenforceable condition which looks into the absence of legal bindings in the contract and the reasons behind it (Campbell et al., 2011). The chief reason for these reasons is the condition being unconscionable. To better understand the enforceable and unenforceable follow the situation where both parties share an equal obligation, a sense of mutual conscience, and have an equal level of awareness towards breaches if any. The situation of unenforceable comes to light in scenarios where legal binding does not back it up properly. The reason behind this is majorly due to the contract being void or unavoidable with respect to unconscionable conditions when either of the parties has no awareness regarding the obligation on them, their lack of knowledge regarding the contract, or their understanding towards the nature of the contract.

What has been the effect on Banks and some larger institutions regarding the court's reluctance to enforce agreements that appear to be unfair or unequal?

The practice of contract formulation has become quite normal and is being formed on a daily basis for different forms of businesses. These contracts are being formed for numerous reasons, including smaller deals among business partners, clients, and shops or the issuance and purchase of smaller-level commodities. These contract-based dealings also include the dealings carried out over websites; these come under e-commerce. All of these e-commerce-related dealings follow the practice of forming a contract between seller and client as well. As such, the laws of the contract need to be followed by both parties (Pasiouras 2016). Similarly, both parties that are conducting their business through an e-commerce gateway are bound by legal bindings of trade and contractual terms, must follow the regulations, and are held responsible for it. ACL provides services to protect clients, facilitate consumer rights, and ensure that businesses carry out their responsibilities. Three conditions provide the foundation for the formation of ACL while catering to the rights of the consumers.

- In regards to the trade of goods
- The purchase of goods and services is limited to household and personal use. The price of the goods purchased must fall under the price range of \$ 40,000 as well. This price range is set to identify personal use.
- The third point deals with the condition of purchasing any transport vehicles that provide

assistance for transporting goods and shall be categorized under public use, rather than personal use.

The rules and laws stated under ACL provide further elaboration on the topic of preventing any misuse or misleading information that businesses or people may use to bring benefits for themselves. This law has proven to be quite useful for banking sectors and larger institutions, a prime example of this is insurance companies.

From your reading is there any interesting commentary on unfair agreements and the attitude of courts when deciding on the enforceability of a contract?

The inequality in the bargaining power factor makes use of general terms that present unconscionable situations in the contract. The company implies the practice of further breaking it down into parts that assist the company in exploiting them for their personal gain (Pearson 2017). This was taken under review and courts saw it fit to implement legislation, to assist the weak, affected parties in these matters.

What is the role of consumer advocate groups regarding unfair agreements, e.g., the Financial and Consumer Rights Council (FCRC) – Victoria? Did your research reveal any similar bodies or advocacy groups? Have there been any particular issues within Australia that you would characterize as unconscionable behavior by vendors, companies, or other institutions?

The Financial and Consumer Rights Council (FCRC) has existing services for speaking up for the rights of consumers, the difficulties they face in their finances, and other consumer rights-related problems. The FCRC assists people who are unable to afford an attorney to fight on their behalf and helps them. FCRC was established to become a platform with the main objective of providing consumers with counseling, securing their funds, speaking out for the rights of the people, and forming a bridge to allow governments and consumers to communicate better together.

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