
Setting Aside Financial Agreements

A financial agreement is intended to be binding on the parties to the agreement and on the Court.

However, in limited circumstances, it is possible for the court to set aside a financial agreement. There are few reported cases dealing with applications to set aside financial agreements so the law in this area is uncertain.

There are very few circumstances where a financial agreement might be set aside:

1. **Change of circumstances in relation to children**

If there has been a "material" change in circumstances relating to the care, welfare and development of a child of the marriage or relationship and as a result of the change the child or the person caring for the child will suffer hardship if the agreement is not set aside.

For example, if a child lived with the wife at the time of the financial agreement but later moved to live with the husband, the husband might apply to set aside the financial agreement.

2. **Fraud and misrepresentation**

Fraud involves the making of a false statement, knowingly or recklessly, to obtain an unfair advantage. Fraud includes failing to disclose a material matter. Misrepresentation is similar, but can be easier to establish. It involves a false statement which has the effect of inducing the party to enter the agreement.

An agreement might be set aside for fraud or misrepresentation if a party to the agreement fails to disclose or deliberately misrepresents their financial circumstances at the time the agreement is being negotiated.

3. **Fraud against third parties and creditors**

An agreement which is intended to defraud a third party such as a creditor can be set aside.

4. **Uncertainty and incompleteness**

If the terms of the agreement are vague and uncertain, or if the agreement fails to deal with an essential term, the court may find that the agreement is void and set it aside.

5. **Impracticability**

If circumstances arise after the agreement is entered into which make it impracticable to put the agreement into effect, the court can set aside the agreement.

6. **Duress, undue influence and unconscionable conduct**

Duress and undue influence are similar. They occur where one party to the agreement places illegitimate pressure on the other party to enter into the agreement. For example, one party may threaten violence against the other if they do not enter into the agreement.

Unconscionable conduct occurs when one party takes advantage of the "special disadvantage" of the other party. The special disadvantage must be more than just a difference in bargaining power. It might include sickness, age, physical or mental disability, drunkenness, illiteracy or a lack of education.

Because each party to an agreement is required to obtain independent legal advice before entering into the agreement, it will probably be difficult to establish duress, undue influence or unconscionable conduct.