

Vitiating Factors

- One party (the defendant) enjoys an ascendant position vis-a-vis the other party (the plaintiff), and abuse that position by subjecting them to threats (duress) or undue pressure (undue influence)

Duress

- Found that once the 'evidence establishes that the pressure exerted was illegitimate, the **onus lies on the person applying** the pressure to show that it made no contribution to the victim entering into the agreement.' (*Crescendo Management Pty Ltd v Westpac Banking Corp*)
- Substantial Unfairness: Unfairness in the terms of the contracts courts can't do anything about this
- Procedural Unfairness: Unfairness in the way in which the contract was brought about. Courts can do stuff in regards to this
- Duress aka Compulsion and Coercion in equity. Remedy is rescission (unless bars to rescission)
- Two questions: **Was the pressure amounting to the compulsion of the will of the victim** and **Was this pressure illegitimate** (the demand doesn't have to be unlawful to be considered duress) (*Universal Tankships of Monrovia v International Transport Workers Federation*)
 - o The lawfulness of the demand depends upon whether it was an act done in contemplation or furtherance of a trade dispute.
 - o Every unlawful threat will be regarded as illegitimate pressure
- Threats **only have to be a reason** not the only reason to enter into the contract (*Barton v Armstrong*)

Goods being held at ransom: Money paid to get them back can be claimed in restitution (*Maskel v Horner* 1915).

- According to *Hawker Pacific v Helicopter Charter* 1991- a promise to pay more to get what is rightfully theirs can now also be considered restitution.
 - o Found that withholding the legal rights of another is enough to be illegitimate pressure amounting to duress
 - o They don't have to show that they were afraid
 - o Contrary to *Skeare v Beale* who said that the promise to pay more for goods held at ransom is an enforceable contract
 - *Skeare v Beale* is a case in which "the victim of the threat had a real alternative to submission and 'room for appeal to the law for a remedy'" - *Occidental Worldwide Investment Corp v Skibs A/A Avanti (The Sibeon and the Bibotro)*

Economic Duress:

Even if a promise is supported by consideration, interference with contractual rights still may be considered illegitimate pressure

- Much will depend on whether there was a threat by the defendant to not perform as opposed to a mere statement of position and whether the threat was a factor caused by the plaintiff to renegotiate the contract.
- If the plaintiff entered into the contract to do what was necessary to avoid illegitimate pressure, to avoid the threat and its consequences, making it clear that the matter was still open, the contract will be voidable. (*Crescendo Management*)

Undue Influence

Acts in reliance on and confidence in the defendant, and suffers from impaired judgement

Presumed relationships of influence: Lawyer, Parent, religious adviser, doctor but NOT financial advisor or husband and wife

- If presumed the defendant must prove 'that he took no advantage of the donor, but that the gift was an independent and well understood act of a man in a position to exercise his free judgement based on full information as full as that of the donee.' that the victim acted in the result of a free exercise of the donors independent will (*Johnson v Butress 1963*)
- Contrary to *national Westminster bank plc v morgan 1985*, there does not need to be proof of the transaction being manifestly disadvantageous to the plaintiff. (*Blomley v ryan 1956*)
- **Solicitor and Client rel:** To be safe it is helpful to advise the client to seek advice from a third party. This is not the only way to rebut the presumption of undue influence is helpful (*Westmelton v Archer and Schulman 1982*)

Unconscionability

- Remedies- Contract is voidable/ rescission as long as no bars. Can be a defence to specific performance (*Blomely v Ryan*)
- *Commercial Bank of Aus v Amadio*- Deane J held that the doctrine applied where a party to a transaction was **under a special disability** in dealing with the other party so that there was an **absence of any reasonable degree of equality** between them And the disability was **sufficiently evident** to the stronger party to make it **prima facie unfair or unconscientious** that he procure, or accept, the weaker party's assent to the impugned transaction.
- OR 'a disabling condition or circumstance which seriously affects the ability of the innocent party to make a judgement as to his own best interests, when the other