

A Brief Discussion on Duress and Undue Influence

Sofiul Ahmed

Assistant Professor, Department of Law, Presidency University, Bangalore, India,
Email Id-sofiul.ahmed@presidencyuniversity.in

ABSTRACT:

When one party applies inappropriate pressure or influence to another party during the creation or execution of a contract, duress and undue influence are legal principles that apply. These ideas are important in contract law because they address circumstances in which a party's free and informed consent can be questioned. When someone is coerced or threatened into signing a contract against their will, this is referred to as duress. It goes against the idea of freely given consent, which is crucial to a contract's legality. A contract may become voidable due to duress, which gives the harmed party the option to accept or reject the agreement based on the situation. On the other side, undue influence refers to the use of unfair pressure or deception to obtain an advantage over another party in a contract. It often happens in circumstances when one person is in a position of authority or trust over the other, such as when there are secretive connections or fiduciary obligations. A contract may also be voidable due to undue influence, enabling the harmed party to seek redress or have the agreement annulled. The legal foundations, constituent parts, and implications of duress and undue influence in relation to contracts are examined in the abstract for these ideas. It examines the many types of stress, such as physical, economic, or emotional coercion, as well as the criteria used by courts to determine if duress exists. Additionally, it explores the components of undue influence, such as the assumption of influence in specific situations and the need for impartial counsel or proof of fairness.

KEYWORDS:

Duress, Negotiating Power, Property Threats, Undue Influence.

I. INTRODUCTION

When one party applies pressure or influence to another party during the creation or execution of a contract, duress and undue influence are key ideas in contract law. These ideas centre on the notion of free and informed consent and deal with circumstances in which a party's consent may be questioned or undercut. When someone is persuaded or pushed into signing a contract against their will as a result of threats, intimidation, or violence, this is referred to as being under duress. It entails the use of improper or illegal coercion that subverts the other party's free will. Due to the basic premise of free consent being undermined, duress may make a contract voidable and illegitimate [1], [2].

On the other side, wrongful influence happens when one party uses their position of authority or trust to coerce or persuade the other party into signing a contract that is unfair or unfavourable to them. It entails taking advantage of a party's weakness or dependence, which impairs their capacity for free choice and self-determination. The goals of the undue influence and duress doctrines are to safeguard parties against oppressive and unjust contractual interactions. They understand that genuine consent and an even playing field are necessary for a contract's legality and fairness. The aggrieved party may be able to avoid the contract or seek remedies to balance the power where duress or undue influence can be shown [3], [4]. It's vital to remember that the side claiming duress or unfair influence is responsible for providing evidence. They must show that the pressure applied was strong enough to compromise their capacity for autonomous judgement and damage their free will. We will go further into the ideas of duress and undue influence, looking at their components, instances, and their legal ramifications. Individuals may traverse the complexity of contract law and safeguard themselves against entering into agreements under coercive or deceptive situations by being aware of these principles [5], [6].

In order to maintain the integrity of commercial relationships and guarantee that contracts are entered into freely, willingly, and based on the informed agreement of all parties concerned, duress and undue influence are prohibited. Fairness, individuality, and the prevention of power abuse and exploitation are all supported by these concepts. It's vital to remember that the side claiming duress or unfair influence is responsible for providing evidence. They must provide adequate proof to demonstrate that the contract should be voided because their consent was compromised. To avoid circumstances where consent is jeopardised or weakened, the concepts of duress and undue influence are fundamental in contract law. The law attempts to safeguard the autonomy and free will of contracting parties, promote justice, and preserve the integrity of contractual relationships by offering remedies for contracts entered into under duress or unfair influence.

II. DISCUSSION

A contract cannot really be a genuine agreement, which is the core of contract law, if it is properly created and has all the components required to make it legitimate but is done so under unjust pressure. The possibility that a party may have been coerced or forced against their will to enter into a contract has long been acknowledged by common law. In order to resolve this, the common law theory of duress and the equitable doctrine of undue influence are used by the courts to annul the contract [7], [8].

Duress

Common law helped to form this idea. It used to be highly specific and restricted to circumstances in which a contract was forced onto a party by actual or threatened actual physical violence against that party, or by actual or threatened illegal coercion of that party or a member of that party's family. The common law notion of duress may be used in the following situations:

(1847) *Cumming v. Ince*

An elderly woman was threatened with placement in a mental institution (although it was not required) if she did not consent to the transfer of property. According to the ruling, the agreement was invalid since it was entered into under duress. This is an illustration of a threat of illegal restraint.

(1904) *Kauffman v. Gerson*

If Mrs. Gerson would not agree to pay off her husband's debts, threats were made to have him punished. The accord was believed to have been forced into being. The case that follows is a more contemporary illustration of threats made against the person, and it is evident that duress claims do not necessarily need that this specific threat be the sole inducement to join the contract [9], [10].

Barton v. Armstrong (1976), an Australian appeal to the Privy Council.

The plaintiff entered into a deal with the defendant to purchase certain shares in exchange for a variety of threats, including claims such, "The city is not as secure as you may imagine between workplace and home. When you see what I can do to you, you'll regret the day you chose not to cooperate with me. P also often got late-night phone calls with heavy breathing, but on one occasion there was even a threat of death. It was decided that the deal was formed illegally and under duress.

Property threats

The idea of duress often does not apply to threats against property since the common law definition of duress is rigorous, as was shown in *Skeate v. Beale* (1840), when threats to distraint property (to seize it to offset debts) were determined not to constitute coercion. Recent decisions demonstrate that courts are willing to be more lenient in specific situations when it comes to threats to property. For instance, it was suggested in *The Siboen and the Sibotre* (1976) that threats to property may constitute duress in some cases, such as the threat to set a home on fire or slice a priceless picture. This sounds plausible considering that sometimes extremely significant threats to property may be more forceful than slight ones against a person. Knowing how far the courts would go in tolerating threats to property is the issue, however. If threats against one's money qualify as duress, for instance, what about threats to break a contract that might harm that person's fortune? In reality, the instances that have come after *The Siboen and the Sibotre* demonstrate that the courts have in fact recognised the notion that, if

serious enough, such threats might constitute economic duress. Due to the high value of these contracts, the majority of the cases involving this development have been shipping issues.

(The Atlantic Baron) North Ocean Shipping Co. Ltd. v. Hyundai Construction Co. Ltd.

For the plaintiff corporation, the defendant shipbuilders promised to construct a supertanker. Later, they threatened to break the agreement if 10% more money wasn't provided. In order to keep a lucrative charter, the plaintiff firm agreed to pay the additional sum; but, after receiving the ship, the corporation made an effort to recoup the overpayment. It was decided that economic hardship would have occurred if such a lucrative contract had been threatened with termination, but the amount of time it took to file a lawsuit tended to support the decision.

For the first time, the court really recognised that economic hardship may render a contract void. The courts are undoubtedly cautious about expanding the doctrine's sphere of application too widely since the idea is still in its infancy. In the case of *Pao On v. Lau Yiu Long*, the Privy Council used the opportunity to establish certain rules, demonstrating that the mere threat of a contract violation would not constitute economic coercion.

1989's Atlas Express v. Kafco

Kafco, a tiny producer of basketware, had agreed to provide Woolworths with a significant amount of items for their seasonal business. Kafco contracted with the Atlas Express to carry the items for a set fee since they lacked sufficient transportation of their own. However, Atlas Express eventually realised that they had overestimated their expenses and moved on to more profitable employment. They warned Kafco that they would stop delivering until Kafco paid more than double what they had initially requested. Kafco had little practical choice but to agree to pay Atlas Express under duress since they needed to keep their contract with Woolworths, had hired more employees, and had expanded their production capacity. Later, citing financial pressure, Kafco declined to provide Atlas Express the additional funds. According to the ruling, the agreement for the additional funds was reached under duress and so was not legally enforceable.

This demonstrates that the size of the operation, as opposed to the actual sum at risk, is what matters, since Kafco was a little business that would have been financially ruinous had the bigger firm, Atlas Express, been able to insist on the additional payment. In the recent case of *Carillion Construction Ltd. v. Felix (UK) Ltd.* (2000), the courts determined that there was economic pressure since Carillion had agreed to pay Felix an unreasonable sum in order to escape a liquidated damages provision. If common law duress is established, the contract is considered invalid. However, economic duress has evolved within the judicial system's equitable powers, and the courts often declare that any agreement reached under such pressure is "set aside." Instead of the contract being invalid, this really indicates that it is voidable, which opens the door for issues like the emergence of third-party rights or issues with affirmation or the passage of time.

Currently, it is unclear precisely what would qualify as economic hardship. Since the boundaries were quite well defined, there wasn't much of a difficulty with the stringent notion of common law duress. However, the courts' more accommodating approach currently creates more ambiguity than it did in the past by permitting economic hardship to invalidate a contract and taking into consideration how strongly dependent on commerce society is. Therefore, we are waiting for cases to be heard by the courts so that the limits of the doctrine may be further defined.

Undue influence

Because the common law doctrine of duress was so narrow in scope, there developed, in equity, the doctrine of undue influence. This provided a remedy in cases where there was clearly improper pressure on one of the parties to the contract, but where it fell short of duress at common law. Undue influence is a good example of the law placing a restriction on the parties' initial freedom to contract, in order to prevent blatant unfairness.

The cases coming before the courts can be divided into two broad categories:

- a. Where there is no special relationship between the parties
- b. Where there is a fiduciary relationship (either because of the very nature of the parties' relationship, or because on a particular occasion one party relied heavily on the other).

Where there is no special relationship

Here it is clear from such cases as *Williams v Bayley* (1866) that the burden is on the person pressed into the contract to prove undue influence on the particular facts. The person alleging undue influence therefore has the burden of showing that there was no exercise of independent free will. Where the existence of undue influence is proved, the court will assume that it was actually exerted, unless proved to the contrary.

Where there is a fiduciary relationship

There is a rebuttable presumption of undue influence where the parties to a contract are in such a position that one is able to exploit a fiduciary (or confidential) relationship with the other. This presumption arises where the relationship is such that one party would normally expect to rely on the confidence of the other (often where one party is dominant, or in a position of trust). The law does not say that one person necessarily has taken advantage of the other, or has exploited the relationship, but that it could have arisen, and that it is up to the party who could have stood to gain to prove that they did not do so. The presumption could arise from:

- a. The situation being one of a list where case law states that there is a fiduciary relationship, or
- b. It could be that on this particular occasion the court decides that the relationship is one where one party was in a position to advantage of the other.

Some examples of such a relationship are:

1. Solicitor – client
2. Parent – child
3. Doctor – patient
4. Trustee – beneficiary
5. Guardian – ward spiritual/religious
6. Adviser – person being advised.

This is not a definitive list of possible fiduciary relationships, but a group of relationships which have been considered by the courts in cases. It is not a closed list, in that should other situations be presented to the courts, they may well be decided in a similar way. Note that husband and wife are not included in the list, although it will be seen that many of the more recent cases concern this relationship. Another point is that where the presumption is shown to apply, it may continue for a short while after the relationship ceases to exist. This is shown in the following case concerning a mother superior and a nun, which, of course, comes within the last category on the above list.

Rebutting the presumption

When a fiduciary relationship is found to exist, undue influence is presumed to have arisen. In order to rebut this presumption (or deny it), a declaration (or a verbal denial) is not enough. There must be clear evidence to show that there has been free exercise of independent will. Suggestions were made in the following case as to how this could be accomplished.

The effect of a finding of undue influence

As the doctrine of undue influence is equitable in nature, the usual principles of equity apply. The remedy where undue influence is found to exist is therefore discretionary, so any contract formed is voidable, not void, which means that it may be set aside. The right to rescission may be barred by:

- a. Affirmation
- b. Restitution impossible (although precise restitution may not be necessary)
- c. Lapse of time
- d. Third-party rights.

An example of the operation of the presumption of undue influence is found in the following case.

Inche Noriah v Shaik Ali Bin Omar (1928)

Here a nephew formed an agreement with an older relative to hand over property, and it was presumed that he had used undue influence. He was unable to rebut the presumption. Due to the common law notion of duress's limited application, the doctrine of undue influence emerged in equity. In situations where there was plainly inappropriate pressure on one of the contracting parties but the pressure fell short of duress under common law, this allowed a remedy. A notable illustration of how the law restricts the parties' original flexibility to bargain in order to avoid flagrant injustice is the prohibition on undue influence.

Two main categories may be used to categorise the cases that are being heard by the courts:

- a. In the absence of any unique links between the parties
- b. When a fiduciary connection exists (either as a result of the nature of the parties' relationship or because one party strongly depended on the other on a specific occasion).

When no unique bond exists

In this situation, it is evident from decisions like *Williams v. Bayley* (1866) that the burden of proof is with the party forced into the contract. Therefore, it is the duty of the party claiming undue influence to demonstrate that autonomous free will was not used. The court will presume that undue influence was really used when it is shown that it existed, unless it can be demonstrated otherwise.

If a fiduciary connection exists

When the parties to a contract are in a position where one may take advantage of a fiduciary (or confidential) connection with the other, there is a rebuttable presumption of undue influence. In situations when one party would typically expect to depend on the confidence of the other (often when one party is dominant or in a position of trust), this assumption emerges. The law does not state that one person has definitely exploited the other or taken advantage of the connection, but rather that it may have happened and that the burden of proof is with the one who could have stood to benefit. The assumption could be justified by:

- a. The circumstance being one of many in which precedent has established a fiduciary connection; or
- b. It's possible that the court determines in this specific case that the connection was one in which one person was in a position to take advantage of the other. Examples of such a connection include:

Parent of the client, the child's doctor, the patient trustee, the beneficiary guardian, the ward's spiritual or religious advisor, and the person receiving the advice. This list of potential fiduciary ties is not exhaustive; rather, it is a collection of those that the courts have taken into account. It is not a closed list since more cases might very easily be handled similarly if they are brought before the courts. Keep in mind that while many of the more recent examples include this connection, husband and wife are not included in the list. Another concern is that, in cases when the assumption is shown to be true, it could be true even after the connection has ended. This is shown in the instance that follows, which, of course, belongs to the final category on the list and involves a mother superior and a nun.

Dispute the assumption

When a fiduciary connection is established, it is assumed that undue influence occurred. A statement or vocal denial is insufficient to refute or refute this inference. To prove that an individual's free, independent will has been exercised, there must be convincing proof. In the situation below, ideas were offered as to how to make this happen.

What happens if undue influence is discovered?

The standard equity standards are applicable since the idea of undue influence is equitable in nature. Due to the discretionary nature of the remedy in cases of undue influence, any contract that results is voidable rather than void, meaning it may be annulled. Revocation rights might be negated by:

- a. Assurance
- b. Restitution is impossible (but specific restitution may not be required)
- c. Time passing

d. Rights of third parties.

The following case serves as an illustration of how the assumption of undue influence operates.

Shaik Ali Bin Omar v. Inche Norah (1928)

Here, a nephew and an elder relative made a deal to transfer property, and it was assumed that he had abused his position of power. He couldn't disprove the assumption.

The banking cases

Some issues after this case are still unanswered. For instance, how far must a bank go to ensure that it is receiving independent counsel in order to fulfil its obligations? The instances that come after O'Brien provide some hint, and they'll assist to make the legal situation and the banks' obligation clearer. Though the instances that soon followed O'Brien seemed to affirm the ruling, more recent ones had a tendency to shift away from supporting the borrower, which at least to some part adds to the doubt surrounding the precedent created by O'Brien.

1. The House of Lords' ruling in O'Brien, which said that the consequence of the deception in this specific instance was to set aside the whole transaction, was followed in the case of TSB v. Camfield (1994). Similar to this, the whole debt was thrown out in the case of TSB v. Camfield. There might be several explanations for this. The first issue is that there is no "halfway measure" in contract law as there is in tort. In contract law, there is no concept of comparative negligence, therefore a party is either entirely accountable or not. To conclude differently would need inventing a whole new definition of contributory blame (the Law Commission has made this suggestion). Second, if Mrs. O'Brien had been responsible for any of the debt, she would still have been forced to sell the property, and the court's goal was, at least in part, to avoid that.
2. Several cases including Midland Bank v. Serter (1994), in which the wife hired the bank's attorney, and Banco Exterior v. Mann (1994), in which the husband and wife used the same attorney have emphasised that banks will likely only be required to take reasonable measures to ensure that independent advice is received. However, a collection of eight appeals over related concerns, each with its unique circumstances, and stemming from the case of Royal Bank of Scotland v. Etridge, have now given the House of Lords the chance to assess the topic.
3. Banks should then take specific actions to make sure that the wife is included completely. Instead of just telling her to seek legal counsel, they should either arrange for her to be seen apart from her husband and informed of the circumstances, or they should request a specific lawyer and written proof that she has done so. Additionally, they need to work with the solicitor to provide facts. The goal of the legislation is to strike a compromise between the necessity for banks to be able to lend money with security and the protection required for a wife (or any other person in a surety position). Lord Bingham described this equilibrium as follows:
4. The wife's interest in the marital home should be used as security for loans in routine situations devoid of anomalous characteristics. If the proper procedures were followed to obtain the security, lenders should have reasonable confidence that the security will be enforceable should the need for enforcement arise. Both parties must get some kind of protection from the law. It cannot establish a code that is impervious to mistake, misunderstanding, or accident. However, it may also serve as a guide to the minimal standards that, if followed, will bring down the likelihood of mistake, misunderstanding, or catastrophe to a manageable level. The most critical criterion in this crucial subject is that these basic standards be understandable, straightforward, and practicable.
5. In the case of Cheese v. Thomas (1993), it was decided that if an investment was made that lost value, the two parties would share the impact of the loss. However, neither party had behaved with any malice. The courts will undoubtedly continue to seek for the free exercise of autonomous will, which is the core of contract law, even if this whole field is still emerging.

Differences in negotiating power

According to some, like Lord Denning in the case of Lloyds Bank v. Bundy, all of these disputes may be resolved by determining if the parties had equal negotiating power and annulling the contract in circumstances where it was "unconscionable" or against the court's moral code. Watkin v. Watson-Smith (1986) provided evidence in favour of this strategy. However, in National Westminster Bank v. Morgan, the House of Lords adopted a

conventional strategy and rejected Lord Denning's broad perspective. They said that due to the imbalance in negotiating power, the courts would not shield people from what they see as errors. However, Lord Denning's strategy has validity and may have been innovative for its day, despite being his own opinion. We watch for changes.

III. CONCLUSION

The legal concepts of duress and undue influence are crucial in contract law because they address circumstances in which a party's assent to a contract may be jeopardised or undermined. Protections against unfair or forceful practices that could void or make a contract voidable are provided by duress and undue influence. When one party coerces or threatens another party into signing a contract against their will, this is referred to as duress. It may entail compulsion that prevents the affected individual from giving permission voluntarily and freely, such as threats of harm, physical violence, financial pressure, or other types of coercion. If the injured party can establish that a contract was made into under duress, it may be deemed voidable and annulled. On the other hand, when one party abuses a position of authority or trust to exert influence on another party, it compromises that party's capacity for making their own judgements. In relationships where one person has a dominating or superior position over the other, such as that between a guardian and ward, a doctor and patient, or an employer and an employee, wrongful influence often occurs. If the person who was subjected to the undue influence can show that their free will was violated, contracts that were thus influenced may be voidable.

REFERENCES

- [1] T. Prenzler and L. Fardell, "Situational prevention of domestic violence: A review of security-based programs," *Aggress. Violent Behav.*, 2017, doi: 10.1016/j.avb.2017.04.003.
- [2] A. Snoek, "How to Recover from a Brain Disease: Is Addiction a Disease, or Is there a Disease-like Stage in Addiction?," *Neuroethics*, 2017, doi: 10.1007/s12152-017-9312-0.
- [3] I. M. Jadalhaq, "Duress & its impact on contracts in the UAE law on civil transactions: Analytical study in the light of Islamic jurisprudence," *Arab Law Q.*, 2017, doi: 10.1163/15730255-12341331.
- [4] E. Oussedik, C. G. Foy, E. J. Masicampo, L. K. Kammrath, R. E. Anderson, and S. R. Feldman, "Accountability: A missing construct in models of adherence behavior and in clinical practice," *Patient Preference and Adherence*. 2017. doi: 10.2147/PPA.S135895.
- [5] B. Ghadimi, S. Russo, and M. Rosano, "Predicted mechanical performance of pultruded FRP material under severe temperature duress," *Compos. Struct.*, 2017, doi: 10.1016/j.compstruct.2017.05.061.
- [6] A. F. H. Loke, "Excusable consent in duress," *Leg. Stud.*, 2017, doi: 10.1111/lest.12160.
- [7] M. U. Syed, "Coercion and responsibility in Islam: a study in ethics and law," *Oxford Islam. Leg. Stud.*, 2017.
- [8] J. Amolo and S. O. Migiro, "Small business and entrepreneurial venture in an economic conundrum," *Probl. Perspect. Manag.*, 2017, doi: 10.21511/ppm.15(1-1).2017.14.
- [9] J. L. Nutt and M. C. Solan, "Ageing and orthopaedics," *Orthop. Trauma*, 2017, doi: 10.1016/j.mporth.2017.07.007.
- [10] T. Hülskötter, "Sports arbitration agreements under review: should they be considered invalid under English national law?," *Int. Sport. Law J.*, 2017, doi: 10.1007/s40318-017-0110-y.