

# Contact Law And Principles Of Duress

Posted on March 22, 2019

## Introduction

A lot of contracts happen every single day, ranging from minor ones to more valuable commercial contracts. Before one enters a contract, a basic principle of voluntariness that is acceptable to both parties is required. Nonetheless, issues may arise when one party is pressured to subscribe to the contract. Equally, when a party is denied an opportunity or their right to voluntarily subscribe to a contract, it may cause the defense of duress that then makes the contract voidable (Chung 2017). The true meaning of duress was clearly explored in the famous court case, *R versus Attorney General* in 2003, in which it was established duress amounts to physical threat or rather other forms of illegitimate pressure that is being applied to achieve a wrong objective that is fairly severe to ruin the consent of one party. While lawful pressures count as illegitimate threats, then the only viable basis for discriminating between acceptable and unacceptable pressures is not positive law but social morality because the law may not delve into whether one party was under duress and influence from such duress, which disrupts the freedom of contract.

## Lawful Pressure/Duress

Notably, the fundamental issue concerning duress is whether an intimidation that emanates from a lawful act should be regarded as illegitimate duress/pressure. Thus, this issue is challenging since the contract itself is voidable despite the fact that every action in that contract was lawful. This was substantially explored in the court case between *CTN Cash and Gallaher* in 1994 (Friedman 2011). In this court case, the plaintiff agreed to have ordered some items, cigarettes after contractually making an agreement, from a defendant, however, through their fault incorrectly ordered those items to be delivered to a wrong warehouse. Resultantly, the cigarettes were whipped. The defendants claimed that the plaintiff should take responsibility for the risk of theft and pay for the item, whereby if they failed to pay for the cigarettes, then the defendant would withdraw any credit facility from their future contracts. Consequently, the court of appeal had the claim failed and established that there was no economic pressure since the threat was indeed agreed upon in good faith. They frankly believed that their claim for any payment was legitimate. Moreover, the plaintiff went further by stating that the defendant was, in law, allowed to reject or subscribe to any future agreements with the plaintiff for any motive, and thus, it was legitimate for the defendant, for any purpose whatsoever, to assert that they will not grant credit any further to the plaintiff, or rather have the legitimacy to refuse any party for whatever reason.

According to Friedman (2011), lawful pressures may validate the principle of duress. He further

argues that the only possible ground for discerning between acceptable and unacceptable pressures is not constructive law but rather social morality (Chung 2017). The implication of this statement is that it significantly demonstrates that lawful act cases confound the principle since it is found on social morality instead of the law, which implies that it may impede the freedom of voluntary contract as well as usual commercial dealings because parties continuously be worried about their actions irrespective of whether they are lawful because of the fear of the agreement being challenged, or even a party disliking the positions of the agreement.

Conversely, this would interfere with commercial agreements because businesses threatening other businesses to achieve an advantage of a deal is regarded as a norm (Friedman 2011). When lawful acts get involved in the duress, it provides an opportunity for several business contracts to become voidable and thus widens this section of law in order to permit numerous claims to be arrived at, which may later cause uncertainty in the law and subsequently disrupt the freedom to make agreements/ contracts.

## Voluntary

One may think that for a claim under duress to happen, an agreement must have been reached. One of the issues with duress is the fact that most claims do not come from the parties, which have been physically compelled to sign the contract and enter into an agreement in which the other party substantially compels their hand to append their signature to means they have voluntarily agreed to the contract; the norm has been that the claims are brought forward by the parties, who voluntarily agree into the contract into its totality without any duress (McKendrick 2014). Therefore, as any party willingly entered the contract, it may be then argued that pressure is in violation of the principle of liberty to enter into a contract, especially when the party can go back and review their agreement later after they have willingly entered an agreement. Notably, it is a contract is considered to be a promise that both parties have agreed up on, thus going back on this promise amounts to violation of the contract.

Besides, another important point that should be noted, is the fact that in scenario in which a party is threatened in order to enter into an agreement that they would still enter into anyway, Friedman, (2011), proposes that duress is still available despite the contract being made without any threats. However, this can be interpreted as violating the principle that guarantees one the freedom of entering an agreement willingly because it efficiently enables parties to have entitlement within duress and make an agreement voidable without any reason since they would have subscribed to the agreement irrespective of the threats made. What is more, a lot of issues have been attributed to this approach, thus Scarman's method in *Pao on versus Lau Yiu Long* in 1980 remain to be more adequate approach. Lord Scarman's approach argues that whether duress is operative or the claimant has any alternative, they should submit to it (Schwartz & Scott 2003). Therefore, this is more voluntarily accepted since it means that the contract would be impossible to reach, although threats that sustain the basic principle of duress thin and fail to permit rights to be reached against agreements they

ought to have reached anyway and evade indefensible duress entitlements in order to preserve the principle of liberty to contract intact.

Moreover, in the court case of Barton versus Armstrong, 1976], the panelists tend to share common sentiments with Lord Cross (Schwartz & Scott 2003). It was established that it was proper to create duress when the threat was the only reason for the applicant to enter into an agreement as another reason but not as the only reason. The panelists argued that their lordship had thought that a similar rule should be used in cases that deal with duress and that when the threat against Armstrong was the only reason enough for executing Barton, he was entitled to release despite the fact that he too may well have subscribed into an agreement when Armstrong had expressed no threats in order to intimidate him into signing the contract (McKendrick 2014). The panelists explained that in this scenario, they are restating that the threat against the defendant merely requires to be the only motive among others for the applicant's agreeing to sign the contract so that a claim for duress can be outstretched (Schwartz & Scott 2003). Thus, this assessment shows that the principle of duress mainly concentrates on the respondent's morally wrong acts instead of looking at their impact on the claimant. Hence, this may point to a lack of rational fundamentals within the principle since this case was found not to bind in terms of precedent. As a matter of fact, not every judge will have a similar view to that of Lord Cross or the Privy Council. The implication is that if a similar case like this one is brought to court, the verdict and reasoning may vary, which will bring about uncertainty within the law.

## Illegitimate Pressure

What is more, for any right in duress to become fruitful, it is expected that there will be an illegitimate pressure. Chung (2017) describes illegitimate pressure as an unlawful threat applied and pursued by the respondent on the applicant. Thus, the question of whether a legitimate act may be regarded as illegitimate had been discussed earlier. Before economic duress, the pressure from an individual was the only thing considered as the duress obtainable for any party to make any claim. Therefore, a lot of issues came up when economic duress was made available.

One question that then begs is which threats should be regarded as illegitimate within economic duress. For instance, in the court case, Pao On versus Lau Yiu, 1980, the applicants were found to have threatened that they would not finalize their contract unless the respondent was ready to buy the stocks back from the applicant at a cost of 2.50 dollars per portion at the close of April 1974 (Schwartz & Scott 2003). After that, the applicants will be allowed to look for the respondent to purchase the stock back, although the respondent rejected it and asserted that they were subjected to intent duress at the time they were entering an agreement. Going by the judgment of Lord Scarman on this issue, the judge said that duress is mainly coercion off the drive so that one may corrupt consent. The judge placed a lot of focus on the compulsion of willpower rather than the unlawful pressure that makes a person question whether the illegitimacy of duress is less pertinent compared to the coercion of willpower with respect to a right for duress (Schwartz & Scott 2003).

Further, the Lordships granted that within a contractual condition, viable pressure is not sufficient, thereby raising the issue of what is termed as being enough pressure within economic duress so that it can be regarded as illegitimate. The implication is that the principle of duress does not have a rational foundation since illegitimate duress remains one of the key characteristics of an entitlement to duress. It is further implied it is not essential compared to the coercion of willpower in respect to this case, which demonstrates that there is a lack of robust basic principles within the true doctrines of duress that will be able to assist judges in making decisions. Rather, this issue has been pushed to the judges to make their decision.

## Fairness

In the view of McKendrick (2014), the main function of a principle of duress is to offer a platform that will guarantee fairness for all the contracting parties. For instance, in the court case *Atlas Express Company versus Kafco Company*, 1989, Atlas had uttered some threats to Kafco, affirming that if they failed to append their signature to the document, then Alta Limited would also not deliver the products. Therefore, the Kafco Company gave in to the threat and signed an agreement because the products were essential to Kafco's business success, and it could not be able to have alternative firms that supplied it with the same products. Nevertheless, when Atlas Company decided to collect the from Kafco as agreed, then the latter refused to pay, thereby claiming that it was under intense pressure to sign the new contract. Notably, this assertion was said to be popular. It was revealed that Kafco entered into the contract under intense pressure and reluctantly and, by that time, had no negotiating power (McKendrick 2014). Thus, as Kafco did not have any bargaining power and was compelled to sign the agreement, it is fair enough to make the agreement voidable.

Conversely, in the court case of *Progress Bulk Carriers company against Tube City* in 2012, two firms made a contract that each party would then offer a cargo ship. Though the cargo was provided to another firm, for the agreement to remain viable, another ship was to be given to offset the cost incurred (Schwartz & Scott 2003). However, the owners of the ship agreed to offer a substitute ship unless the parties waive their claims in case there is a violation of the contract. The parties refused the offer and later agreed. This is a pure case of an unfair condition, an assertion in pressure would have made the rights things become wrong. By examining the instances of the case stated above, it is obvious that the principle of duress offers rational ground because it forms a basis for the principle of justice and fairness for everyone. Equally, one can argue that the principles of duress also contribute to the violation of the freedom of forming an agreement.

What is more, compelling a party to enter into an agreement violates the true basis of the doctrine of freedom of forming an agreement voluntarily. Thus, duress can be interpreted as compelling the principal to put one party at a losing end when the contract is decided as void because there was duress. This is evident in the court case between *Halpern and Halpern*, 2007, in which both parties were involved in a disagreement over the inheritance of a property that was then settled (McKendrick 2014). The applicant applicant wanted to be paid for the breach of contract, although the defendant

argued that they were under due duress. The case was taken forward to higher courts to solve the matter. The implication is that there is a challenge in making sure that the law provides justice.

## Limited Use

It has been established that many judges are reluctant to make decisions in favor of the claims of duress. For instance, in the above-discussed case of *R versus Attorney General*, 2003 (McKendrick 2014). The judges fail to define duress and only refer to the reason for future cases. There is a need for judges to define duress and the overall tenets of the agreement between parties duly. To effectively regulate claims that support duress, most judges added a timeframe in which both parties subscribe to an agreement can claim (Chung 2017). For instance, if the claim was not launched in time, then the judges would not make a decision in favor of duress. There is a need for fairness for both parties, just as it is embodied in the principle of duress. The judges should critically examine the case of duress before they make any decision in favor of duress or not.

## Conclusion

In brief, the issues concerning the principle of the doctrine of duress remain a subject of discussion and criticism. However, scholars criticize the limitation of the principle of duress. Nonetheless, it is important to embrace any doctrine that seeks to serve justice and fairness to all parties. Moreover, the judges agree that the principles of duress substantially interest the freedom of entering into a contract, although judges tend to avoid making any conclusion unless it is merited. Despite the fact that benefits of the principle of duress outweigh the disadvantages, it is important for the law and the judge's to be fair to all the contracting parties.

## References

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