

## CASES ON DURESS

### DURESS TO THE PERSON

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***Barton v Armstrong*** [1976] AC 104

A (the former chairman of a company) threatened B (the managing director) with death if he did not agree to purchase A's shares in the company. There was some evidence that B thought the proposed agreement was a satisfactory business arrangement both from his own point of view and that of the company. B executed a deed on behalf of the company carrying out the agreement. He sought a declaration that the deed was executed under duress and was void.

The Privy Council held that if A's threats were "a" reason for B's executing the deed he was entitled to relief even though he might well have entered into the contract if A had uttered no threats to induce him to do so. The onus was on A to prove that the threats he made contributed nothing to B's decision to sign.

### DURESS TO GOODS

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***Skeate v Beale*** (1840) 11 Ad&El 983

A tenant who was threatened with the levying of distress by his landlord in respect of rent owed, promised to pay part immediately and the balance within one month. When the tenant failed to pay the balance, as agreed, the landlord brought an action for the balance. The tenant pleaded that the distress was wrongful in that a smaller sum only was owed. He had consented to the agreement because the landlord threatened to sell the goods immediately unless the agreement was made. This plea of duress was rejected.

***Maskell v Horner*** [1915] 3 KB 106

Toll money was taken from the plaintiff under a threat to close down his market stall and to seize his goods if he did not pay. These tolls were, in fact, demanded from him with no right in law. The Court of Appeal allowed the plaintiff to recover all the toll money paid, even though the payments had been made over a considerable period of time. Lord Reading CJ stated that if a person pays money, which he is not bound to pay, under a compulsion of urgent and pressing necessity or of seizure, he can recover it as money had and received under the law of restitution.

It was held that there was a wider restitutionary rule that money paid to avoid goods being seized or to obtain their release could be recovered. Further, it was held that in the present case there was a compulsory agreement to enter into, whereas in *Skeate* the agreement was entered into voluntarily.

NOTE: The distinction between the *Skeate v Beale* line of cases and the decision in *Maskell v Horner* is hard to follow, and it has been pointed out that the peculiar result would follow that although an agreement to pay money under duress of goods is enforceable, sums paid in pursuance of such an agreement by the coerced can be recovered in an action for money had and received under the law of restitution.

***The Sibeon and The Sibotre*** [1976] 1 Lloyd's Rep 293

Kerr J stated: "if I should be compelled to sign a lease or some other contract for a nominal but legally sufficient consideration under an imminent threat of having my house burnt down or a valuable picture slashed through without any threat of physical violence to anyone, I do not think that the law would

uphold the agreement ... The true question is ultimately whether or not the agreement in question is to be regarded as having been concluded voluntarily."

## **ECONOMIC DURESS**

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### ***The Sibeon and The Sibotre* [1976] (above)**

The charterers of two ships renegotiated the rates of hire after a threat by them that they would go bankrupt and cease to trade if payments under the contract of hire were not lowered. Since they also represented that they had no substantial assets, this would have left the owners with no effective legal remedy. The owners would have had to lay up the vessels and would then have been unable to meet mortgages and charges - a fact known by the charterers. The threats themselves were false in that there was no question of the charterers being bankrupted by high rates of hire.

Kerr J rejected the earlier confines of duress. But, he said, in a contractual situation commercial pressure is not enough to prove economic duress. The court must, he said, be satisfied that the consent of the other party was overborne by compulsion so as to deprive him of his free consent and agreement. This would depend on the facts in each case. He considered that two questions had to be asked before the test could be satisfied: (1) did the victim protest at the time of the demand and (2) did the victim regard the transaction as closed or did he intend to repudiate the new agreement? Kerr J considered that the owners would have been entitled to set aside the renegotiated rates on the ground of economic duress, but that on the present facts their will and consent had not been 'overborne' by what was ordinary commercial pressures.

### ***The Atlantic Baron* [1979] QB 705**

The builders of a ship demanded a 10% increase on the contract price from the owners largely because the value of the US dollar fell by 10%, or threatened not to complete the ship. The owners paid the increased rate demanded from them, although they protested that there was no legal basis on which the demand could be made. The owners were commercially compelled to pay since, at the time of the threat, they were negotiating a very lucrative contract for the charter of the ship being built.

Mocatta J decided that this constituted economic duress. The illegitimate pressure exerted by the building company was their threat to break the construction contract. Where a threat to break a contract had led to a further contract, that contract, even though it was made for good consideration, was voidable by reason of economic duress. However, the right to have the contract set aside could be lost by affirmation. The plaintiffs had delayed in reclaiming the extra 10% until eight months later, after the delivery of a second ship. This delay defeated the plaintiff's claim for the rescission of the contract to pay the extra 10%.

### ***Pao On v Lau Yiu Long* [1980] AC 614**

The plaintiff had threatened not to proceed with a contract for the sale of shares, unless the other side agreed to a renegotiation of certain subsidiary arrangements. Anxious to complete the main agreement, but knowing that they could claim specific performance of it, the defendant, wishing to avoid litigation, agreed. When the plaintiff later tried to enforce these arrangements the defendant claimed that they had been extracted by duress, and were therefore voidable. The Privy Council held that the plaintiff was entitled to succeed. On the facts, the defendant considered the matter thoroughly, chose to avoid litigation and formed the opinion that there was no risk in the subsidiary arrangements. In short, there was commercial pressure, but no coercion.

Lord Scarman agreed with the observations of Kerr J in *The Sibeon and The Sibotre* that in a contractual situation, commercial pressure is not enough. There must be present some factor 'which could be regarded as a coercion of his will so as to vitiate his consent'. In determining whether there was a coercion of will such that there was no true consent, it is material to enquire: whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are relevant in determining whether he acted voluntarily or not.

***The Universe Sentinel* [1982] 2 All ER 67**

A trade union had 'blackened' the plaintiff's ship, ie threatened to induce the crew of a ship to break their contracts of employment and so to prevent the ship from leaving port, unless the owner paid a large sum of money, partly to the union welfare fund. In view of the catastrophic financial consequences which the shipowners would suffer if these threats were carried out, it was conceded that they constituted economic duress, vitiating the shipowners' consent to the agreement. It was held by the House of Lords that these payments could be recovered.

Lord Diplock stated that economic duress could be relied upon by a victim where his apparent consent was induced by pressure exercised on him by the other party which the law does not regard as legitimate, with the consequence that the consent is treated in law as revocable unless expressly or impliedly approbated after the illegitimate pressure has ceased to operate on his mind.

Lord Scarman dealt with the two elements of economic duress, ie consent induced by coercion of the will of the victim, and the fact that the pressure was illegitimate. In his discussion of 'compulsion', Lord Scarman modified the approach previously taken. His Lordship stated: "Compulsion is variously described in the authorities as coercion or the vitiation of consent. The classic case of duress is, however, not the lack of will to submit but the victim's intentional submission arising from the realisation that there is no other practical choice open to him ... The absence of choice can be proved in various ways, eg by protest, by the absence of independent advice, or by a declaration of intention to go to law to recover the money paid or the property transferred ... But non of these evidential matters goes to the essence of duress. The victim's silence will not assist the bully, if the lack of any practicable choice but to submit is proved." In the present case there was no protest at the time, but only a determination to do whatever was needed as rapidly as possible to release the ship.

***B&S Contractors v Victor Green Publications* [1984] ICR 419**

A contractor who had undertaken to erect stands for an exhibition at Olympia told his client, less than a week before the exhibition was due to open, that the contract would be cancelled unless the client paid an additional sum to meet claims which were being made against the contractor by his workforce. The consequence of not having the stands erected in time would have been disastrous for the client in that it would have gravely damaged his reputation and might have exposed him to heavy claims for damages from exhibitors to whom space on the stands had been let. In these circumstances it was held that the payment had been made under duress and that the client was entitled to recover it back.

***Atlas Express v Kafco* [1989] 1 All ER 641**

Kafco, a small company dealing in basketware, had secured a large contract from Woolworths and had obtained a large quantity of goods to fulfil it. They entered into a contract with Atlas, a national road carrier, to distribute the goods to Woolworths' shops. Before entering into the contract Atlas's

manager inspected the cartons used by Kafco and, estimating a minimum load of 400 cartons, quoted a price £1.10 per carton (total, £440). In fact, the first load contained only 200 cartons which the manager said was not viable unless Kafco agreed to pay a minimum of £440 per load. It was essential to Kafco's commercial survival that they should be able to meet delivery dates. It would have been difficult, if not impossible, to find alternative carriers to do so. Kafco agreed to the new terms but later refused to pay at the new rate.

It was held that Kafco were not bound by the new terms: economic duress had vitiated the new agreement and, in any case, there was no consideration for it. Tucker J found that the defendants' apparent consent to the agreement was induced by pressure which was illegitimate and he found that it was not approbated.

***The Alev* [1989] 1 Lloyd's Rep 138**

The plaintiffs chartered a vessel to hirers who were carrying the defendants' cargo of steel. The hirers defaulted on the payments and the plaintiffs were obliged by the terms of the bills of lading to carry the cargo. This would involve extra costs. They therefore negotiated with the defendants who agreed to pay extra costs and not to detain or arrest the vessel while in port. This agreement was secured through threats, including a statement that unless the defendants paid the extra costs they would not get their cargo. When the ship was in port and had commenced unloading the defendants ignored the agreement and arrested the ship. They pleaded duress to any breach of contract and claimed damages.

It was held that the agreement clearly fell within the principles of economic duress. During their negotiations the plaintiffs did make an illegal threat to withhold cargo and they were fully aware that, since they were legally obliged to carry the cargo, even if at a loss of profit to themselves, such a threat would be unlawful. The defendant's right to rely on duress was therefore established and the contract was voidable on the ground of duress.

***The Evia Luck* [1991] 4 All ER 871**

Whilst the plaintiff's ship was in harbour in Sweden, it was boarded by agents of the International Transport Workers' Federation, who informed them that the ship would be blacked and loading would not be continued until the company entered into certain agreements with ITWF, including back pay to the crew, new contracts of employment at higher wages and guarantees for future payments. At first the plaintiffs would not agree and the ship was in fact blacked. Yielding to the pressure, the company agreed to sign the various agreements, which were expressly declared to be governed by English law. The plaintiffs then sought to avoid the agreement on the grounds of duress and claimed restitution of all sums paid.

The House of Lords in discussing what constituted economic duress, said the fact that ITWF's conduct was quite legal in Sweden was irrelevant. In stipulating that the agreements were to be governed by English law, the defendants had to accept English law as the proper law of conduct. Under English law a contract obtained by duress was voidable, and improper economic pressure (blacking the ship) constituted one form of duress. The owners were thus entitled to avoid the agreements they entered into because of pressure from ITWF.

***CTN Cash & Carry v Gallagher* [1994] 4 All ER 714**

The plaintiffs purchased cigarettes from the defendants. One consignment was delivered by the defendants to the wrong warehouse (although it did belong to the plaintiffs). The parties agreed that the defendants would collect the consignment and transport it to the proper warehouse, but before this could be done the entire consignment was stolen. Each purchase of cigarettes was a separate sale and a separate contract made by credit. Credit

facilities had been arranged with the defendants and they reserved an absolute right to withdraw credit at any time and for any reason. When the consignment was stolen the plaintiffs initially refused to pay, but were coerced into doing so by the defendants' threat to withdraw all credit facilities. Later, the plaintiffs reclaimed the payment arguing that they had paid under duress.

The Court of Appeal, while recognising that the defendants' method of obtaining payment was questionable, declared itself unwilling, for policy reasons, to introduce a concept of 'lawful act duress'. Legally, although the defendants' conduct was 'unattractive' it did not amount to duress.

## **REMEDIES**

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### ***Morgan v Fry* [1968] 2 QB 710.**

Lord Denning MR defined the tort of intimidation as follows:

"The essential ingredients are these: there must be a threat by one person to use unlawful means (such as violence or a tort or a breach of contract) so as to compel another to obey his wishes and the person so threatened must comply with the demand rather than risk the threat being carried into execution. In such circumstances the person damaged by the compliance can sue for intimidation."

### ***D&C Builders v Rees* [1966] 2 QB 617**

In this case (which has been previously considered in relation to promissory estoppel), Lord Denning equated the undue pressure brought to bear on the plaintiffs with the tort of intimidation. His Lordship refused to exercise estoppel because of the wife's inequitable actions since she knew the builders needed the money.

### ***Universe Tankships v ITWF* [1982] 2 All ER 67**

Lord Scarman said that : 'duress, if proved, not only renders voidable a transaction into which a person has entered under its compulsion but is actionable as a tort, if it causes damage or loss'.