



CONTRACT LAW

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Introduction

The purpose of the report is to find out what it is meant by duress, how this will affect someone's choices and decisions. It will determine if any case that link and give examples of when a person has become under duress in order to complete a contract. It will investigate whether a case would be upheld under duress and determine any outcomes. Secondly the report will explore what undue influence is and how that can affect an individual when I come to making a choice. It will provide examples of a case where there has been undue influence and it will prove the outcomes of each case. It will also explore what economical duress is and how that can affect a person's choice. The report will then look at how the Etridge has changed and affected the way that banks now process their transactions on behalf of a wife. It will conclude the finds of the report and give thought on the outcomes.

Duress

The word duress has been defined by many, the word in short means, putting someone under pressure and/or forced to do something, in some cases along with threats towards the person under duress (Collins English Dictionary, 2021, Law, J 2021, Agule, C K, 2020). When a person has been threatened or warned of an unlawful act that will be committed if one person does not do as told, this would also be classed as someone under duress. While it is believed by Saprai that a promise made under duress should not be legal and binding as it is not moral to do so (Saprai, P 2019).

In the case *Barton V Armstrong* (1976), Armstrong was the largest shareholder. While the other shareholders did not like the way that Armstrong run the company, they came up with a plan that would take all the power from Armstrong. They were successful until Armstrong had found out then took actions into his own hands to get the shares back and more. Armstrong had put Barton under duress with the threat to his life to get the shares back. Barton had signed over the shares to Armstrong in hope that he could turn the company around in his own favour. While Barton was under duress, despite his plan to benefit. This case was upheld, and the contract was set aside as a result of the duress and threat to Barton's life.

Another case that was raised in court under duress was the case *Skeate V Beale* (1967). This case was raised after a landlord was owed money from a tenant. The landlord took actions into their own hands to try and get the money back, the landlord seized the tenant's goods without their permission or consent in order to use them to pressure the tenant to repaying the money, The landlord told the tenant that they would sell the goods immediately unless the tenant was to pay back the owed money. The tenant agreed to the repayment terms. After the agreement was made, the tenant sought to have the agreement set aside as he was under duress. This case was held, as duress against goods do not render a contract voidable.

It has been explained by Story, the reason why a contract is unavoidable if the party claiming duress was under duress of goods, as the duress of goods does not affect the persons free will or ability to make sound decisions (Story, W.W 1874). This can also be backed by Parsons, where it has been agreeing that it does not affect a person free while like it would if that person were under threat of their life rather than an object (Parsons, T 1860). It has been classed as a protest in order to get the outcome requested, using the example of *Skeate V Beale*, the landlord was protesting to get the sum over money owed back by taking the tenants goods.

Undue Influence

When I come to defining undue influence, it depends on which standard and nation you follow.

There are different standards to each nation, there is an international standard and a British standard which are the most followed. While it has been defined as using a vulnerable person to get what they would like, and many agree that coercion is one and the same (Persiah, C Et al 2019).

Furthermore, it has been agreed by Largent, E that undue influence is when someone has been persuaded to do something with an offer of payment, or something that can benefit them (Largent, E 2013).

A common example of undue influence is in the case *Williams V Bayley* (1866). In this case, a son forged his father (Bayley) signature to get a promissory note, a form of loan with promise to pay back another time. The son had done this many times and it was by chance it was caught / questions by the banker to the Bailey as on this occasion the request had been dishonoured. All parties were brought to the bank to be questioned about this promissory note that had been forged. Bayley's son was asked was it forged, and he did not deny the claim. The banker then gives Bayley the option he could either mortgage his house in order to pay off the debit, or he would prosecute his son. Bayley feared for his son so agreed to mortgage his house. After thought and consideration whether over the offers validity, Bayley choose to take the case to court. Bayley's case was held due to the

agreement of the property was invalid and Bayley had only agreed to protect his son against criminal prosecution. In this case Bayley was considered to be under undue influence as his son was in danger of prosecution (Price, E. K. 1864).

Additionally, in the case of Allcard V Skinner (1887), Miss Allcard, choose out of freewill to join a sisterhood that was recommended to her by her own confessor. While joining the sisterhood was of freewill, after been part of the sisterhood for some while, she felt obliged to give the mother superior gifts in the form of money and stoke. When Miss Allcard decided to leave the sisterhood, she was left with no money or stock, this led her to go to court to reclaim what she had gifted to the mother superior. Miss Allcard claimed that she was under undue influence to give the gifts. This case was upheld however it was also deemed that Miss Allcard had in fact had training while in the sisterhood, it was deemed that the gift would be payment for this training therefore no money or stoke was recovered.

Economic Duress

It has been defined by Law that economical duress is when there is a threat that involves financial pressure towards the person under duress which is also unlawful (Law, J 2018), this can be backed by a definition given from ... that economic duress is when an individual are subjected to make decisions that will affect their financial utility (Hintermann, Beat et al., 2017). It is a common opinion that economic duress focuses on targeting someone based on the financials.

In addition to the definitions this can be proven in the case Corporation V Skibs (1976). For example, the defendant owned two tankers that they choose to charter out to the Plaintiffs for three years. They had agreed on a value to charge for the rental. The Plaintiffs contacted the defended and fraudulently claimed they were at a loss and struggling financially. They claimed that they were dependent on a mother company to keep the afloat, and requested the defendant lowers their

rental rate to enable them to continue. Out of economical duress the defendant chooses to agree, later the market had improved, and it became clear to the defendant that the Plaintiffs were profiting on the reduced rental charge and the defendant was only getting the reduced payment in return. The defendant proposed the hire rate would return the originally agreed rate as the market had improved or all the charters would be cancelled. The Defendant has realised the claims were fraudulent and withdrew the tankers from the Plaintiffs, the Plaintiffs then claimed against the defendant for damages as they believed the tankers were wrongfully withdrawn. The defendant disagreed with their claim as they had been making a profit at his expense. The claim was upheld in part to the defendant and was awarded damages and remedies however the defendant was not awarded additional damages as it was deemed, he was not duress.

Impacts of post-Etridge.

The original case was Royal Bank of Scotland Plc v Etridge (2002) where a wife had agreed to put her home up for a loan against the bank for her husband's business. Despite the wife not having any involvement in the business to satisfy the bank of her involvement. The bank agreed the loan against the house. The business had gone under, and the wife was due to lose the house as a result to pay back the loan. The wife wanted the agreement to be declared void as she was under duress at the time, or even for the shares to be equity to prevent the home from being repossessed. After / during this case a further 7 cases came forward with identical or similar cases where they have agreed to put their homes against a bank loan for their husbands. It was deemed that the banks did not do enough to satisfy the wife's involvement in the businesses, or that the wife's would benefit as a result of the loan itself. In all cases the business failed, and the bank sought to possess all the houses. The bank was negligent and did not ensure that the wife's had full understanding of the implications this could have on them. The banks sure have ensured all wife's had seemed legal guidance before agreeing to the loan.

As a result of these cases, in 2001 the House of Lords found the banks were not doing enough to be able to approve the loans. Due to these findings, there has been changes made and now banks have to follow new steps in order to be satisfied enough to accept the homes as collateral towards a loan. The bank must communicate directly with the wife who wishes to take on the loan, giving full information regarding the loan. They must inform the wife's that it is now for their own protection they get a solicitor to write a confirmation confirming the wife has full understanding of the risks. Ensure that if there is any doubt of the wife being misled by the husband, the bank must contact the solicitor with the information before they continue with the transaction (Cms-lawnow.com. 2021, E-lawresources.co.uk. 2021, Lawteacher.net. 2021 and Lawsociety.org.uk. 2021).

Commercial Bargaining

"Commercial pressure exists wherever one party to a commercial transaction is in a stronger bargaining position than the other party and claims for economic duress are relatively rare" (Smith, Pigott and Bates, 2021).

When companies are bargaining deals, there that is for goods or services there needs to be a strong clear understanding. It has to abide by and follow set codes to ensure that all parties are paying or receiving equal values in return. It is important that there is no economic duress or duress put into place when a deal is being bargained. It is also important all parties continue to act within the law when they are bargaining (Steamship Mutual 2021)

Conclusion

In summary the report has come to the conclusion there are a lot of factors that come into play when ensuring a contract is made of sound mind. It has become clear that if someone were being threatened with their lives or harm towards them, forcing them to do something against their will this would be classed as duress in the eyes of the law. It is important to take from duress is that if someone is under duress when a contract is made, it is possible to get the contract set aside as seen in both cases *Barton V Armstrong* (1976) and *Skeate V Beale* (1840). Secondly, by putting another person in a position where they are bound to protect their family and do as asked like the case *William V Bayley* (1866). This would not be freewill or free choice; in this case the law would see this as undue influence as Bayley was only agreeing to mortgage his house in order to protect his son from criminal prosecution. While in the case *Allcard V Skinner* (1887), Miss Allcard was deemed under undue influence the case was voided as she had been trained for her time she spent in the sisterhood and was unable to reclaim her gift of money and stock as they were classed as payment for the training. Whereas in the case of *Corporation V Skibs* (1976), The defendant partly won their case as they were misled on the earning from the Plaintiffs, however it was deemed in this case that the defendant chooses to lower the rental rates willingly and there was no duress against him. Lastly the important points to take from *Etridge* is that, because so many cases alike had come forward it became clear there was something wrong. Changes were made in order to prevent the banks from being able to just accept a wife's word when they are taking a loan against their husband's business. In future the banks will now be required to get a solicitor's letter, under the wife's request, proving they are at sound mind and fully understand and commit to the loan. This will prevent anymore case like this, and help banks be clearer with what the risks are.

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Case Law

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