



# Law of Contract II

## JDOC1002

Duress, Undue Influence,  
Unconscionability – Pt 1



# Duress

- ▶ Contract voidable under common law for duress where a party applies illegitimate pressure on other to procure other's consent to contract
- ▶ Duress may involve coercion or compulsion of the will of a party (who does not act freely)
- ▶ But duress may also arise where the will is not overborne as such – person exercising free will by choosing to submit to pressure instead of taking alternative action
  - ▶ *Zebra Industries (Oregogenesis Nova) Ltd v Wah Tong Paper Products Group Ltd* [2016] 1 HKC 213, citing *Crescendo Management Pty Ltd v Westpac Corp* (1988) 19 NSWLR 40



# Duress

- Two elements to be established:
  - Threat or pressure exerted by def which is illegitimate
  - Illegitimate threat or pressure caused pl to contract
- *Times Travel (UK) Ltd v Pakistan International Airline Corp* [2023] AC 101
  - HK case law: see *Re Li Xiaoming* [2019] HKCFI 2782, appeal dismissed [2021] HKCA 779



# Duress

- ➡ Pressure must be illegitimate
- ➡ Overwhelming pressure per se not sufficient
  - ➡ *Zebra Industries; Crescendo Management*
- ➡ Fairness of contract not critical
  - ➡ *The Law Debenture Trust Corpn plc v Ukraine*  
[2024] AC 411



# Duress

- Categories of duress include:
  - Duress to person
  - Duress to goods
  - Economic duress



# Duress to the person

- ▶ Threats to the life, health or liberty of a person may constitute illegitimate pressure
  - ▶ *Re Li Xiaoming*
- ▶ *Barton v Armstrong* [1976] AC 104
- ▶ Facts:
  - ▶ Disputes between 2 major shareholders in company (A and B)
  - ▶ Agreement between A and B to buy out A's interests in company
  - ▶ B to pay A \$140,000 + \$400,000 (A's loan to co) + \$180,000 (buy out of A's shares)
  - ▶ B argued duress because of A's threats to murder him



# Duress to the person

- Held:

- Agreement may be set aside for duress
- Sufficient if illegitimate pressure was a cause of pl entering into contract even if it is not the only cause
- Not necessary to establish “but for” causation
- Onus of proof on def to prove that pressure had no effect
- B in genuine fear; threats contributed to his decision to sign even if the threats were unnecessary and he would have signed anyway



# Duress to the person

- *Mir v Mir* [2013] 4 HKC 213

- Facts:

- De facto couple – H owned 75% and W owned 25% interest in flat

- 2001: H transferred 75% to W

- 1 June 2006: H assaulted W in flat

- 12 June 2006: W transferred 50% interest to H by deed

- Issue: was deed procured by duress?








# Duress to the person



## CA:

-  Deed voidable for duress
-  H pressed W for transfer; assault plus ongoing threat posed by presence of H sufficient to constitute illegitimate pressure on W
-  *Barton v Armstrong* applied regarding causation



# Duress to the person

- *The Law Debenture Trust Corpn plc v Ukraine* [2024] AC 411

- Facts:

- Contract: Ukraine borrowed money from Russia (US\$2 billion, pursuant to notes issued by Ukraine to Russia) - 2013
- United Kingdom trust corporation was trustee under trust deed for notes (governed by English law)
- Repayments due in 2015
- Ukraine argued that contract to borrow was procured by duress
- Alleged pressure: Russia pressuring Ukraine not to seek financial support from European Union but from Russia (with threats to territorial integrity of Ukraine and use of unlawful force)



# Duress to the person

- ➡ UKSC held:
  - ➡ Threats to person need not be directed at contracting party
  - ➡ Threats to a state's citizens or to safety of members of its armed forces capable of constituting duress against a state which is contracting party



# Duress to goods

- ▶ Actual or threats of unlawful taking of or damage to goods can constitute illegitimate pressure
  - ▶ *Dimskal Shipping Co SA v International Transport Workers' Federation (The Evia Luck)* [1992] 2 AC 152
- ▶ *Law Debenture Trust Corpn plc v Ukraine*:
  - ▶ Threats of invasion can also involve duress to goods
  - ▶ Use of force to invade = threat to destroy or damage property



# Economic duress

- Threats or pressure affecting the economic well-being of the person can amount to duress
  - *Times Travel (UK) Ltd v Pakistan International Airline Corp* [2023] AC 101
- Elements:
  - Pressure must be illegitimate
  - No reasonable alternative to giving in to threat/pressure
  - Causation in entering into contract



# Illegitimate pressure – unlawful conduct

- ▶ Unlawful conduct includes crimes and torts
- ▶ Threatened breach of contract may also constitute unlawful conduct amounting to illegitimate pressure



# Illegitimate pressure – unlawful conduct

- ▶ *North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd (Atlantic Baron)* [1979] QB 705
- ▶ Facts:
  - ▶ Def shipbuilder contracted to construct tanker for pl
  - ▶ Devaluation in US\$ (currency for contractual payment)
  - ▶ Def demanded 10% increase; threatened to terminate contract
  - ▶ Pl subsequently agreed



# Illegitimate pressure – unlawful conduct

- ▶ Note separate issue of whether there was consideration
- ▶ Whether duress – court held:
  - ▶ Threat to break contract constituted economic duress
  - ▶ But on facts, pl lost right to rescind due to affirmation





# Illegitimate pressure – unlawful conduct

- ▶ “Generally”, a threatened breach of contract may constitute duress, “particularly” if the party making the threat knows that there would be a breach of contract
  - ▶ *Kolmar Group AG v Traxpo Enterprises Pvt Ltd* [2010] EWHC 113 (Comm)
- ▶ But compare genuine disputes over existing contractual obligations leading to a settlement agreement
  - ▶ Generally no duress even if a party’s assertion that they need not perform some obligation under original contract was incorrect



# Illegitimate pressure – lawful act duress

- Threatened acts which are lawful may still constitute duress
- *Times Travel (UK) Ltd v Pakistan International Airline Corp* [2023] AC 101
- Facts:
  - Claimant travel agent had agency agreement with def airline
  - Dispute over non-payment of commissions alleged to be owing from def
  - Airline gave notice to terminate existing agreements and offered new agreements on terms that agents waive claims for unpaid commission
  - Claimant accepted



# Illegitimate pressure – lawful act duress

- Issue: was the waiver procured by duress?
- Held:
  - No duress on facts
  - Lawful act duress a narrow principle
  - Focus on nature of demand (being sought) and not nature of (lawful) threat of what def would do if demand not met
  - Demands motivated by commercial self-interest not illegitimate per se



# Illegitimate pressure – lawful act duress

- ▶ When is the lawful pressure illegitimate?
- ▶ Maj judgment of Lord Hodge:
- ▶ Existing categories of lawful act duress:
  - ▶ Def uses knowledge of criminal activity of pl to obtain personal benefit by threats to report crime
  - ▶ Def who is civilly liable to pl, deliberately manoeuvres pl into position of vulnerability by illegitimate means to force pl to waive claim
  - ▶ Illegitimate means: highly reprehensible; unconscionable
- ▶ These 2 categories are not exhaustive of situations of lawful act duress
  - ▶ But courts should approach any extension of categories of lawful act duress with caution, particularly in the context of commercial contractual negotiations
- ▶ Present case: hard-nosed commercial pressure but no manoeuvring of travel agent into vulnerable position



# Illegitimate pressure – lawful act duress

- ▶ Lord Burrows (minority):
  - ▶ Test is whether there was a bad faith demand by def
  - ▶ Bad faith where demand for payment of sum which def knows is not owing from pl
  - ▶ Bad faith where demand for pl to waive claim for which def knows it has no defence



# Illegitimate pressure – lawful act duress

- *Progress Bulk Carriers Ltd v Tube City IMS LLC* [2012] EWHC 273 (Comm)
- Facts:
  - Claimant chartered vessel to def
  - Claimant sought to provide different vessel (breach of contract)
  - Claimant originally said they would compensate def but at last minute, reneged and required def to waive claims, otherwise would not provide vessel
  - Def reluctantly agreed to avoid liabilities to own customers



# Illegitimate pressure – lawful act duress

- ▶ Court held: there was economic duress
- ▶ Lord Hodge in *Pakistan International Airlines*:
  - ▶ Manoeuvring of def into vulnerable position by initial breaking of contract and misleading conduct in negotiations



# Lawful act duress: HK position

- ▶ Lawful act economic duress exists under Hong Kong law
- ▶ *Fine Vision Opportunity III Ltd v Xinyuan Real Estate Co Ltd* [2024] 5 HKLRD 300 (CFI)
  - ▶ Majority judgment in *Times Travel (UK) Ltd v Pakistan International Airline Corp* reflects HK law





# Economic duress – no reasonable alternative to giving in to threat

- Requirement only applies for economic duress:
  - *Pakistan International Airlines*



# Economic duress – no reasonable alternative to giving in to threat

- *Pao On v Lau Yiu Long* [1980] AC 614 (PC)
- Facts:
  - Main agreement (27/2/1973): sale of shares in private company from Paos (pls) to Laus (defs)
  - Payment by issue of shares in public company controlled by Laus
  - Paos agreed with Laus not to sell 60% of shares in public company until 30/4/1974
  - Subsidiary agreement (27/2/1973): Laus to buy shares at \$2.50 per share on 30/4/1974
  - But Paos wanted to revise agreement; threatened not to complete main agreement unless subsidiary agreement revised
  - Revised subsidiary agreement (4/5/1973): Laus to indemnify Paos if price of shares on 30/4/1974 lower than \$2.50



# Economic duress – no reasonable alternative to giving in to threat

## ➡ Issue:

- ➡ Was revised subsidiary agreement procured by economic duress?

## ➡ Privy Council:

- ➡ No duress
- ➡ Reasonable alternative available to Laus – seek legal remedy through litigation (specific performance of main agreement)

# Economic duress – causation

- Stricter test of causation compared with other forms of duress
- Pressure must be “significant cause”:
  - *Dimskal Shipping Co SA v International Transport Workers' Federation (The Evia Luck)* [1992] 2 AC 152
- Possibly “but for” test applies:
  - *Kolmar Group AG v Traxpo Enterprises Pty Ltd* [2010] 2 Lloyd's Rep 653
- Whether these formulations provide for a different test (and if so which formulation applies) left open by HKCA:
  - *Esquire (Electronics) Ltd v Hong Kong and Shanghai Banking Corp Ltd* [2007] 3 HKLRD 439



# Economic duress: Ukraine case

- ▶ *Law Debenture Trust Corpn plc v Ukraine*
- ▶ Economic duress on basis of threats of trade restrictions, sanctions and embargoes?
  - ▶ Maj of UKSC held: such threats not illegitimate pressure under English law
- ▶ What if threats unlawful under international law (breach of treaties between Ukraine and Russia)?
  - ▶ Maj of UKSC held: not a basis for duress under English law (international law not applicable in UK unless incorporated by domestic law)