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

These terms in a contract present an approach contrary to conscience from the perspective of fairness. 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 an existing term in the contract and makes the addition anyway. This gives rise to a one-sided advantage in terms of these contract provisions and allows one party to take full advantage of them while denying any possibility of fairness or justice to the other party. Practices such as these disregard the basic principles of contract formation. Such behavior is unfair and unjust to the affected party, who wishes to avail themselves of 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 a contract, both parties need to consider a few points. These points elaborate on the importance given to bargaining power, mental capacity, and age. Among the other issues related to unconscionability are factors such as a lack of superior understanding and the requirements or skills needed to perform proper bargaining. The possibility of fraud comes into play if an individual from one party misrepresents the terms included in the contract and causes problems for the other party by denying meaningful assistance in bargaining (Poole 2016). It may pose a threat to an individual's possessions that can be affected by the contract. All of these situations and errors can make a contract null or void, and these criteria may cause a contract to be characterized as fraudulent or contrary to public policy.

Unconscionability has been considered in various cases, one of which is Williams v. Walker-Thomas Furniture Co., a notably famous case. The details of this case involve two parties and the purchase of furniture items from a shop owner, but one of the terms included in that purchase breached standards of unconscionability. This provision could cause the whole shipment of purchased items to be considered unpaid, and the customer would be required to return all of the items to their previous owner, the shopkeeper in this case. The items were delivered to the customer, but because the customer was unaware of the last item and did not pay for it, the condition was not fulfilled. This allowed the shopkeeper to use the term to his advantage and ask for the return of all of the sold items. The District of Columbia court reviewed this case and considered whether the shopkeeper had imposed a condition that was neither understood by the customer nor negotiated from a position of equal bargaining power.

Another 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 knowledge of this contract term, and because of this, the court considered the enforceability of the agreement and the effect of one party's unilateral power to modify it.

Reasons behind the formulation of these principles include undue influence, which may involve a customer not having enough authority or power to make decisions independently and being susceptible to the influence of another party (Corones 2011). A second reason involves a scenario in which one party holds an unfair and unjust advantage over the other party and, as such, can misuse this advantage for its own benefit during contract formation.

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

There are some obvious factors that include facts capable of rendering a contract unconscionable,

and in such a situation, the court may release parties from the duty of fulfilling certain terms of the contract (Alavi 2016). In some situations, undue influence is regarded as pressure that the dominant party imposes on the weaker party to provide benefits to itself. For instance, in situations where a customer needs to provide a signature and is denied any meaningful possibility of taking independent action, such mandatory actions may be deemed unjust (Macneil 1977). A second form of unjust behavior is taking advantage of superior bargaining power, otherwise stated as the weaker 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 being formed. This can lead to undesirable situations and can assist one party in having a dominant position over the decisions of the other party, using it to its advantage at any given time during the life of the contract. The third characteristic includes the criterion 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 its sole benefit and availed itself of contract terms that permitted it to avoid liability. The major information gap that occurred was during the process in which the original worth of the property was not properly disclosed, and this resulted in Lane receiving more than the value for which the two parties bargained. This case is an example of a situation in which complexities in a term gave Lane an opportunity to avoid liability. Another notable example is Commercial Bank of Australia Ltd v Amadio. This case involved the bank providing a loan and later relying on a mortgage over property. The borrowers failed to repay the loan fully, and the bank sought to enforce the security. The court reviewed the case and ruled in favor of the Amadios due to their lack of awareness regarding important terms, as well as complexities in the contract language used by the bank and the lack of adequate explanation.

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, contributed to the development of legal principles dealing with cases involving unjust and unfair conduct. Changes in legislation brought about provisions for deciding whether a contract included conditions whose enforcement would be unconscionable (Martimort, Semenov, and Stole 2017). Relevant statutory frameworks include the Contracts Review Act 1980 and the Australian Consumer Law under the Competition and Consumer Act 2010. Further elaboration of the points highlights some key features:

- The Contracts Review Act addresses circumstances in which pressure, influence, or other conditions are used to intimidate a customer into agreeing to a contract. This framework allows consideration of whether a customer was unable to take independent action regarding their

affairs because of another party's intimidation, influence, or pressure during contract formation.
- The law also requires attention to circumstances involving a lack of knowledge, general unawareness of terms, or a lack of understanding of presented terms and conditions in a contract. A situation like this may arise when the seller fails to convey proper instructions or information to the customer. Such a situation can become advantageous to the seller because it may allow the seller to avoid liability while inflicting further liability on the customer and forcing the customer to abide by hidden terms.

A successful execution of a contract involves considering whether the contract is enforceable, meaning whether it is legally backed by law, as well as whether any condition is unenforceable because of the absence of legal validity (Campbell et al., 2011). A chief reason for unenforceability may be that a condition is unconscionable. To better understand enforceable and unenforceable contracts, consider a situation in which both parties share an equal obligation, a sense of mutual understanding, and an equal level of awareness of potential breaches. An unenforceable contract or provision may arise in scenarios in which legal enforceability is absent. This can occur because a contract is void or voidable with respect to unconscionable conditions, particularly when either party lacks awareness of the obligations imposed on them, lacks knowledge regarding the contract, or does not understand 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 formation has become quite common and occurs on a daily basis in different forms of business. These contracts are 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 transactions 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 contract need to be followed by both parties (Pasiouras 2016). Similarly, both parties conducting their business through an e-commerce gateway are bound by legal requirements concerning trade and contractual terms, must follow the regulations, and are held responsible for doing so. Australian Consumer Law (ACL) provides protections for clients, facilitates consumer rights, and ensures that businesses carry out their responsibilities. Several conditions determine the application of ACL while protecting the rights of consumers.

- In regard to the trade of goods.
- The purchase of goods and services may relate to household and personal use. The price of the goods purchased may also be relevant to whether statutory consumer protections apply.
- Other provisions address the purchase of vehicles used for transporting goods and whether they fall within the scope of consumer protection.

The rules and laws stated under ACL provide further elaboration on preventing misuse or misleading information that businesses or people may use to obtain benefits for themselves. This law has proven useful for the banking sector and larger institutions, including 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?

Inequality in bargaining power may contribute to unconscionable situations in a contract. A company may engage in practices that exploit weaker parties for personal gain (Pearson 2017). Such conduct has been reviewed by courts, and legislation has been implemented to assist weaker, 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 services for speaking up for the rights of consumers, addressing the difficulties they face in their finances, and dealing with other consumer-rights problems. The FCRC assists people who are unable to afford an attorney to fight on their behalf. The FCRC was established as a platform with the main objective of providing consumers with counseling, helping to secure their finances, speaking out for people's rights, and forming a bridge to allow governments and consumers to communicate better with one another.

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