

Duress and Undue Influence



Contract Law

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Introduction

Duress refers to the individual person, who will be forced to do something against his or her will. At that time, a person can be said that have been shown as victim of duress- compulsion. Usually, it can be divided into different types- physical duress and duress by threat or risk.

It can be induced contract by physical violence between two parties. On the other hand, undue influence as consider unfair persuasion. Undue restatement of contract section 177 (ALABDULQADER, 2018). It does not lie in any kind of misinterpretation because it has been occurred when a victim is under condition of domination of persuader or is one who can view a relationship between parties. In this report, it will discuss about the court, which will be upholding the particular contracts, which are applicable in result of threat or risks. It will be examining the level of pressure among different parties because of a contract.

Main body

History of duress at common law including cases of physical duress

Duress is basically considered as common threat, violent and other action which is mainly used to implement suitable action against illegal activities. This can be possible by using contract law (Faizal Kurniawan and Srihandayani, 2020). It may prefer to where one or more party uses duress against other one. It means that considering a contract law which it either does not want, where specific terms and conditions applied in contract law.

History of Duress – it was declared the specific common legislation, here are some common examples in different forms and discussing occurrences in the following manner.

- ❖ Duress by threat of violence- Barton v Armstrong 1976 AC 104
- ❖ Duress by threat of imprisonment- William v Batley 1886 HL 200
- ❖ Duress by developing a threatening situation- Antonia v Antonia EWHC 1199

Duress by threat of Violence-

This type of threat is very self-explanatory. One party can understand the legislation and they are establishing a contract due to threat of violence. In some situations, it can be avoided in a proper manner. Within duress by threat of violence, there should be considered some important requirements.

- ❖ Threat related to the nature which is not sufficient to large amount of duress.
- ❖ The significant effect of threat must have been focused and eliminate to claimant into specific contract.

Economic Duress-

It can be defined threat or risk to an individual's regarding financial interests. This is not a way to suggest or recommend as potential ground of duress. In this case, it will be applied as Siboen & Sibotre 1976 (Moore, 2018). Typically, it will be applied the scenario of such kind of duress such as:

- party 1 and party 2 are negotiated of particular contract.
- Part 2 feel threatens because of the breach in contract unless, it will be marked as re-negotiated.

- Party A opt to find the requirement of re-negotiate the contract in favour of another party. This is because of result or outcome.

In this condition, it may be finding the breach of contract by party 2 and also generated unnecessary result or outcome in party 1. Another way, if party 2 breach of contract, party 1 will be liable in context of any damages, if occurs.

The economic duress was developed in particular case of *Pao on lau yiu long* 1980 AC. These are considered two set of requirements: -

- It will be represented as vitiate consent
- It will be considered as an illegitimate undue pressure of threat.

According to the first requirement, it is very important to find criticised the coercion of that vitiate as consent needs on the victim of duress. In this way, both parties are completely aware about the certain actions. It can be identified the importance of criminal law whereas it should be considered as party undue duress which does not consent. But it can do so many things without consideration of alternative options.

Moreover, the opportunity can be arising in *DSND Subsea Limited v Petroleum Geo-Services ASA* (2000). It can be examined the requirements: -

- ❖ Examine the pressure
- ❖ Identify the certain effect of pressure and consequences sue to lack of practical selection for victim,
- ❖ Pressure will develop illegal actions
- ❖ Causes as claimant to enter specific contract

Undue influence

It refers to the undue influence which provide best remedy where establishing a contract that has been entered into improper pressure. Generally, it occurs because of the relationship between two different parties (Ong, 2020). Different parties are exploited to gain more benefit or advantage.

Undue influence is similar kind of approach to duress, but at a certain point undue influence has become considered equitable doctrine, which is always opposed to common legislation.

According to the undue influence in O'Brien 1994 AC 180; it has been categorized into different ways: -

Actual influence of undue

Presumed as undue influence which can be divided into protected relationships and other cases.

In context of protected relationships, it is mainly defined as assumption to create or develop a strong relationship. This is not only giving a better rise in assumption, beliefs, and values. In context of other cases, it can be influenced the relationships which are mainly pre-assumed, but it is not possible to be done in automatic ways.

On the basis of evidence, it has been explored the exact requirements of different kinds of undue influence. The primary importance of evidential burden should be covered with a full understanding of doctrines when it can go on to explore them.

In context of 2a relation, it is always tried to protect or secure relation. There is no such kind of burden on the claimant which can prove a strong importance of pre-assumed influence. Therefore, it is simply exploring the particular nature between one or two parties' relationships.

According to the royal bank of Scotland Vs Etridge, it was proven by claimant that there was influence of undue nature, identify the pre-assumption entered into contract freely without any influence. There are most common ways to define the assumption and undertaken independent suggestion or advice in regards of the transaction. The courts concluded because of independent suggestion, and also influence which would not have been considered as an important factor. In some situation, it can also receive a better suggestion and gather many facts of each case which will need to be assessed.

Undue influence has become an influence third party, which will be confirmed and increases claim for undue influence. As a result, it is representing the strong contract between one or more parties (Zawideh, 2020). If in case, it may identify unfair situations within contracting parties, it will become an obvious thing to applicable as claims for undue influence under specific circumstances. Therefore, it may be increased the contracting more party knowledge. It is also exercising undue influence on the claimant.

In Daniel v Drew 2005, this type of approach is relating to the court in which they establish a relation between categories of pre-assumed undue influence, which was confirmed in a proper manner. Etridge 2002, it was clarified the approach in context of presumed undue influence, establishing a relationship between two parties that would provide as pre assumption of influence.

Conclusion

From the above discussion, it has been summarised about the concept of Duress and Undue Influence. These are considered an important aspect which may represent the significant role of Duress and undue influence within contract laws. As per analysis, it can be examined the history of duress at common law, including cases of physical duress, economic duress undue specific circumstances. Moreover, it has focused on the undue influence in context to the relationship between one or more parties. On the basis of case laws, it can be identified the presumed based approach to find the unfair situation between two parties and their relationship.

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