

Name of the Case: Ong Ban Chai & Ors v Seah Siang Mong [1998] 3 MLJ 346

Tutorial Section: *Tuesday (3pm-4pm)*

Name of the Group Members:

1. Aaina Nadhirah Binti Johari (1816616)
2. Siti Nur Sarah bt Sheik Mohd Amizul (1814008)
3. Puteri Izzah Zalifah Binti Tarmizan (1811138)
4. Nurul Alia Nadira bt Khidzir (1812472)

No	Item	Answer	Explanation	Relevant Provisions(s)
1	Why did the plaintiff bring the case?		There were two civil suits. In the first suit CS No.22-90-90 , the plaintiff is challenging Ong Ban Chai's title to his half undivided share in all the pieces of land referred as "the subject property" on the grounds of fraud, misrepresentation and/or that the transfers were affected by way of insufficient and void instruments. In the second suit - CS No. 22-358-94 - the 4th defendant's title is challenged on several grounds	
2	What is the nature of the relationship between the disputing parties? (Who are they)		The relationship between the respondent and the appellant is vendor/ client and purchaser/ advocate & solicitor.	
3	Was the defendant in a position to dominate the will of the plaintiff?	Yes	Firstly because the appellant was acting as the plaintiff's advocate & solicitor. Thus there was a relationship of trust and confidence between the respondent and appellant. Secondly, it is because the respondent owed a sum of money from the appellant and therefore he feels	

			indebted and thirdly it is because the appellant had the power of attorney for the subject property.	
4	Was there a real or apparent authority?	Yes	Both respondent and appellant had some <b>special relationship</b> with the reason of the confidence reposed by the appellant to the respondent. The appellant was able to take advantage of the confiding party.	
5	Was there a fiduciary relationship?	Yes	The first appellant and the respondent were in a fiduciary relationship as a <b>solicitor and his client</b> . The respondent <b>put his trust and confidence</b> onto the first appellant to prepare the 1980 agreement. He appointed the first appellant as his true and lawful attorney to deal with the respondent's property as if the first appellant were the owner. The first appellant also gave the power to sign and execute any contracts, transfers, changes, deeds, and instruments in the name of the respondent.	
6	Was there an affected mental capacity?	No	-	-
7	Did the defendant use his dominating position?	Yes	The appellant <b>used the power of attorney</b> that he signed with the respondent in 1980 agreement. With the dominant position that the first appellant had against the respondent, he used it to transfer the respondent's half undivided share in the three lots of land by the first appellant to himself and also charging to the bank without the knowledge and consent of the respondent.	Section 16(1) of CA.

8	Was there an unfair advantage obtained by the defendant?	Yes	<p>The first appellant firstly gave RM682,000 to the respondent as a friendly loan and never asked for repayment. The respondent was unable to pay his debt and made a promise with the first appellant to treat the friendly loan as a set-off price. The first appellant then made use of the irrevocable power of the attorney given by the respondent to him and <b>transferred half share of the plaintiff to himself</b>. The unfair advantage obtained by the first appellant is that the first appellant sold the land to the second and third appellant at the price of RM1.6M and it was unfair to the respondent.</p>	Sec 16 (1) of CA
9	Was the claim of Undue Influence successful? Why/Why not?	Yes	<p>The respondent accused the first appellant of using undue influence and breach of trust. The act of transferring of the respondent's one half undivided share in the three lots of land by the first appellant to himself by using the power of attorney granted by the respondent and simultaneously charging it to the bank with the knowledge and consent of the respondent <b>has led to unfair advantages to the respondent</b>. Why? Although the terms and conditions of the 1980 agreement had been explained to the respondent before he signed it, <b>at the time of signing the agreement, he had no independent solicitor to advise and act for him in the transaction</b>. The first appellant had also abused the trust and confidence of the respondent as an advocate and solicitor. As the first appellant was an interested party and</p>	

			<p>there was a conflict of interest, the first appellant should encourage the respondent and insisted that he should be represented by his own solicitor, so that any contracting parties will not suffer any unfair advantages. The court mentioned that it is the <b>duty of the advocate and solicitor</b> to explain the terms and conditions of the contract and the legal consequences to the contracting party.</p>	
10	<p>What was the remedy given by court?</p>	<p>No remedy was given to the respondent.</p>	<p>The court did not award any remedy to the respondent because the respondent had lost his right to rescind the contract to a <b>third party</b> which is the fourth appellant (not a party in the appeal) whereby the fourth appellant had acquired the land in good faith from the first appellant as a registered proprietor through second and third appellant.</p>	