

UNIVERSITY OF HONG KONG
FACULTY OF LAW

JDOC1002 LAW OF CONTRACT II

2024-2025 SEMESTER 2

SEMINAR QUESTIONS: DURESS AND UNDUE INFLUENCE

Question 1

Please read the hypothetical below and answer the question that follows.

Luxury Cars Co is a boutique car dealer that specializes in custom made automobiles. It maintains a stable clientele of high-net-worth individuals. In July 2023, it ordered 48 Titan convertibles from Titan Automobiles Co, to be delivered by January 2024, at a contract price of HKD 50 million. Payment was to be due on delivery. These convertibles had been pre-ordered by customers who were told that they should have their new cars in time for the Lunar New Year.

The contract between Luxury Cars Co and Titan Automobiles Co included a hardship clause. The clause provided:

“If, after the time this contract comes into effect, events occur which have not been contemplated by the Parties and which fundamentally alter the equilibrium of the present contract, thereby placing an excessive burden on one of the Parties in the performance of its contractual obligations, that party is entitled to request revision of this contract. Each party must in good faith consider any proposed revision seriously put forward by the other party in the interests of the relationship between the Parties. Any revision agreed to by the Parties pursuant to this clause is binding on the Parties.”

In November 2023, the global price of titanium unexpectedly surged, raising the cost of manufacturing a Titan convertible from HKD 750,000 to HKD 1 million. Titan Automobiles Co wrote to Luxury Cars Co, invoking the hardship clause and asking for the contract price to be increased to HKD 60 million. In the alternative, Titan Automobiles Co suggested that the convertibles be made from steel at a reduced contract price of HKD 30 million. Luxury Cars Co responded that these terms were unacceptable. Titan Automobiles Co then informed Luxury Cars Co that unless it acceded to the higher contract price, the cars would not be delivered until June 2024 at the earliest.

Luxury Cars Co immediately contacted other manufacturers, but they were unable to produce the requested cars at such short notice. Not wanting to disappoint its long-time

customers, Luxury Cars Co reluctantly agreed to pay Titan Automobiles Co an extra HKD 10 million. The convertibles were delivered in January 2024 and came with one-year warranties. Luxury Cars Co tendered the sum of HKD 60 million to Titan Automobiles Co without protest. Very shortly after the warranties on the cars expired in January 2025, Luxury Cars Co sent Titan Automobiles Co a demand for HKD 10 million, alleging duress.

Advise Titan Automobiles Co on whether it can resist Luxury Cars Co's claim.

Question 2

Please read Rick Bigwood, "Undue Influence: Impaired Consent or Wicked Exploitation" (1996) 16 OJLS 503. Then answer the following questions.

- (a) What is Bigwood's thesis?
- (b) Bigwood suggests all involuntary agreements involve exploitation. How is exploitation manifested? How does exploitation account for the focus of the law on the defendant and the defendant's conduct?
- (c) According to Bigwood, how does exploitation occur in a case of undue influence? Why is the rejection of the "manifest disadvantage" criterion a salutary development?
- (d) Do you agree with Bigwood's analysis? How well does it explain the case law?