

### Contract Law Concentrate: Law Revision and Study Guide (6th edn) Adam Shaw-Mellors and James Devenney

## p. 213 10. Duress and undue influence

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### Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. The doctrines of duress and undue influence may result in a contract being set aside (the remedy of rescission) where illegitimate pressure has been used in the contracting process. This chapter focuses on instances where the agreement cannot stand in light of duress or undue influence, including instances where the duress or undue influence was exercised by a third party and the contracting party had notice of that duress or undue influence.

**Keywords:** duress, undue influence, equitable, actual, presumed, rescission

### Key facts

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- Pressure is often an intrinsic part of the contracting process. However, there are limits to the pressure which may be *legitimately* used to secure a contract (for example, would it ever be legitimate to threaten another with a gun in order to induce them to enter into a contract?).
- The doctrines of duress and undue influence regulate the pressure which made be used to induce another to enter into a contract (and indeed other transactions).
- An agreement may be avoided where it was entered into as a result of duress or undue influence.
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Duress is a common law doctrine. Traditionally duress was a limited doctrine in this context, largely limited to threats of violence or threats to property. Today the doctrine of duress regulates more types of pressure used in the contracting process, including illegitimate economic pressure (*economic duress*). A key difficulty is to distinguish between legitimate and illegitimate economic pressure,

- Undue influence is a (wider) equitable doctrine with contextual links to the common law doctrine of duress. Undue influence is particularly, although not exclusively, concerned with improper (or undue) pressure within relationships (e.g. between a husband and wife).
- It is common to distinguish between *actual* undue influence (where, similar to duress, the claimant can affirmatively prove improper pressure) and *presumed* undue influence (where the claimant is assisted in proving improper pressure by an evidential presumption). The evidential presumption is often a very useful tool given the subtleties of relational pressures. In some circumstances there will be an evidential presumption of influence which may develop into an evidential presumption of undue influence where there is something in the transaction ‘which is suspicious or calls for an explanation’ (i.e. of such a size, nature, or context as to raise suspicions).
- In the case of presumptive undue influence, the conclusion of influence may arise automatically in the case of certain types of protected relationships but needs to be established on the facts in other cases on the basis that there is a relationship of trust and confidence between the particular parties. In both cases there needs to be something in the transaction ‘which is suspicious or calls for an explanation’ (i.e. of such a size, nature, or context as to raise suspicions).
- Where duress or undue influence is established as between the contracting parties, the victim can have the transaction set aside, although see general bars to rescission in Chapter 9.
- **Three party situations:** where a person enters into a contract with X as the result of the duress or undue influence not of X but of Y (who is not party to the contract). For example, as a result of her husband’s undue influence a wife gives security in order to support the debts (e.g. a loan) of her husband (i.e. her contract is with the lender—someone other than the person exercising the influence), the lender will be affected by the actions of the person exercising the undue influence (her husband) where that lender has actual or constructive notice of the other’s undue influence. This may occur where the lender is ‘put on inquiry’ (and may occur in all cases where a wife stands surety for her husband’s debts and not for any joint purpose). A lender is required to take precise steps (involving ensuring that the practical implications of the proposed transaction have been explained to the wife) or that lender risks losing its security.

### 10.1 Introduction

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This chapter is primarily concerned with instances where the agreement is challenged on the ground that (i) in making the agreement one party has used improper pressure (duress or undue influence), or (ii) one party is ‘infected’ (through the doctrine of notice) by the use of improper pressure by a third party to ensure the agreement was concluded. If duress or undue influence (and notice in the case of third party duress or undue influence) is established, *prima facie* the agreement will be voidable (liable to be set aside).

### Think like an examiner

This topic is often set as a problem question with all of the traditional ingredients, i.e. husband persuading his wife to use the matrimonial home as security to cover the debts of the husband's company in favour of that company's lender. The question is whether the wife can avoid this contract due to her husband's undue influence. Such a question can be combined with misrepresentation since the husband might well misrepresent the effect of the security or purpose of the loan. (Note that the current **Consumer Protection from Unfair Trading Regulations (CPUTRs) 2008** probably provide no assistance here, **regs. 27A–D.**)

Equally, undue influence can be part of a mixed problem involving economic duress (e.g. financial pressure or threats) to secure agreement and undue influence (taking advantage of the parties' relationship).

### Looking for extra marks?

Examiners want to know that you understand the context for an allegation of undue influence (or duress) and whether you are faced with a case involving two parties or three parties. If you are dealing with a two-party situation, you simply need to establish the undue influence (or duress)—and its type—with supporting authority, and appreciate the consequences of the finding of undue influence (or duress) for the parties' positions.

Alternatively, you may be faced with a claim that a contract between two parties should be set aside as a result of the undue influence (or duress) of a third. Can you appreciate this distinction—and identify each party's role in this scenario? If so, are you then also able to apply the applicable principles and appreciate the balancing act being attempted by means of these principles?

Technical knowledge of principles and appreciation of context are key.

## 10.2 Duress

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Threats of violence or threats to a person's property will *normally* be illegitimate for the purposes of establishing duress. See also *Ukraine v Law Debenture Trust Corp. Plc* (2023) where the Supreme Court (SC) held that threats of force by the Russian Federation in Ukraine could amount to duress, with Lords Reed, Lloyd-Jones, and Kitchin (with whom Lord Hodge agreed) stating (at [175]): 'United Kingdom courts have not previously had to consider whether threats to the safety of a state's citizens, or to the safety of members of its armed forces, can constitute duress of the person. We consider that in principle they can.' In addition, threats affecting a person's business interests or financial well-being—e.g. a threat to breach an existing

commercial contract, such as a threat to cancel supplies of goods unless a new, higher, price is paid—*may* also be illegitimate for the purposes of establishing duress. (Thus duress is particularly relevant in the context of alteration promises, on which see Chapter 3.)

### Practical example

The terms of an existing contract provide that Axel Ltd is to supply Brandon Ltd with light bulbs according to an agreed schedule for delivery and payment. Axel Ltd then threatens to stop these supplies unless Brandon Ltd pays double the agreed price, knowing that Brandon Ltd will be unable to secure an alternative supply at short notice to fulfil its own contract with a retailer, Cutprice plc.

Brandon Ltd reluctantly agrees to pay the extra price to secure its supply. The contract term has now ended and Brandon Ltd is seeking the return of all monies paid in excess of the original contract price. Is Brandon Ltd's promise to pay more enforceable?

p. 216      ↩ Was the alteration promise to pay more obtained as a result of duress? If it was, the promise is voidable, and assuming that Brandon Ltd does not affirm the alteration promise, it will not be enforceable against Brandon Ltd (or, to put it another way, Brandon Ltd is not bound by it).

### 10.2.1 Economic duress

In *Pao On v Lau Yiu Long* (1980) it was held that for a contract to be voidable for economic duress:

- there must be a threat or pressure which is illegitimate; and
- that pressure or threat must amount to a 'coercion of will that vitiates consent'.

By contrast, in *Pakistan International Airline Corp. v Times Travel (UK) Ltd* (2021) Lord Burrows identified three elements to duress: (i) illegitimate pressure; (ii) causation (the illegitimate pressure must have caused the claimant to enter into a contract); and (iii) in cases of economic duress, the claimant must have had no reasonable alternative but to give in to the threat. There is undoubtedly some overlap between the second and third elements identified by Lord Burrows but, given there are different tests of causation for different types of threats (see later), Lord Burrows's approach seems helpful.

### Is there evidence of pressure or a threat?

In the Axel Ltd/Brandon Ltd (A Ltd/B Ltd) example this is easily established since there is a clear *threat*. Identifying where the line is crossed in cases of *pressure* is, however, more difficult. As we noted in Chapter 3, in *Williams v Roffey Bros* the Court of Appeal (CA) had no difficulty in concluding that there was no duress since the initiative for the promised extra payment came from the main contractor (promisor). There was no

evidence of any pressure or threat from the subcontractor (promisee). But what do you think the position would have been if the subcontractor had made a factual statement as to its financial position? Would this be pressure?

### Is the pressure or threat illegitimate?

The difficulty is to know what constitutes an *illegitimate* threat. The threat in the A Ltd/B Ltd example is arguably illegitimate since A Ltd seems, without good reason, to be threatening a breach of contract (an unlawful act) where there is no default by B Ltd and terms were agreed.

By contrast, if, for example, a commercial lender threatens to call in a loan repayable on demand from a commercial customer, then, as the lender is exercising its rights, this will probably not be 'illegitimate' and hence it will not constitute duress. In *CTN Cash and Carry Ltd v Gallaher Ltd* (1994) (a commercial contract) the threat was to withdraw credit facilities unless payment was made for a consignment of cigarettes which the supplier thought had been delivered but had in fact been stolen. The supplier had a legitimate right to demand payment for goods delivered. The CA, whilst accepting that acts which were not unlawful could sometimes amount to illegitimate pressure, held that this particular threat did not amount to 'lawful act duress'. In so doing the CA emphasized that the supplier made the demand in good faith and argued that to extend duress to the facts of the case would create uncertainty in commercial dealings. This decision must now be read in the light of *Pakistan International Airline Corp. v Times Travel (UK) Ltd* (2021), which will be considered below.

In *Progress Bulk Carriers Ltd v Tube City IMS LLC* (2012), the judge held that 'illegitimate pressure' could be constituted by conduct which was not in itself unlawful, although it would be an unusual case where that was so, particularly in the commercial context. On the facts the shipowner had refused to supply an alternative vessel unless the charterer waived its right to full compensation for the shipowner's breach. This amounted to illegitimate pressure.

According to Lord Scarman in *The Universe Sentinel* (1983), there will be duress if a lawful threat is being used to achieve a goal which is unlawful (such as blackmail). The majority of the House of Lords (HL) considered that it was unlawful/an illegitimate threat for a trade union to refuse to allow tugs to assist vessels in leaving the harbour unless the owners of the vessels made a payment to the trade union's welfare fund. If they could not leave and had to lie idle, the losses would have been catastrophic. The majority concluded that legislation which might have protected the trade union's action as lawful action 'in furtherance of a trade dispute', did not cover this situation.

In *Pakistan International Airline Corp. v Times Travel (UK) Ltd* (2021) the majority of the SC were of the opinion that a 'bad faith' demand (in the sense of being made without genuine belief of being entitled to what was demanded) could not, without more, amount to illegitimate pressure. Instead, the majority anchored the concept of lawful act duress to a concept of unconscionability. Yet this concept of unconscionability is, at least at present, limited to two cases (at [4]):

The first circumstance is where a defendant uses his knowledge of criminal activity by the claimant or a member of the claimant's close family to obtain a personal benefit from the claimant by the express or implicit threat to report the crime or initiate a prosecution. The second circumstance is where the defendant, having exposed himself to a civil claim by the claimant, for example, for damages for breach of contract, deliberately manoeuvres the claimant into a position of vulnerability by means which the law regards as illegitimate and thereby forces the claimant to waive his claim. In both categories of case the defendant has behaved in a highly reprehensible way which the courts have treated as amounting to illegitimate pressure.

### Coercion of will that vitiates consent (compulsion)

It is clear that a party in the position of B Ltd, in the previous practical example, knows full well that it is agreeing to pay double the agreed price for the light bulbs. Rather, B Ltd has agreed because it feels it has no realistic commercial choice other than to agree, given that alternative supplies are unavailable at short notice and it will otherwise find itself in breach of its contract with C plc.

#### ***B & S Contracts & Design Ltd v Victor Green Publications Ltd (1984)* (CA)**

**FACTS:** There was an agreement to erect exhibition stands for the Ds. Workers threatened not to complete unless the Ds paid £4,500. The Ds paid, since, although they could have brought a claim for breach, the failure to erect the stands on time would have exposed the Ds to claims from those to whom they had let the exhibition stands.

**HELD:** The extra payment was voidable for duress.

p. 218 ↩ See also *Adam Opel GmbH v Mitras Automotive (UK) Ltd* (2007) and *Atlas Express Ltd v Kafco* (1989).

**Causation:** in a claim for economic duress it must be this illegitimate threat or pressure that is the reason why the promisor agreed to make the promise, e.g. why B Ltd agreed to pay A Ltd double the originally agreed price (*Huyton SA v Peter Cremer GmbH & Co.* (1999)). This can be compared with the position in *Pao On v Lau Yiu Long* where the majority shareholders made the indemnity promise as a commercial decision and did not think that the share price would fall, so triggering the indemnity promise. In *Pakistan International Airline Corp. v Times Travel (UK) Ltd* (2021) at [79] Lord Burrows stated that the lack of a reasonable alternative was a requirement of economic duress but not necessarily of other forms of address (this seems to have been the view of the whole court (see [1])). His citation of *Astley v Reynolds* (1731) appeared to indicate that a lack of a reasonable alternative is not a requirement of duress by threats to property and this was subsequently confirmed by the SC in *Ukraine v Law Debenture Trust Corp. Plc* (2023) at [144].

## The need to protest and avoid affirmation

Duress renders the promise voidable and the bars to rescission apply (see '9.4.1 Step 1: Always start by considering whether rescission is possible'). The victim of duress must therefore be careful to avoid affirmation as it will then lose the ability to rescind or avoid the promise. In *The Siboen and the Sibotre* (1976), Kerr J said that it was central to ask: *did the victim protest at the time or shortly thereafter and seek to reopen the issue?*

In *North Ocean Shipping Co. Ltd v Hyundai Construction Co. Ltd, The Atlantic Baron* (1979), there was clear evidence of duress in relation to a promise to pay more for the construction of an oil tanker which had already been chartered by the owner. Nevertheless, the owners had left it until nine months after the ship had been delivered before seeking to reclaim the monies paid under duress. It followed that the owners had affirmed and so lost the right to avoid liability on this promise.

## 10.3 Undue influence

### Definition

The doctrine of undue influence is an equitable doctrine allowing, in a two-party situation, a contract to be set aside (the remedy of rescission) where there has been a wrongful (undue) exercise of influence by one party over the other. It is common to distinguish actual undue influence and presumed undue influence, see Table 10.1. ↩

**Table 10.1 Types of undue influence**

|   |  |  |
|---|--|--|
| <b>Actual undue influence</b>   | Claimant has to <i>actually prove</i> that undue influence was exercised at the time of the transaction so that, in general terms, it was not the product of the exercise of free will.  |  |
| <b>Presumed undue influence and protected relationships: formerly called 2A relationships</b> | <p>Claimant only has to show that there was a protected relationship between the claimant and the wrongdoer. This leads to a presumption of influence in law. The presumption of undue influence arises if there is something suspicious about the transaction which calls for an explanation.</p> <p>The burden then falls on the other party to show that in fact there was no undue influence exercised, e.g. it may be possible to achieve this by showing that the transaction was entered freely following independent advice.</p> | Protected relationships: religious adviser and disciple ( <i>Allcard v Skinner</i> (1887)), parent and child ( <i>Bainbrigge v Browne</i> (1881)), and solicitor and client ( <i>Wright v Carter</i> (1903)), but not husband and wife relationship ( <i>Bank of Montreal v Stuart</i> (1911)) or bank and customer ( <i>National Westminster Bank plc v Morgan</i> (1985)). |

**Other cases of presumed undue influence: formerly called 2B relationships**

Claimant is able to establish the existence of a relationship of trust and confidence on the facts. This raises a presumption that influence has been exercised and that presumption will be 'undue' where there is something in the nature of the transaction which calls for an explanation. (A small gift between relatives might be easily explicable; a large gift may call for an explanation.) The burden then falls on the other party to show there was no undue influence exercised.

***Lloyds Bank Ltd v Bundy* (1975):** bank customer placed trust and confidence in bank manager for financial advice.

A wife may place trust and confidence in her husband with regard to financial affairs.

### 10.3.1 Examples of presumed undue influence (2B) to illustrate the scope of this category

#### ***Goodchild v Bradbury* (2006)**

**FACTS:** There was a gift of land by a frail and elderly gentleman (while in hospital suffering from a stroke) to his great-nephew and the subsequent sale of that land by the great-nephew to a property developer for only £1,800. The evidence was that the property developer had arranged for the solicitor who acted for the great-nephew in the transfer of the land from the great-uncle.

**HELD:** Both transfers would be set aside for undue influence. The presumption of influence was shown to exist between the great-uncle and the great-nephew and the sale was not in the interests of the great-uncle (property development devalued his remaining land). The great-nephew was unable to show that the great-uncle had acted freely in the transaction or with independent advice.

#### ***Hammond v Osborn* (2002)**

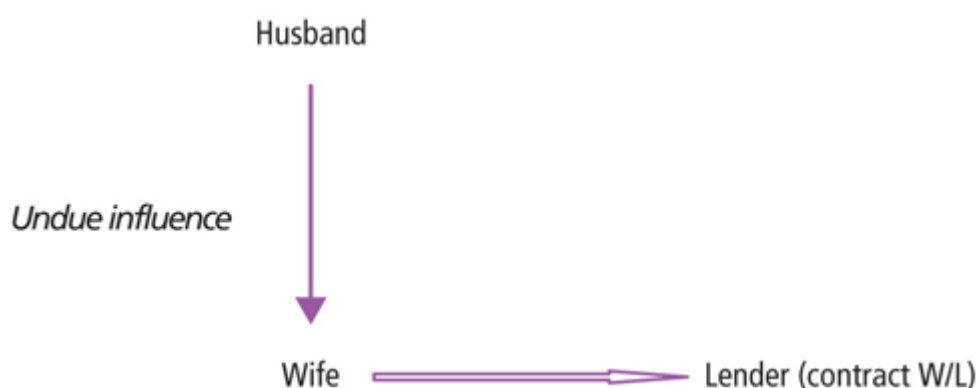
**FACTS:** An elderly donor had made a number of sizeable gifts (nearly £300,000) to the D, his neighbour, who had been taking care of him. These gifts represented over 90% of the donor's liquid assets and exposed him to a considerable tax liability.



**HELD:** A relationship of trust and confidence was shown to exist on the facts and there was clearly something suspicious about gifts of this size in these circumstances. The D had not been able to rebut the presumption of undue influence since the donor had received no advice concerning the wisdom of his actions and the implications. Therefore, the gifts could not be the result of full, free, and informed thought.

p. 220 **10.3.2 Can a transaction be set aside on the ground that undue influence was exercised by a third party?**

For example, a wife gives a guarantee and charge over the matrimonial home to a bank as security for the debts of her husband's company but later wishes to have that contract with the bank set aside on the basis that she entered into the contract only because of her husband's undue influence (see Figure 10.1).



**Figure 10.1** Exercise of undue influence by husband upon wife

The wife argues that her contract with the lender should be set aside due to her husband's undue influence since this had persuaded her to make the contract with the lender (i.e. contract W/L—see Figure 10.1). Can she succeed?

- (i) **Undue influence by the third party needs to be established.** In the case of husband and wife this will need to be either actual undue influence, or presumed undue influence (2B) where the transaction is based on a relationship of trust and confidence but calls for an explanation in the circumstances—and that the presumption of undue influence has not been rebutted.
- (ii) **The lender will only be affected by this undue influence** (and lose its security) if either:
  - the husband could be shown to be acting as agent for the lender in obtaining his wife's signature to the charge or other security document; or
  - if the lender had actual or constructive notice of the husband's undue influence.

p. 221 ↩ Lord Bingham in *Royal Bank of Scotland plc v Etridge (No. 2)* (2001), at [2], explained the need for the law to achieve a balance of interests:

It is important that a wife (or anyone in a like position) should not charge her interest in the matrimonial home to secure the borrowing of her husband (or anyone in a like position) without fully understanding the nature and effect of the proposed transaction and that the decision is hers, to agree or not to agree. It is important that lenders should feel able to advance money, in run-of-the-mill cases with no abnormal features, on the security of the wife's interest in the matrimonial home in reasonable confidence that, if appropriate procedures have been followed in obtaining the security, it will be enforceable if the need for enforcement arises. The law must afford both parties a measure of protection. It cannot prescribe a code which will be proof against error, misunderstanding or mishap. But it can indicate minimum requirements which, if met, will reduce the risk of error, misunderstanding or mishap to an acceptable level. The paramount need in this important field is that these minimum requirements should be clear, simple and practically operable.

### When will a lender have constructive notice of the husband's undue influence?

- Where the lender is put on inquiry by the circumstances—and this will occur whenever a wife stands surety for her husband's debts (or vice versa, or in the case of any other unmarried relationship of which the lender is aware).

#### Looking for extra marks?

Where the loan is made to husband and wife jointly (or the paperwork indicates this) the lender is *not* put on inquiry unless the lender is aware that the real position is that the loan is solely for the husband's purposes: *CIBC Mortgages plc v Pitt* (1994).

However, the lender is put on inquiry where the wife is named as a shareholder, director, or secretary of the husband's company for whose purposes the loan is being advanced. Examiners are fond of these cases!

- Having been put on inquiry, the lender will be deemed to have constructive notice if it then fails to take reasonable steps to satisfy itself that the wife's agreement to act as surety has been properly obtained.

### What are these steps?

In general terms, the lender only needs to take reasonable steps to satisfy itself that the practical implications of the proposed transaction have been explained to the wife and can rely on confirmation from the lender's solicitor that this advice has been given, unless the lender knows or ought to realize that the appropriate advice was not received.

### p. 222 10.3.3 The effect of undue influence

The contract is voidable so that both parties are to be restored to their original positions. *Dunbar Bank plc v Nadeem* (1998): the victim of the undue influence needs to make restitution of all that they have obtained from the transaction.

#### ***Cheese v Thomas* (1994) (CA)**

**FACTS:** The 86-year-old P had contributed £43,000 to the purchase of a property for £83,000, with his great-nephew, the D, contributing £40,000 by means of a building society mortgage. The P was to live in the property until his death. The property was in the D's name but he defaulted on the mortgage payments. The P succeeded in having the transaction set aside for undue influence and sought to recover his £43,000. However, the property's value had fallen and it sold for £55,000.

**HELD:** It was not possible to restore the parties to their exact original positions, so the court would do what was fair and just in practical terms. Since the purpose of the transaction had been to benefit both parties, it would not be just for the D to suffer the entire loss of market value. Each party was therefore to receive a share, in proportion to their original contribution, of the net proceeds of £55,000.

## Key debates

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The nature of undue influence and whether it is based on the defendant's wrongdoing or is a 'claimant-sided doctrine' (see Birks and Chin, 'On the Nature of Undue Influence' in Beatson and Friedmann (eds), *Good Faith and Fault in Contract Law* (Oxford University Press, 1995) and Devenney and Chandler, 'Unconscionability and the Taxonomy of Undue Influence' [2007] JBL 269).

For a summary of the arguments, see Morgan, *Great Debates: Contract Law*, 3rd edn (Palgrave, 2020), 223ff.

Should the doctrines of duress and undue influence be merged?

## Key cases

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You need to be careful with the case examples for undue influence since the law has developed over the years and cases pre-**Etridge** might not be explained in the same way now due to the rejection of any requirement to establish manifest disadvantage. ↩ ↩

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| Case  | Facts   | Principle   |
|---|---|---|
| <b><i>Pao On v Lau Yiu Long</i></b> (PC)  | When Ps acquired shares in a company its majority shareholders wanted to protect themselves against a fall in value of shareholding if shares all sold at once. At request of Ds and on basis of some form of protection being provided by Ds, Ps promised the company that they would not sell 60% of their shares for one year. Ds later made a promise to indemnify Ps against a loss in not being able to sell. Ps wanted to enforce this promise. Held it was not a promise extracted as a result of duress and Ps had provided consideration for it through their promise to the company (promising to perform an existing duty owed to a third party—the company). Consideration was not past consideration since the promise had been made following a request by Ds which carried with it a promise of protection. The later promise of indemnity merely fixed the method of protection. | This is an important case discussing: <ul style="list-style-type: none"> <li>• ingredients for a claim in duress;</li> <li>• previous request device as a means of avoiding past consideration;</li> <li>• consideration in the form of promising to perform an existing contractual duty owed to a third party.</li> </ul>   |
| <b>*<i>Royal Bank of Scotland plc v Etridge</i></b> (No. 2) (HL)<br>(known as <b><i>Etridge</i></b> ) | Eight joined appeals. Wife provided security on home for loan by bank to her husband's business. Home was being repossessed and wife alleged she had not understood the legal advice.   | * Latest statement of principles that apply to establishing undue influence and should be discussed in all answers on this topic.<br><br>Bank will be put on inquiry where wife stands surety for her husband's debts. Once on inquiry the bank will generally avoid being fixed with constructive notice of husband's undue influence by ensuring the wife receives independent advice.  |
| <b><i>Allcard v Skinner</i></b> (CA)  | A had inherited her family's wealth. She became a member of the Protestant Sisters of the Poor (religious order with oaths of poverty and obedience) and this involved giving up her property. She gifted her property to the sisterhood. She left the order but it was a further six years before she sought to reclaim her property. The CA held that although she had been unduly influenced, she could not recover due to delay (laches) and acquiescence since leaving the sisterhood.   | The judgment involves distinctions of actual and presumed undue influence. It is important for Lindley LJ's test of the types of gifts which will be set aside (raising suspicions) which later became the test adopted more expressly in <b><i>Etridge</i></b> and for the fact that it is not necessary to prove 'wrongdoing' (or a motive to abuse the relationship) in order to establish undue influence based on the parties' relationship. |
| <b><i>CIBC Mortgages plc v Pitt</i></b> (HL)  | Husband persuaded his wife to provide security over the matrimonial home for a bank loan. The stated purpose of the loan was to purchase a holiday home and pay off the   | Actual undue influence.   |

| Case                              | Facts  | Principle   |
|-----------------------------------|--|---|
|                                   | mortgage. The husband in fact intended to purchase shares with this money and did so. The HL held that this was a case of actual undue influence by the husband but that the bank was not put on inquiry due to the joint benefit statement in the loan application. It followed that the bank was not fixed with constructive notice and the security could not be avoided. | A bank will not be put on inquiry (and so in danger of being fixed with constructive notice of the undue influence of husband) where the loan is for joint purposes so that there is nothing suspicious in the transaction. |
| <b><i>Lloyds Bank v Bundy</i></b> | Mr Bundy placed trust and confidence in bank manager with regard to his financial affairs. He was persuaded to charge his home as security for the debts of his son's company. CA set this aside for undue influence by the bank.  | Presumed undue influence because a relationship of trust and confidence arose on the facts.<br><br>A case involving a bank as the party exercising undue influence (so not a third party case).                             |

## Exam questions

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### Problem question

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For many years Ceri was a member of a religious cult. During her time as a member of the cult Ceri transferred all of her property, including a very large inheritance, to the leader of the cult, Dewi-Dog. Dewi-Dog wished to use the property transferred from all members of the cult to further 'the love and appreciation of animals'. When Ceri left the cult, she quickly fell into debt and applied for a bank loan. The bank, Thomas Bank plc, would only lend to Ceri if she was able to provide security from a third party. Ceri persuaded her elderly, infirm parents to use their home as security for a loan from Thomas Bank plc to Ceri. Ceri did not repay the loan and Thomas Bank plc wishes to enforce the security against her parents' home.

Advise (i) Ceri's parents on whether they might be able to resist the bank's claims on the basis of undue influence and (ii) whether Ceri can regain property from Dewi-Dog so as to be able to pay Thomas Bank plc.

**Head to the Outline Answers** <<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-outline-answers-to-essay-questions?options=showName>> **section of the online resources for help with this question.**

### Essay question

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Critically discuss the case of ***Royal Bank of Scotland v Etridge (No. 2)*** (2001).

### Online Resources

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This chapter is accompanied by a selection of online resources to help you with this topic, including:

- An outline answer to the essay question [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-outline-answers-to-essay-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-outline-answers-to-essay-questions?options=showName)
- Interactive key cases [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-interactive-key-cases?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-interactive-key-cases?options=showName)
- Multiple-choice questions [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-multiple-choice-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-chapter-10-multiple-choice-questions?options=showName)

You can also find an interactive glossary [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-interactive-glossary?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-interactive-glossary?options=showName) on our online resources.

Additionally, to help you focus your revision, there is also a diagnostic test [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-diagnostic-test?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/contract-concentrate6e-diagnostic-test?options=showName) available. For general advice on your revision and exam technique, you can listen to our podcast [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/lawrevision-advice-on-revision-and-exam-technique-audio-podcast?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/lawrevision-advice-on-revision-and-exam-technique-audio-podcast?options=showName), or alternatively, you can access the transcript here [\\_<https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/lawrevision-advice-on-revision-and-exam-technique-podcast-transcript?options=showName>](https://iws.oup.support.com/ebook/access/content/contract-concentrate6e-student-resources/lawrevision-advice-on-revision-and-exam-technique-podcast-transcript?options=showName).

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