

Name of the Case: **PENGIRAN OTHMAN SHAH BIN PENGIRAN MOHD YUSOFF & ANOR v KARAMBUNAI RESORTS SDN BHD (FORMERLY KNOWN AS LIPKLAND (SABAH) SDN BHD) & ORS**

Tutorial Section: *Tuesday 4 - 5 pm*

Name of the Group Members:

Muhd Nivin bin Anuar (1810235)
Muhammad Adam bin Burhanudeen (1819785)
Muhammad Zakiy Najdee bin Shahirul (1817459)
Arif Hakimi bin Amin Hafiz (1810391)

No	Item	Answer	Explanation	Relevant Provision(s)
1	Why did the plaintiff bring the case?	Undue Influence	The appellants had been unduly influenced by the third respondent to enter into the various agreements with the first respondent without consideration	Section 16 (1) CA 1950
2	What is the nature of relationship between the disputing parties? (Who are they)	Trustee and beneficiary	The appellant had contended that the third respondent had befriended giving legal advice, assuring and advancing money to their father.	Section 16 (2) (a) Contracts Act 1950 <i>Ellis v Barker</i> [1871]

3	Was the defendant in a position to dominate the will of the plaintiff?	No	The undue influence doctrine when a person is forced into a contract without their free consent. In this case the appellants was not forced, they executed the agreements freely. They had not been rushed into executing the agreements within a limited period of time	Section 16 (3) (a) + Illustration (b) Contracts Act 1950 <i>Raghunath Prasad v Sarju Prasad [1924]</i>
4	Was there a real or apparent authority?	Yes	The court agree that the legal representative cannot become an independent trustee but it was on the father and Pengiran Othman to consult public trustee yet they did not.	S.16(2)(a)
5	Was there a fiduciary relationship?	Yes	The court agree that the father was indebted to the third respondent as the legal representative. However, they had entered the contract on their own will as it was their own folly to not consulting any other public trustee.	S.16(2)(a) <i>Tengku Abdullah ibni Sultan Abu Bakar v Muhd Latiff bin Shah Mohd [1996]</i>
6	Was there an affected mental capacity?	No	Both the brother's was of the age of 16 years old and they were fully aware of the transactions that they have entered. In these transactions also they had the benefit of the advice of their legal	S. 16(2)(b) + Illustration (b) S.16

			representatives in the persons of their father and Pengiran Othman.	
7	Did the defendant use his dominating position?	No	The court held that there was no domination of will from any of the parties from the very beginning. The court agree that the both parties was on equal footing although the third respondent had paid the land debt that led the appellant to be in debt toward the third respondent.	Section 16 (3) (a) + Illustration (b) Contracts Act 1950
8	Was there an unfair advantage obtained by the defendant?	No	As far as the facts concern, there is no unfair advantages that renders a contract to have elements of undue influence in this case, as it had been stated that the consideration that had been agreed upon is satisfying both sides; <i>“The appellants have admitted that with each agreement executed they were compensated either in cash or in kind. As such there has been good consideration given and the appellants have been paid a total of more</i>	Section 16 (1) Contracts Act 1950 <i>Polygram Records Sdn Bhd v The Search [1994]</i>

			<p><i>than RM10.8m.”</i></p> <p>Undue influence is a bad consideration. With this statement, it is crystal clear that this contract have a good consideration, hence, no undue influence.</p>	
9	<p>Was the claim of Undue Influence successful? Why/Why not?</p>	Not successful	<p>There is no evidence depicting undue influence. All the parties made the contract at their own free will. One of the elements of undue influence is the existence of an overwhelming party that forces another to act, but in this case, the parties made their own consideration and agreed to that.</p> <p>Quoting the judgement;</p> <p><i>“They cannot now complain that just because they have been deprived of the main bulk of their inheritance, they had been unduly influenced into entering into contractual obligations which they now say are unconscionable.”</i></p> <p>The appellants even admitted that they had been compensated</p>	S16 of Contracts Act

			properly. Hence, we can vaguely assume that the appellant was regretting his action and rendered him to act against his own family members.	
10	What was the remedy given by court?	No remedy	This case was dismissed by the court as the case didn't have and solid grounds to stand and it was proven by the respondent's council that there was no undue influence or any signs of coercion	