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Duress and Unwarranted Influence When Signing a Contract, and How to Avoid It

In order to be valid, contracts require having all parties signing them freely with mutual assent. Duress and undue influence are concepts that indicate the occasion when a person has been forced into signing a contract. Duress and undue influence lead to contracts being voidable, though they can also be considered void under special circumstances. Duress, a circumstance of entering a contract under undue pressure and undue influence, a circumstance of entering a contract because of a violation of trust, can sometimes be avoided with the help of precautionary measures and the involvement of an independent lawyer.

Duress indicates a specific occasion when a contract has been signed as a result of pressure. Duress can involve both a direct use of force and a threat to use it. The coercion that is used in duress can be both of a physical and mental nature. Such pressure to sign a contract can come in many forms, including threats of violence, threats of unlawful restraint, threats to property, and economic duress (Trevelyan). The most severe type of duress occurs when a contract is signed under physical pressure, such as an individual signing a contract with a knife

being held at his or her throat. These contracts are considered void, and the party responsible for holding an individual at gunpoint is likely to face criminal prosecution for one's actions.

All other types of duress result in a contract being considered voidable but not void. Voidable contracts signed under duress include ones signed under the threat of physical harm to the consignee or a member of one's family, ones signed under the threat of damage to property, signed under a threat of disgrace, economic loss, and others (Trevelyan). In *Universe Tankships Inc. of Monrovia v International Transport Workers' Federation*, the House Of Lords has determined the conditions under which an action of a party can be considered a form of economic duress. Elements of economic duress include the presence of a wrongful or improper threat and a lack of reasonable alternatives for the party rather than signing the contract. What is more, a threat under economic duress has to induce signing the contract. In considering this circumstance, the judge has to take the age of a person, their background, the ability to seek advice in the particular situation, and the relationship between the parties into account (“Universe Tankships Inc”). Finally, financial distress has to be caused by economic duress.

Undue influence stands for cases when a contract was signed due to external pressure on the cosigner but this pressure did not qualify as duress. Undue influence usually occurs in cases when one of the parties of the contract takes unfair advantage of the good relationship that exists between contract parties. The Court of Appeal of England and Wales has identified several classes of undue influence, including actual undue influence, and two subclasses of presumed undue influence (Trevelyan). Actual undue influence calls for evidence. For instance, it may occur in cases when a violating party threatens to end a relationship, or when a party is

persistently verbally forced into a contract until it finally submits for the lack of better ways to escape such situations.

The two classes of presumed undue influence, according to The Court of Appeal of England and Wales, are Class 2a and Class 2b. Class 2a implies that there is no need to prove that improper influence took place to prove that the party was indeed forced into a contract. Instead, it is required for the affected party to prove the presence of a relationship that implies the possibility of undue influence (Trevelyan). Legal relationships that fall under this category include ones that imply a certain degree of subordination, such as a parent or legal guardian/child, doctor/patient, and others. A case falls under this category if a transaction cannot be explained by the nature of the relationship between the parties.

Class 2b on the presumed undue influence occurs when a relationship that exists between parties does not lead to the automatic presumptions that are derived in Class 2a. However, the relationship that exists within 2b has to demonstrate that the parties somehow had confidence in each other. The parties that might fall under the definition of this class include bosses and employees, or cohabitants (Trevelyan). The party that is accused of forcing the other into a contract under undue influence can rebut such a presumption by giving proof that the other party has entered the transaction using free will, with the awareness of the potential risks involved. One of the ways of proving this is to provide evidence that the parties sought independent legal advice before entering the contract.

While duress and undue influence can occur under unpredictable circumstances, there are several ways in which the risk of duress or undue influence can be minimized to a reasonable

extent. A universal solution is seeking legal advice from a lawyer independent of both parties prior to signing a contract. It should be noted that it is necessary to seek legal advice regardless of the relationship between the parties in the contract because any trust can be violated, resulting in duress or undue influence. The most secure option is for an independent lawyer to be present at the moment when the contract is signed. It is also useful to have a lawyer supervise every step of signing the contract, starting from negotiations. The presence of a third party is likely to reduce the possibility of threats being made, or one party taking advantage of the other. If any substantial threat is being made in the process of signing a contract, the victim of the threats should report to the police. In cases when the contracts are signed because of business, good advice is to evaluate the safety of doing business with the other party by seeking the available history of its cooperation with other businesses. If no such data can be extracted, it is possible to ask the representatives of the business to overview their history of entering into legal contracts during negotiations.

Claims of undue influence are often made in cases relevant to inheritance law. The testators can protect the carrying out of their will by using a revocable trust in addition to the will (Phillips and Wagner 2017). Unwarranted influence is more difficult to avoid in cases that involve elders or children. Lawyers involved in these cases may also share a part of the responsibility by explaining the nature and effect of the transaction, and taking precautions to ensure that the party is acting independently ("Avoiding Undue Influence Claims"). Specific precautionary measures that depend on the type of contract should be taken at all times.

All in all, duress and undue influence occur in contracts much more often than the individuals or businesses seeking to enter a contract might assume. Signing a contract is a risky operation, no matter how secure parties might feel about the document and the other party. Therefore, the best solution is to secure oneself and seek legal advice before signing a contract. If these efforts do not succeed, and duress or undue influence indeed occurs, the party that is forced into the contract can rely on the court to find the contract null and to establish remedies. As long as there is proof of duress or undue influence, the suffering party is likely to be properly compensated.

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