



# Too Much Pressure

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## TRANSCRIPT

Hello, it's Roger Halson here, and I've called this blog Too Much Pressure, which of course is the name of the first album on the title track by the British ska band, The Selecter.

[music]

Okay, so we've had the musical interlude, but I'm afraid that the musical collection is going to stop there, because what I'm going to talk about is what amounts to too much pressure sufficient to justify the setting aside of a contract when parties are negotiating the formation or the modification of a contract.

Now, there are two legal doctrines that limit the exercise of power by parties in those circumstances. These are undue influence and duress. The doctrine of undue influence controls the abuse of either actual or presumed psychological reliance by one party upon another. The emphasis in undue duress is upon the relationship of the parties. I'm going to look at the other doctrine. The doctrine of duress. That doctrine limits the pressure that one contracting party may exercise over another. The emphasis is not upon the relationship of the parties, but upon the type of pressure that is used and its effect upon the person it is directed to.

There are three types of duress. The first is duress of the person. That is actual or threatened violence to a person. If some of you like the film *The Godfather*, you might remember the character Johnny Fontaine, which many people say was based upon Frank Sinatra. In *The Godfather*, Johnny Fontaine was bound by a contract to a particular person. He wanted out of that contract so he could take a part in a film, and the Godfather, Don Corleone and his henchmen Luca Brasi persuaded the person to offer him the role in the new film by holding a gun to his head. A rather clear case of duress of the person, but perhaps not one you take to court and incur that wrath of *The Godfather*.

Duress of goods is the second category of duress. This involves the seizure or the threatened seizure of goods. I take your goods or threaten to take them unless you agree to something.

The final category, is the one we're interested in, is economic duress. This is any type of economic pressure that is not duress of goods. The doctrine of economic duress was only developed in the 1970s in the UK in cases such as the *Atlantic Baron*.

Now, nearly all contracts are concluded under considerable commercial pressure. Typically, we have a seller who wants the maximum price for a good or service, and a buyer who wants to pay the minimum price for the best quality service or good. Their interests are opposed, and so this produces pressure. How do we distinguish normal, and so acceptable, commercial pressure from unacceptable commercial pressure?

Well, this was examined recently by the Supreme Court in a case called *Times Travel v Pakistan Airlines* in 2021. They said that a contract can be set aside for economic duress when:

1. an illegitimate threat is made, which causes a party to enter or modify a contract,
2. the 'victim' had no reasonable alternative but to submit to the demand.

Two elements there, an illegitimate threat and the lack of any reasonable alternative.

The illegitimate threat is normally a threat to breach a contract. "I will breach my contract unless you agree to something." You can see from the fact that that is a normal threat, that the doctrine of economic duress grew up in relation to the modification rather than in relation to the formation of contract.

The facts of the *Times Travel* case were a little bit different, because this involved a travel agency which served the Pakistani community in the UK. When it was forced to agree to new terms with an airline, that airline was the virtual monopoly supplier of direct flights between the UK and Pakistan, the pressure applied by the airline was not a threat to breach an existing contract. They were merely saying, "If you don't agree to new terms with us, we will not deal with you in the future. We will not do business with you." This, being something that they would otherwise be entitled to do, is termed a case of 'legitimate act duress'. The Supreme Court said that despite the overwhelming pressure on the travel agency, this did not amount to economic duress. They said that although threatening to do what you're otherwise legally entitled to do will sometimes exceptionally amount to a case of economic duress, it will not in this particular case. We have guidance now as to what are the requirements of economic duress, but we have some uncertainty as to what it is will constitute sufficient pressure when someone is threatening what they would otherwise legally be entitled to do.

I hope you've enjoyed this short blog and thank you very much.