

Capacity contract law

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Question 1(i) Phing, 17 years old daughter of a wealthy businessman is currently studying at a University College at Kelana Jaya. She bought a luxury car Audi R8 worth RM 900, 000. The car has now been delivered but she is unable to pay for it. Firstly, Phing is a 17 years old teenager which also known as minor. Minor is a person who legally underage; who has not yet attained the age of majority, and which are denied the ability to fully and freely contract. In Capacity of Section 11 define a person who is of the age of majority, sound mind and is not disqualified from contracting under any law.

Age of majority is recognized as above 18 years of age as stated in the Age of Majority Act 1971. Below are similar with the case, which case 1: *Ryder v. Wombwell* (1868), the defendant, an infant, having an income of only 500 Pounds per year was supplied a pair of crystal, ruby and diamond solitaires and an antique silver goblet. It was held that these things could not be considered to be necessities. It was observed that certain things like ear rings for a male, spectacles for a blind person, or a wild animal, cannot be considered as necessities.

For another case which case 2: *Mohori Bibee v. Dharmodas Ghose* (1903) the plaintiff, Dharmodas Ghose, while he was a minor, mortgaged his property in favour of the defendant, Brahmo Dutt, who was a moneylender to secure a loan of Rs. 20, 000. The actual amount of loan given was less than Rs. 20, 000. At the time of the transaction the attorney, who acted on behalf of the moneylender, had the knowledge that the plaintiff is a minor. The plaintiff brought an action against the defendant stating that he was a minor when the mortgage was executed by him.

Held mortgage was void and inoperative and the same should be cancelled. In the Phing case, she is unable to pay for luxury car Audi R8 which is already delivered to her. Under the Sale of Goods Act (1979) Phing is against the section 32 of the Act goes on to say that unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions. This means that the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

However, before look on the section 32 of the Act we also have to refer the Section 3(2) of the Act. Under this section, necessaries are defined as the goods are suitable to the condition in life of the minor or other person concerned and to his actual requirements at the time of sale and delivery. “Necessaries” are things which are essential to the existence and reasonable comfort of the infant. Luxurious articles are excluded. Thus, what may be termed as necessaries depends on the nature of goods supplied as well as the infant’s actual needs.

In the next case which case 3: Fawcett v Smthurst (1914) the court ruled that a minor is not bound by a contract for the hire of a car, although it was a necessary service, as the contract included the terms which make him liable for damage to the car ‘in any event’, whether or not the damage in his fault. Where there is a binding contract for necessaries, the minor is only bound to pay a reasonable price for them. Next case is relevant with luxury cases, case 4: Chapple v. Cooper (1844) a minor whose husband had recently died contracted with undertakers for his funeral.

She later refused to pay the cost of the funeral, claiming her incapacity to contract. The court held her liable to pay the bill. The funeral was for her private benefit and was a necessary as she had an obvious obligation to bury her dead husband. In the next, case 5: Nash v Inman (1908) a Cambridge undergraduate, the son of an architect, was supplied with clothes, including 11 'fancy waistcoats', to the value of \$122. The cloth could be appropriate to the station in life of the undergraduate, but the contract was not enforceable because the minor was already adequately supplied with clothes.

Therefore clothes supplied by the tailor could not be classified as necessities. As conclusion, in the Phing case, she is only a minor and not has any income when she was studying, therefore, the luxury car may not be the necessities for her. In conclusion, Phing buy luxury car Audi R8 contract is void, she is not obliged to accept and pay any damages. Question 1(ii) In this case, Phing is a 17 year old student bought a Myvi as a transport to travel back and forth from the college. In the element of contract, Phing is already against with the capacity section 11.

In section 11 of capacity say that " Every person is competent to contract who is of age of majority according to law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. " It means that the following three categories of persons are not competent to contract. The position of a minor is a person who has not attained the age of majority is a minor. Section 4 of the age of majority, the minority of all males and females shall cease and determine within Malaysia

at the age of 18 years and every such male and female attaining that age shall be of the age of majority.

However, some contracts of capacity made by infants are not void there are contract for necessaries, contract for scholarships and contract for insurance. In the case of Phing bought a Myvi may be necessaries for her to travel back and forth from the college. According the section 69 of Contract Act (1950) say that the necessaries supplied to a minor “ should be suited to his condition life” it does not mean the food, clothing, shelter and education, but such things which may be necessary to maintain a person according to his condition in life.

Below is the cases that related with contract for necessaries, which case 1: Kunwarlal v. Surajmal (1963) It has held that the house given to a minor on rent for living and continuing his studies is deemed to be supply of necessaries suited to the minor’s conditions of life, and the rent for the house can be recovered. For another good summary case is case 2: Chapple v Cooper (1844) where the court ruled that the funeral service of her husband was a necessary service for the young widow in this case, so she was obliged to pay. In the case of case 3: Clowes v.

Brook (1739) where, though the plaintiff Farrier's claim for work done on an infant's horse failed on technical pleading grounds, it would appear clearly to have been accepted by the Court that a horse could be a necessary in certain cases. In the case 4: Mohori Bibee v. Dharmodas Ghose (1903) case, the Privy Council did not consider it necessary to decide whether Section 115, Indian Evidence Act was applicable to the present case, because the

money lender was not misled by the false statement made by the minor as has was aware of the real age of the borrower .

Under the Section 3(2) of the Sale of Good Act (1979), provides that if goods are sold and delivered to minors or those mentally incapacitated the minor will be liable to pay a reasonable price if the goods are necessities. The case more suitable for showing this section is case 5: Roberts v. Gray (1913), in this case a minor was held liable for his failure to perform a contract for a tour with the plaintiff, a noted billiards player. It was a contract for the instruction of the minor. The contract was wholly executory and but it was held that the contract was binding on him from its formation. In conclusion, in Phing case to purchased

Myvi, Myvi car is her necessities good for her to travel back and forth from the college and she is able to afford it, so the contract for her to purchased Myvi car is valid. Question 1(iii) Phing is 17 year old, she is a student which studying at a University College at Kelana Jaya. She now has to take a state loan of RM 20, 000 for her studies in the college. 17 year old is not attained the age of majority, for another word Phing is also call as minor. In capacity section 11 define that a person who legally underage; who has not yet attained the age of majority, and which are denied the ability to fully and freely contract.

The similar case that related which case 1: Burnard v. Haggis (1863), there a minor hired a mare. It was expressly agreed that the mare will be used only for riding and not “ for jumping and larking. ” The mare was made to jump over a fence; she was impaled on it and killed. It was held that the minor was liable for negligently killing the mare as his act was totally independent of <https://assignbuster.com/capacity-contract-law/>

the contract made by him. For another similar case, which case 2: *Ballett v. Mingay* (1943), there a minor hired a microphone and an amplifier. Instead of returning the same to the owner the minor passed it on to his friend.

It was held that the minor's act of passing it on was altogether outside the purview of bailment and, therefore, the minor could be made liable for detinue. In the *Phing* case, she unable to have the contract to get the scholarship, but Under the Section 69 of Contract Act 1950, it is said that " if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person. Under necessaries a minor can enter into valid contract if only it is the basic need of the minor and suitable of his or her station in life or lifestyle. The similar cases that related with, which case 3: *Mohori Bibee v. Dharmodas Ghose* (1903) case, the minor misrepresented his age while taking loan, but the fact that the person taking the loan is a minor was known to the money lender.

The Privy Council did not consider it necessary to decide whether Section 115, Indian Evidence Act was applicable to the present case, because the money lender was not misled by the false statement made by the minor as has was aware of the real age of the borrower. Contract of Scholarship between a minor and the government or non government organization is also under Section 4 (a) Contracts (Amendment) Act 1976 " the scholar entering into such agreement is not of the age of majority". Next similar case, which case 4: *Government of Malaysia v.*

Gurcharansingh & ors (1971) say that when the award, bursary, loan or scholarships granted by the federal or state government, a statutory authority, or an educational institution such as a university. This is a good example case to show the contract of scholarship, in this case Gurcharan is a student who had received a government scholarship to undergo teacher training and was bonded to serve the government. However, Gurcharan left the service before completing his 5 years bond. When the Government sued Gurcharan for breach of contract, he contended that he had no capacity to contract.

The court, never the less, held that education was a necessary. For another good case is case 5: Harnedy v National Greyhound Racing Co. Ltd, where the contract does not appear to have had any connection, whether by way of analogy or otherwise, with contracts for the education or employment of children or contracts for personal services. The distinction between trading contracts and contracts for apprenticeship and education and analogous contracts may often be difficult to draw. Treitel has commented that, an infant haulage contractor is a trader, but probably an infant driver would not be.

An infant house painter probably be regarded as a trader, but not an infant portrait painter. In conclusion, Phing have to take loan of scholarship to continue her study, so the scholarship will be the necessities for Phing, so the contract for her to get scholarship is valid. Question 1(b) Johnny is an old man. He has children, Joe and Victoria. Johnny has informed everyone that when he dies, the property is to be shared equally among Joe and Victoria.

He stays with Victoria and is totally dependent on her to look after him. Johnny loves Victoria and does whatever she tells him to do.

Two months ago, Johnny transferred all his property to Victoria. In this case, Victoria take care of her father is her responsibility, but Johnny should not transfer all property to Victoria although he loves Victoria so much. Johnny should be fair for Joe too. On the other situation, Victoria maybe said something or persuades her father, Johnny to transfer all property to her. If this situation become true, Victoria is against vitiating factors, Section 10 – Contracts must be entered into with free consent of the parties and Section 10(1) – all agreements are contracts if they are made by the free consent of parties competent to contract.

Section 14 Consent is free when it is not caused by Section 16(1) undue influence – Undue influence occur where there is a relationship between the parties and one party is in the position to dominate the will of the other. The dominant part uses that position to obtain an unfair advantage over the other. The word “ undue influence” has the tendency to make people feel that it would include situations where one party is about to persuade the other through some kind of influence in a general sense ands. Undue influence can divide into actual undue influence and presumed undue influence.

Actual undue influence as the name suggests, requires proof that the contract was entered into as a result of actual influence exerted. The claimant must plead and prove the acts which they assert amounted to undue influence. This may include such acts as threats to end a relationship, continuing to badger the party where they have refused consent until they

eventually give in. For presumed undue influence is no automatic presumption arising as a matter of law. Here it must be established that there is a relationship of such a kind that one party in fact placed their trust and confidence in the other to safeguard their interest.

Any relationship is capable of amounting to this examples include husband and wife, cohabitees, employer and employee. In Section 16(2) – person is in a position to dominate the will of another where he holds a real/apparent authority over the other, or where he stands in a fiduciary relation to the other, he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental bodily distress. Next, in Section 16(3) – where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other as the case 1: *Re Craig* (1971) C, an old man of 84 years whose wife had died, employed Mrs M as secretary/companion. From the beginning she occupied a position of trust, and in addition to running the house she took a confidential part in running C's affairs.

From the time of Mrs M's employment and C's death (January 1959 - August 1964) he gave her gifts worth ? 28, 000 from his total assets of ? 40, 000. It was held by the Chancery Division that All the gifts complained of were such as to satisfy the requirements to raise the presumption of undue influence, namely, that they could not be accounted for on the ground of the ordinary motives on which ordinary men act, and secondly, that the

relationship between C and Mrs M involved such confidence by C in Mrs M as to place her in a position to exercise undue influence over him.

Mrs M failed to discharge the onus on her of establishing that the gifts were only made after 'full, free and informed discussion' so as to rebut the presumption of undue influence. The gifts would, therefore, be set aside. Other similar cases, which case 2: Williams v Bailey (1866) - A son forged his father's signature on promissory notes and gave them to their bankers. At a meeting of all the parties at the bank, one of the bankers said to the father: " If the bills are yours we are all right; if they are not, we have only one course to pursue; we cannot be parties to compounding a felony. The bank's solicitor said it was a serious matter and the father's own solicitor added, " a case of transportation for life. " After further discussion as to the son's financial liability the bank's solicitor said that they could only look to the father. The father then agreed to make an equitable mortgage to the bank in consideration of the return of the promissory notes. The father succeeded in an action for cancellation of the agreement.

It was held by Lord Westbury that the security given for the debt of the son by the father under such circumstances was not the security of a man who acted with that freedom and power of deliberation that must be considered as necessary to validate a contract to give security for the debt of another. Besides that, in the Singapore High Court case, which case 3: che Som bte. Yip & Ors. V. Maha Pte. Ltd. & Ors. (Maha Pte. Ltd. & Anor. , Third Parties) a mortgage deed was set aside in so far as it affected the plaintiff over whom undue influence was exercised.

In this case the relationship was that of brothers. This relationship does not per se (That is, on the face of it) give rise to a presumption of undue influence. However, the court found as a fact that undue influence was indeed exercised. In the next similar case, which case: 4 Inche Noriah v. Shaik Allie Bin Omar (1929) case, an old and illiterate Malay woman executed a deed of gift of a landed property in Singapore in favour of her nephew who had been managing her affairs. Before executing the deed the donor had independent advice from a lawyer who acted in good faith.

However, he was unaware that the gift constituted practically the whole of her property and did not impress upon her that she could prudently, and equally effectively, have benefited the donee by bestowing the property upon him by a will. Held the gift should be set aside as the presumption of undue influence, which is raised by the relationship proved to have been in existence between the parties, was not rebutted. A plea of undue influence can only be raised by a party to the contract and not by a third party, this has been shown in the case, which case: 5 Malaysian Firearm Bank Bhd. V. Abdullah bin Mohd Yusof & Ors.

It was held that in order to establish undue influence, the defendants have to prove that the plaintiff was in a position to dominate their will and thus obtained an unfair advantage by using that position. In this case, there is undue influence involving family members or friends. Often cases arise that involve family and friends who become parties to a contract. In general, family relationships, such as between husband and wife or parent and child, are confidential relationships. These relationships, like fiduciary

relationships, have at their crux a history of "informal" trust and confidential dealings.

In cases that arise where a family member gains a profit or distinct advantage through dealing with a weaker party, the courts have looked to see if the weaker party is very old, mentally incapacitated, suffering from debilitating sickness, or otherwise physically or psychologically impaired. Such physical or psychological impairment combined with a lack of independent advice and a contract giving an obvious advantage to a family member would force the stronger party to prove the contract's fairness. The cases of undue influence, which case: 6 Allcard v.

Skinner - Miss Allcard was introduced by the Revd Mr Nihill to Miss Skinner, a lady superior of a religious order named "Protestant Sisters of the Poor". She had to observe vows of poverty and obedience. Three days after becoming a member, Miss Allcard made a will bequeathing all property to Miss Skinner, and passed on railway stock that she came into possession of in 1872 and 1874. She then claimed the money back after she left the sisterhood. Held: Lindley LJ, held that she was unduly influenced but barred by laches from getting restitution.

And in any case she would only have been able to recover as much of the gift as remained in the defendant's hands after some of it had been spent in accordance with her wishes. Another next case, which case 7: In Royal Bank of Scotland v Etridge 2001, the House of Lord indicates that, in normal circumstances, a wife's agreement to charge the matrimonial home as security for her husband's business debts is not a transaction that calls for

explanation. Undue influence connotes impropriety, and should only be found where the husband's influence has been 'misused'.

Then, the other case, which case 8: *Lloyds Bank Ltd v Bundy* (1974) - Herbert James Bundy was a farmer. His son, Michael, formed a MJB Plant Hire Ltd and it was in financial trouble. Mr Bundy had already guaranteed the business with a ? 7, 500 charge over his only asset to Lloyds. This was his farmhouse at Yew Tree Farm, Broadchalke, and Wiltshire. Michael's company got into more trouble still, and needed more money. Bundy's solicitor said not to put on any more money, but they went up to ? 11, 000.

The assistant manager of Lloyds, Mr Head explained the company's position to Bundy (i. e. a conflict of interest) but neglected to say the company was in serious trouble. Bundy signed the guarantee and charge form. Lloyds foreclosed on the house when the money was not paid, and Bundy had a heart attack in the witness box. The question was whether the contract leading to the repossession of the house was voidable for some iniquitous pressure. The held is that the contract was voidable due to the unequal bargaining position in which Mr Bundy had found himself.

He held that undue influence was a category of a wider class where the balance of power between the parties was such as to merit the interference of the court. It was apparent that Mr Bundy had, without independent advice entered the contract and it was very unfair and pressures were brought to bear by the bank. Another similar case, which case 9: *National Westminster Bank v. Morgan* (1985) Mrs Morgan jointly owned the family home with her husband. As a result of his business problems, their mortgage payments fell into arrears, and the bank started to seek possession.

Mr Morgan approached the bank to arrange a refinancing loan (this work as follows: if Mr Morgan's original mortgage was for ? 50, 000, and he owed arrears of ? 5, 000, he could replace the mortgage with a refinancing loan of ? 55, 000, and start afresh). Mrs Morgan's signature was required to use the house as security for the extended loans. The bank manager went to see her, in the presence of Mr Morgan; she made it clear that she had little confidence in her husband's business and wanted to talk to the manager alone, but this did not happen, and she eventually signed to prevent the house being repossessed.

The loan was not repaid, and Mr Morgan later died. When the bank tried to take possession of the house, Mrs Morgan pleaded undue influence. Next, the case which case: 10 CIBC Mortgages v Pitt (1994) Mr Pitt wished to purchase some shares on the stock market. He pressured his wife into signing a mortgage of ? 150, 000 securing the family home. The stated purpose of the loan was to purchase a holiday home and pay off the existing mortgage. The husband used the money to purchase shares and then used those shares as collateral to purchase further shares.

For a time the shares did very well and he was a millionaire on paper. The wife saw no benefit from these shares as any income was always used to purchase more shares. In 1987 the stock market crashed. The bank sought to enforce the security under the mortgage which at the time exceeded the value of the home. The wife raised actual undue influence in defence. The judge is the Overruling BCCI v Abouy - it is not necessary for a claimant to demonstrate manifest disadvantage where a defence is based on actual undue influence.

However, as the transaction on its face did not seem to the manifest disadvantage of the wife, because the stated purpose was to purchase a holiday home, the bank was not put on enquiry and therefore could not be fixed with constructive notice. In the case: 11 Bank of Credit and Commerce International v Aboody (1990) A husband exerted actual undue influence over his wife in order to get her to sign a charge securing the family home on the debts owed by the company in which the husband and wife owned shares. The couples were unable to repay the mortgage and the bank sought to repossess the home.

The wife sought to have the mortgage set aside on the grounds that it was procured by actual undue influence of the husband. Held the husband had exerted actual undue influence on the wife. However, the transaction was not to the manifest disadvantage of the wife since she owned shares in the company. In considering whether a transaction was to the manifest disadvantage the court was to have regard to any benefits received in addition to the risks undertaken. Therefore the banks were granted possession. Furthermore, in case: 12 Credit Lyonnais Bank Nederland NV v Burch (1997) Miss Burch started working for her employer at the age of 18.

She became close to the director, Mr Pelosi, who was an Italian business man 10 years older and trusted him implicitly. She often visited his home to do babysitting and went on holiday with the family to Italy. At the age of 21 she purchased a flat. 5 years later, she was still working for him but the company was experiencing financial difficulty. Mr Pelosi asked her to put her flat up as security for a loan taken out by the company. He told her that his home and villa in Italy were also secured on the debt but they would not accept 100%

mortgage on these properties and needed another ? 0, 000. She agreed to allow her home to be used as security believing that it was only ? 20, 000 and that Mr Pelosi's properties would first be sold which would release the debt so that there was no risk to her. The bank had written to her and informed her that the charge was unlimited in amount and time and advised her to seek independent advice. She at no time was told of the extent of the company's borrowings which stood at ? 270, 000 neither did the bank satisfy themselves that she had in fact received independent advice.

In the case: 13 UCB v Williams (2002) The Williams family (Mr & Mrs Jack Williams and their three grown up children) ran a garage business as a partnership with the benefit of a franchise from Toyota. Toyota threatened to withdraw the franchise unless the showrooms were extended and improved. The cost for this was ? 500, 000. The Williams approached the bank for a loan which asked for security by way of a charge on the three showrooms in addition to a charge on each of the partner's home. The defendant, Mrs Williams, was the wife of one of the sons.

She had signed the charge without having been told the full extent of the liability. The signature was executed in the presence of all the other partners and witnessed by Mr. Howells, the solicitor of the partnership. The charge secured all debts present and future of the partnership and provided for joint and several liabilities of all the partners. The business was unable to repay the loan and became bankrupt. UCB sought to enforce the charge and Mrs Williams raised undue influence and misrepresentation in her defence. The trial judge, HHJ Hickinbottom, held that undue influence and misrepresentation were established.

However, he held that Mrs Williams would have signed the charge in any event had she known the full facts and also that UCB were not fixed with constructive notice as a solicitor had witnessed the signature therefore they could assume Mrs Williams had been advised accordingly. Mrs Williams appealed to the Court of Appeal. Held Mrs Williams was successful on both grounds. In conclusion, Joe still can voidable the contract about the Johnny transferred all his property to Victoria. If the contract is void, property Johnny will use back the contract in early to share equally among for Joe and Victoria.