EQUITY AND TRUSTS GUIDEBOOK
SECOND EDITION
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CHAPTER 4

ESSAY / DISCUSSION QUESTIONS

QUESTION 1

‘Unconscionable conduct underlies undue influence and estoppel. It is not possible, nor necessary, to distinguish individual principles. When in doubt, unconscionable conduct can be used as a slogan when seeking to set aside a transaction.’

Critically discuss this statement.

TIPS FOR QUESTION 1:

This question is similar to the first question at the end of Chapter 1 The History and Nature of Equity. See Figure 4.1 to assist in establishing that undue influence, unconscionable conduct and estoppel are separate principles.

QUESTION 2

‘In Kakavas v Crown Melbourne Ltd (2013) 87 ALJR 708 the High Court of Australia found that Crown Casino lacked knowledge that a ‘high roller’ patron suffered from a pathological affliction to gambling. In these circumstances Equity did not intervene.’

Do you agree with the decision of the court? Should a casino as a matter of public policy attract problem gamblers?

TIPS FOR QUESTION 2:

The facts concerning Kakavas v Crown Melbourne Ltd (2013) 87 ALJR 708 need careful discussion. There is scope in this question to also discuss the public purpose of casinos and...
how judges decide cases. A very good answer to this question would also provide commentary with regards to the role of a common law judge.

PROBLEM QUESTIONS

QUESTION 1

Bruce is a 55-year-old legal practitioner. Maria, whom he has known for twelve months, contacted him three days ago. Maria told Bruce that she was in a desperate state and unless he gave her sufficient money to buy a house, she would commit suicide. Having been romantically linked with Maria, Bruce gives her $450,000 in a burst of generosity. Bruce seeks your advice. He would like to have the transaction set aside.

TIPS FOR QUESTION 1:

See *Louth v Diprose* (1992) 175 CLR 621 and other matters raised in Figure 4.1.

QUESTION 2

Michael has been selling second-hand cars for several years. Two years ago he met Susan. After a brief courtship, they married. Since the start of the year, Michael has been having difficulty in selling cars. Michael would like to raise $200,000 so that the showroom can be refurbished. If the showroom was painted and new carpet was laid, more customers would be interested in the cars.

Michael approaches the bank and applies for a loan. The bank is prepared to provide the funds if Susan is the guarantor, since the home that they live in is in her name. Susan is initially reluctant, but after a couple of days, Michael convinces her that this is the best means of obtaining finance. Together, they complete the paperwork and collect the money. Work on the showroom starts immediately and is completed within a week.

Six months later Michael is struggling to make the loan repayments. The bank advises Susan that, since she was the guarantor for the loan, they will be seeking repayment of the loan from her.

Advise Susan.

TIPS FOR QUESTION 2:

See Figure 4.1 – undue influence and unconscionable conduct need to be distinguished. Consideration should also be given to appropriate remedies such as a constructive or remedial trust.
QUESTION 3

Tom’s Sausages is a gourmet smallgoods business that was established by Thomas Pattie. The business is very successful and Thomas is keen to move into the new shopping centre that is being built across town. He had been assured by the developer that a large department store will be a foundation tenant for the centre. Lots of people will be attracted to the department store and they will be passing his shop window. After giving the matter careful thought, Thomas signs a ten-year lease. He would only agree to such a long lease because of the department store being in the complex.

Over the last few months the manager of the department store has been speaking with the developer about changing the layout of the shopping centre. Discussions have broken down, and the two parties are no longer speaking with one another. Twenty minutes before Thomas signed the ten-year lease, the developer was informed by the manager of the department store that they had decided not to occupy the shopping centre.

Thomas contacts the shopping centre developer with some questions regarding the fit-out of his store. At no time does the developer indicate that the department store has cancelled their plans to be in the centre.

When ‘Tom’s Sausages’ opens in the shopping centre, he immediately contacts the developer to see when the department store will open. The developer replies that the department store will not be part of the centre and that the space will be converted into a series of small shops. Thomas Pattie seeks your advice about the lease.

TIPS FOR QUESTION 3: