THE LAW AND THE ELDERLY

Transactions by the Elderly

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Overview

• General vulnerability of the elderly

• What protection do they have in law?
  Example: highly disadvantageous contracts
General

The elderly may be vulnerable for various reasons. Below are some common examples.

- Illiterate
- Ignorant of rights
- Afraid or dependant
- In poor health
General

• The law provides protection to the elderly in various ways.

• This can be through statutes or case law.

• An example of a **statute** passed by our Parliament is the Mental Capacity Act.

• An example of case law that can protect the elderly can be found in what we call **contract law** – the elderly may be protected against certain transactions they are made to enter.
General

• The law may protect the elderly against harm of different kinds, e.g. physical or financial.
• The focus here is on agreements that the elderly may be asked to sign.
• There may be situations in which the elderly find out later that either the agreement is not what they thought it was, or they find that it is highly disadvantageous to them.
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Examples of transactions an elderly person may be asked to enter into:

• Sign a contract
• Sell or transfer away property or items of value unwittingly or for less than their true value
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Questions we often ask in law:

• Does the elderly person understand the contract or transfer?
• Does the elderly person know the consequences of making that contract or transfer?
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• In Contract Law if a person signs a contract it is usually legally binding. (There are exceptions.)
• Once a contract is signed, if an elderly person wishes to challenge it e.g. to get money or property back, it may be difficult.
• He/she may have to engage a lawyer to get help.
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*OCBC Ltd v Tan Teck Khong & Another*

Singapore case (2005)

The High Court said:

“When a person enters into a transaction, he may not be acting of his own free will. He may have been affected by the unacceptable conduct of others.”
Example

- Madam A, 86, a widow, is poorly educated and in poor health. She lives with her son, B, in a flat that she owns.

- Madam A depends heavily on B to take care of her and of daily matters like marketing, doctor’s visits, etc.

- One day, B asks Madam A to sign a document which he says is just a simple form to allow him to stay with her.

- Madam A signs it but later finds out that the document was an agreement to transfer the flat to B for a very small sum.

- B wants to evict Madam A from the flat.

- What can Madam A do?
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• One may then have to examine the circumstances under which the elderly person signed the agreement.
• Court cases have told us that there are some contract law principles that may help someone like Madam A.
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- The law sometimes provides a way out of a contract if the elderly person can show that the other person made a **misrepresentation** to him/her to induce her into signing it.
- For example, if the son B had misrepresented that the document was “just a survey form” when it was really a **contract**.
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Duress

• Another way that contract law may help the elderly is if it can be proven that duress was used to make the elderly enter the transaction.

• For example, B may have made some threat to pressure Madam A into signing an agreement.
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- Finally, contract law may also help where it can be proven that undue influence was used to make the elderly person sign the agreement.
- For example, A is highly dependent on B and trusts him completely – B takes advantage of this to persuade her to sign an agreement that is highly disadvantageous to her.
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• Finally, for **blind or illiterate** elderly persons, the law may sometimes allow them to argue that they did not know what they had signed (*non est factum*) but this has to be proven to the court.
Transactions by the Elderly

• If one of these situations can be proven, the law could allow someone like Madam A to overturn the contract she signed, and get her property back.

• However, it is sometimes hard to prove that they exist.

• Caregivers therefore need to be mindful and alert: the elderly person may need to seek legal advice.