The Law of Contract

Lecture 3

MGT 388

This lecture will cover what we mean by a breach of contract, and what remedies are available for someone who suffers a breach.

It will also look at frustration, misrepresentation and arbitration.

**Discharge of Contractual Obligations**

1 Discharged by performance – applies to most contracts. Obligations are “strict”, but some obs are qualified.

2 Discharge by agreement – need consideration or deed.

3 Discharge due to frustration of contract – contract cannot be completed due to some occurrence beyond the control of the parties – more on this later.

4 Discharge by breach – occurs where one party fails to perform as agreed.

“Innocent” party has the right to claim damages; the contract itself remains in force. Repudiatory breach = innocent party also has the option to terminate the contract as to future obligations, or they can affirm the contract.

**What constitutes a repudiatory breach?**

The type of term that has been broken determines whether the breach is repudiatory.

Three classes of terms – conditions, warranties and innominate terms.

1 Condition - Breach is a repudiatory breach and so other party can terminate regards future obligations (e.g. series of supplies). Tend to be the most important terms e.g. payment, or significant errors in measurements.

2 Warranty - is a minor term, the breach of which only gives rise to a claim for damages, but not the right to terminate the remainder of the contract. Insignificant errors in measurements. Packaging variances etc.

3 “Innominate term” - Right to terminate depends on nature of the event leading to the breach and the effect of the breach.

For example, the late delivery of a couple of parts out of thousands for an engineering project is not likely to be a repudiatory breach.

On the other hand, late delivery of a major part may well give rise to the right to terminate any remaining deliveries.

**Anticipatory breach** is where one party, before time for performance has arrived, indicates that they will not perform the contract as agreed or is clearly unable to do so. The innocent party is permitted to treat the contract as terminated immediately.

**The right to claim damages**

Compensation - aim is to put party who suffers the breach back in the position they would have been in had the contract been performed as agreed.

A claimant can claim for the expectation interest generally means that the claimant will be compensated for the financial loss incurred – the expected financial benefit.

This would therefore include any profit which that party had expected to make.

The concept of punitive damages is extremely limited in contract law.

Can be difficult to assess level of damages, for example if a party has lost a chance, but court will find a way to reach a figure for damages.

Sometimes a claimant may wish to recover expenses which have been incurred, and effectively lost due to the breach. This is generally allowed, as long as no “double” compensation occurs Anglia TV Ltd v Reed (1972) – Reed withdrew in breach, court allowed recovery of reliance expenditure incurred before conclusion of the contract, because it was reasonably in the contemplation of the parties that the expenditure would be wasted in the event of a breach. Also, no way of proving what profits would have been.

**Limits on compensation**

A **causal link** must be established between the claimant’s loss and the defendant’s breach. Generally the question is one of fact, and is not usually a difficult issue in practice. The test is often referred to the “but for” test – “but for” the breach, the loss would not have resulted.

A claimant can only recover for losses which:

* occur naturally or as a result of the usual course of things after a breach of contract

or

* which were in the reasonable contemplation of both of the parties at the time the contract was entered into.

The operation of the two limbs can be seen in Victoria Laundry (Windsor) Limited v Newman Industries Ltd (1949). (Late delivery of boiler). This case made it clear that the courts may distinguish between ordinary profits and exceptional profits (from a government order which was not mentioned) and encourages parties to disclose exceptional losses that may be suffered on breach prior to entering into the contract.

A claimant is under a duty to take all reasonable steps to **mitigate his loss** – he will be unable to recover that proportion of his loss attributable to his failure to mitigate. For example, if an engineer is employed for a 4 week period but is then “dismissed” after one week in breach of contract, he cannot sit back and claim damages for the other three weeks. He must attempt to get alternative work for the period, and potential damages are reduced accordingly.

The law of contract does not generally compensate a claimant for **disappointment or hurt feelings or distress** caused by the mere fact of a contract being breached. Example - Engineer unfairly dismissed in a particularly vindictive way.

There are however some notable exceptions to this general rule….

For example, where the predominant object of the contract is to obtain some mental satisfaction - contract for a holiday.

Expanded in Farley v Skinner (2001) A surveyor was asked to report on a house including whether noise could be a problem due to its proximity to Gatwick airport. The surveyor said noise was unlikely to be a problem and was found to be in breach of contract. The “predominant object of the contract” test was dispensed with, and it was held that it is enough if the term breached was one which both parties knew to be important – the contract as a whole did not need to be for some mental satisfaction. This was satisfied on the facts as the defendant had specifically asked the surveyor to report on noise. (Value of house unaffected).

A **liquidated damages clause** is one which genuinely attempts to quantify the loss that will result on breach and will therefore be enforceable.

A penalty clause, on the other hand, is one which is not a genuine estimate but which attempts to compel performance by imposing a penalty for non performance.

Penalty clauses are generally unenforceable, but the court has equitable jurisdiction to enforce the clause up to an amount equivalent to the loss incurred.

**Heads of Damage**

* Cost of replacement performance – i.e. putting it right. If you are called in to make good a job which has been done badly by another engineer, then your client could sue the previous engineer for the level your reasonable costs.
* Lost profits – George Mitchell v Finney Lock Seeds (1983). Defective seed – farmer could sue for cost of seed - £200, and loss of profits from sale of crops which never grew - £61,000.
* Damage to property – Parsons (Livestock) Ltd v Uttley Ingham Ltd (1978) – faulty storage hoppers resulted in contaminated food = dead pigs. Farmer could sue for value of pigs.
* Personal injury – Godley v Perry (1960) – boy injured when elastic on catapult snapped – could claim damages for personal injury suffered.
* Damages payable to customer – Godley v Perry again – retailer sued supplier who had to compensate for damages payable to boy.
* Damage to commercial reputation – Aerial Advertising v Batchelors Peas Ltd (1938) – advertising plane flew over Manchester in middle of a two minutes silence on Armistice Day. People boycotted Batchelors products leading to a fall in sales.
* Emotional distress – as above – Farley v Skinner allowed this where surveyor wrongly reported on effects of noise from night flights.
* Loss of pleasure - again, as we saw earlier, this can be awarded where the main purpose of the contract was pleasure, relaxation etc. Holiday cases.

**Other remedies**

The most common claim is the **claim for a debt**. To claim the “price” (where one party has performed) of a contract, substantial performance is required.

**Specific performance** - equitable remedy – where subject matter is unique – eg. Where engineered a unique item for a client. Must sell to them.

**Injunctions** can be ordered by the court to prevent the breach of a negative stipulation in a contract, such as restraint of trade clauses.

**Frustration**

Contract not completed due to some occurrence or situation which is brought about through no fault of their own. Impossibility and Illegality.

A good example of the doctrine can be found in the well-known case of Taylor v Caldwell (1863). A contract for the hire of a concert hall was held to be frustrated when, before performance had begun, the concert hall burnt down. No fault.

The modern position is set out in Davis Contractors Ltd v Fareham Urban District Council (1956)– house builder delayed – shortage of skilled labour – risk not unforeseeable so not frustration.

The required performance has become something which is either impossible or fundamentally different from what the parties agreed to in the contract.

Frustration of purpose - Krell v Henry – hire of flat to view Coronation of Edward VII frustrated when Coronation didn’t take place (more paid for flat).

**Risk allocation** – Commerce likes certainty.

It is common practice for the parties to a commercial contract to allocate the risk of potentially frustrating events between them - the risk of the potentially frustrating event will fall where agreed. This is known as a force majeure clause (p19). Must be drafted to cover the situation, so often drafted very widely. In practice, can be the focus of much negotiation.

**Fault** - Another important aspect of frustration. A party cannot claim frustration if due to some breach of the contract by that party, or where the event is self-induced. Any element of choice…

**Consequences of frustration**

Law Reform (Frustrated Contracts) Act 1943.

* + Money payable in advance is recoverable
  + Money due but not yet paid is not payable.
  + Court has discretion to allow the recipient to retain or claim such proportion of that money as the court thinks is just.
  + Where one party has in some way performed their side of the contract and has, by doing that, conferred some valuable benefit on the other party, the court has discretion to award the performing party such sum as it considers just.

**Improper Conduct**

Three areas of law deal with improper conduct in the entering into of contracts

1. Misrepresentation
2. Duress & Economic Duress
3. Undue Influence

**Misrepresentation**

One party makes a false statement to another party which induces that other party to enter into a contract.

False statement = is the statement substantially correct? If so, it is not false.

A statement can be made orally or in writing. Can include conduct. So if the vendor of a property fraudulently concealed dry rot on an inspection by the buyer – could be held to have misrepresented that the property did not suffer from dry rot.

Generally, silence does not amount to misrepresentation due to the principle of “buyer beware”, although there are a few exceptions to this rule, such as where circumstances change since a previous representation was made.

Misrepresentation generally applies to statements of fact. Statements of opinion or belief or future intention are therefore not generally subject to the law of misrepresentation.

However, statements of opinion made by experts have also been held to be statements of fact, based on their special skill and knowledge of a particular area.

There are **various elements** involved in whether a statement induced the other party to enter into the contract or not.

* The representation must be **material**. This is something of a formality, and operates to exclude trivial misstatements.
* The statement must be **known** to the other party in order to be said to induce them into entering the contract.
* The maker of the statement must also intend that the statement will be relied upon, and it must actually be relied upon.

There are **three types of misrepresentation**: fraudulent, negligent and innocent.

* Fraudulent misrepresentation is based on the absence of an honest belief that the statement is true, whether made deliberately or recklessly. Due to the serious nature of fraud claims, the courts may require a higher burden of proof on the claimant.
* Negligent misrepresentation is where the maker believes the statement is true, but has been negligent in reaching that conclusion. There are two limbs to this.
  + Common law - the injured party could bring a claim [in tort] for negligent misstatement. The leading case here is Hedley Byrne & Co. Ltd v Heller & Partners Ltd (1964) – inaccurate bank reference given on customer.

There must be a close relationship between the maker and recipient of the statement in order for a claim to be made; a duty of accuracy is not owed to the whole world. Could apply to engineer and client.

* + Secondly, under s2(1) Misrepresentation Act 1967, a person is liable for negligent misrepresentation if they induce another person to enter into a contract with them.

This does not require any kind of “special relationship” but it does require that a contract be entered into.

This section has advantages over the common law in that once the statement has been shown to be false and that it induced the entering into of the contract, it is up to the maker of the statement to show that they had reasonable grounds for their belief in the truth of the statement.

* The final type of misrepresentation is innocent misrepresentation. This applies where the maker of the false statement can show that they had reasonable grounds for their belief in the truth of the statement.

**Duress and Economic Duress**

Duress

The common law doctrine of duress in contract law originally related to where a person enters into a contractual agreement as a result of violence or the threat of violence. Obviously this means that the party has not entered the contract by his own free will and thus runs counter to the notion of freedom of contract.

It is important to note that this violence or threat of violence must be unlawful. As such, in the case of Williams v Bailey (1866) the threat to report a person for forging a signature could not be duress as the potential prosecution would have been a lawful act.

So for example:

* In *Barton v Armstrong* (1976) the plaintiff threatened to kill the defendant if he did not sell his interest in the company they were both major shareholders in.
* In *Cummings v Ince* (1847), an elderly lady was told to sign over all her property or face not ever having a committal order to a mental asylum lifted.
* OPTIONAL - Whilst in the earlier case *Skeate v Beale* (1840), the court decided that a threat had been directed towards property did not constitute duress. The later case of *The Siboen and the Sibotre* (1976), found that serious threats that constituted burning a house or damaging expensive paintings should be considered as duress. Therefore, duress also covers threats to property in the most serious circumstances.

Economic Duress

Criticised for being somewhat narrow, the law on duress was extended by the courts to cover what is now known as economic duress.

Economic duress was established in *North Ocean Shipping Co v Hyundai (The**Atlantic Baron)* where the builders of a tanker who were being paid in dollarsinsisted on an additional 10% payment to compensate them for the devaluation of thedollar. The owners, who at that time were negotiating a very lucrative contract for thecharter of the tanker, replied to the ship builders that although they were under noobligation to make additional payments, they would do so "without prejudice" to theirrights. Payments of various instalments were made at the increased rate and withoutprotest. The Court held that the ship builder’s threat to break the contract without anylegal justification unless the owners increased their payments by 10% did amount toduress in the form of economic pressure and, accordingly, the agreement was avoidable contract

However, the mere fact that a party has agreed a contractual variation after the other side hasthreatened to break or otherwise vary the terms of the contract does not necessarily mean that the doctrine ofeconomic duress will apply. Along with the issue of causation, two elements are required. Firstly, the threat or pressure must vitiate consent and secondly, the threat or pressure must be ‘illegitimate.’

1. Must vitiate consent

Lord Scarman in Pau On v Lau Yiu Long“There must be presentsome factor 'which could in law be regarded as a coercion of his will so as to vitiatehis consent.' .... In determining whether there was a coercion of will such that therewas no true consent, it is material to inquire whether:

* the person alleged to have beencoerced did or did not protest;
* whether, at the time he was allegedly coerced intomaking the contract, he did or did not have an alternative course open to him suchas an adequate legal remedy;
* whether he was independently advised;
* whetherafter entering the contract he took steps to avoid it.

1. Illegitimate threat/pressure

“Illegitimate pressure must be distinguished from the rough and tumble of thepressures of normal commercial bargaining.” (Dyson, J in DSND Subsea Ltd v PetroleumGeo Services ASA).

In that case, Dyson stated that in deciding whether the pressure is illegitimate, the relevant factors include:(a) Whether there has been an actual or threatened breach of contract;(b) whether the person allegedly exerting the pressure has acted in good or bad faith;(c) whether the victim had any realistic practical alternative but to submit to the pressure;(d) whether the victim protested at the time; and(e) whether he affirmed and sought to rely on the contract.

**Undue Influence**

The equitable doctrine of undue influence allows the court to intervene where a relationship between two parties has been exploited by one part in order to gain an unfair advantage.

This exploitation can arise where there is an abuse of a particular confidence placed in a party or where that party is a position of dominance over the victim.

This inequity in power between the parties has the potential to vitiate one party's consent if they are unable to freely exercise their independent will

As such, where this position of trust or dominance is abused in order to coerce a party to enter into a contract, the court may find the presence of undue influence.

Undue influence plays a far larger role in probate law as regards the making of wills. However, it is applicable to contract law too.

For example, a boyfriend threatening to split up with his partner if she doesn’t agree to sell her car so that they can go on holiday or a mother threatening to disown her daughter if she doesn’t enter a contract to sell a property she inherited from a long, lost uncle.

The similarities to duress are noted but undue influence covers those situations which do not revolve around the threat of violence or economic loss.

The law identifies two classifications of undue influence: actual and presumed (BCCI v Aboody).

Class 1 – Actual undue influence

Here the claimant must show that there is:

* a relationship of trust or confidence between the victim and the wrongdoer, and
* that the pressure that the wrongdoer exerted led to the victim entering into a particular transaction.

Class 2A – Presumed undue influence

With a Class 2 category of undue influence the focus is on the nature of the relationship of the parties.

In some cases, as categorised by class 2A, a relationship exists which at law gives rise to an automatic presumption of a position of influence (i.e. doctor/patient, lawyer/client, parent/child).

This means that the law will presume there is a relationship of trust or confidence between the victim and the wrongdoer, and that the wrongdoer exerted pressure leading to the victim entering into a particular transaction.

Here it is up to the defendant to rebut these presumptions by showing that the other party entered into the contract of their own free will and were aware of the risks involved. For example, showing that they received independent legal advice before signing the contract might suffice.

Class 2B – Presumed undue influence

In other cases, a relationship may exist which does not fall within those given by category 2A but is nonetheless significant, such as that between cohabitees or between an employer/employee. Here if the claimant can show that the relationship was one whereby trust/confidence placed in wrongdoer the law will presume the person was unduly influenced to enter the contract unless the defendant can prove otherwise.

**Remedies for improper conduct**

In all three instances (misrepresentation, duress, and undue influence) the remedy is rescission which means that the innocent party (the claimant) may choose to terminate the contract if he or she wishes. Damages are also available either in addition or in lieu of rescission except for cases of innocent misrepresentation.

**Arbitration**

Parties may decide to provide in the contract for what happens when things go wrong.

Often found in commercial agreements.

Common way to do this is to provide that the parties will go to arbitration.

Explain what this is – agree to submit themselves to an independent expert.

Need a method of choosing arbitrator – mutual agreement or third party to appoint.

Decision is generally binding subject to limited rights of appeal for things like failing to comply with the agreed procedure, or making an uncertain award.

If proceedings are issued, can get a stay (s9 of AA) until arbitration has been carried out.

The AA 1996 provides a framework to ensure:

* that disputes are resolved fairly,
* that parties should be able to agree how to resolve their disputes, and
* the court should not intervene other than in very limited circumstances.

Advantages of arbitration…

Arbitrator is an expert

Opt out of state system – speed, control and privacy.

Also, informal = maintains relationships rather than all or nothing

Usually cheaper, but still expensive due to expertise of arbitrator.

**Notebook: Law Part**

**合同义务的解除**

1. **履行解除 -** 大多数合同通过履行来解除义务。义务是“严格”的，但有些是有条件的。
2. **协议解除 -** 需要对价或契据。
3. **合同挫折导致的解除 -** 因双方控制之外的事件导致合同无法完成。
4. **违约解除 -** 当一方未能按协议履行时发生。无辜方有权要求损害赔偿；合同本身仍然有效。重大违约让无辜方有权终止合同未来的义务，或者可以确认合同。

**什么是根本性违约？**

违约的性质决定了是否构成根本性违约：

1. **条件**：违反条件条款即为根本性违约，另一方可以终止合同的未来义务。
2. **保证**：违反保证条款只能要求损害赔偿，不能终止合同。
3. **无名条款**：是否终止取决于违约的性质和影响。

**预期违约**是指一方当事人在履行期限到来之前表示其不按约定履行合同或明显无法履行合同。无过错方可以立即将合同视为终止。

**索赔权利 - 赔偿**

赔偿的目的是为了弥补索赔方由于违约而遭受的损失，而不是为了惩罚违约方。索赔方有责任证明损失的存在，并且法院将努力确定一个合理的赔偿数额。同时，法院会确保不会发生超出实际损失的赔偿。

**赔偿限制**

* 必须在索赔方的损失与被告的违约之间建立因果关系。一般来说，这是一个事实问题，在实践中通常不难解决。这个测试常被称为“但是”测试——如果没有违约，损失就不会发生。

索赔方只能恢复以下损失：

1. 自然发生的损失，或者是合同违约后通常情况下会发生的损失；
2. 或者是双方在签订合同时可以合理预见的损失。

* 索赔方有责任采取所有合理步骤减轻其损失——如果未能减轻损失，他将无法恢复由此造成的损失比例。例如，如果一名工程师被雇佣了四周，但在违约后的第一周被“解雇”，他不能坐视不管，索赔其他三周的损失。他必须尝试在该期间找到替代工作，相应地减少潜在的赔偿。
* 合同法通常不会因合同被违约而导致的失望、心情受伤或痛苦给予索赔方赔偿。

**违约赔偿条款与违约金条款**

* **违约赔偿条款**（Liquidated damages clause）是合同中一种真实尝试估计违约所导致的损失并因此可以强制执行的条款。
* **违约金条款**（Penalty clause）则不是一个真正的损失估算，而是试图通过对不履行行为施加罚金来强制履行合同。违约金条款通常是不可强制执行的，但法院具有衡平法上的裁量权，可以执行该条款，赔偿金额最多不超过实际损失。

**损害赔偿种类**

* **替代履行成本**：如果你被召唤去修正另一名工程师做得不好的工作，你的客户可以起诉前一个工程师，索赔你合理成本的金额。
* **利润损失**：在《George Mitchell v Finney Lock Seeds (1983)》案中，由于种子有缺陷，农民可以索赔种子成本（£200），以及因作物未能生长而损失的利润（£61,000）。
* **财产损害**：在《Parsons (Livestock) Ltd v Uttley Ingham Ltd (1978)》案中，储藏漏斗的故障导致食物污染，致死猪只，农民可以索赔猪只的价值。
* **人身伤害**：在《Godley v Perry (1960)》案中，一名男孩因弹弓的橡皮筋断裂而受伤，可以索赔因人身伤害所遭受的损失。
* **向顾客支付的赔偿金**：在《Godley v Perry》案中，零售商起诉供应商，后者必须赔偿支付给男孩的损害赔偿金。
* **商誉损害**：在《Aerial Advertising v Batchelors Peas Ltd (1938)》案中，广告飞机在停战日的两分钟默哀期间飞过曼彻斯特，人们抵制Batchelors的产品，导致销量下降。
* **情感困扰**：如上所述，在《Farley v Skinner》案中，测量员错误报告了夜间航班的噪音影响，允许索赔情感困扰的损害。
* **快乐损失**：如前所述，如果合同的主要目的是为了乐趣、放松等（如度假案例），可以授予赔偿。

**其他救济措施**

* **债务索赔**：最常见的索赔类型是债务索赔。要索赔合同的“价格”（即一方已经履行的部分），需要有实质性的履行。
* **特定履行**（Specific performance）：这是一种衡平法上的救济措施，适用于主体物是独一无二的情况，例如工程师为客户设计了一个独特的项目。在这种情况下，必须向客户出售这个独特的项目。
* **禁令**（Injunctions）：法院可以命令禁令以防止合同中的负面规定被违反，比如贸易限制条款。

**合同挫折**

合同挫折是指由于不可抗力或不可预见的情况导致合同无法完成，且这种情况不是任何一方的过错。包括了实际的不可能性和非法性。

* **不可能性**：合同的履行变得实际不可能，例如因为合同所涉及的物件被毁灭（如在《Taylor v Caldwell (1863)》案中，租用的音乐厅在演出开始前被烧毁）。
* **非法性**：如果合同履行变得非法，也会导致合同挫折。
* **目的挫折**：在《Krell v Henry》案中，因为预定的活动（爱德华七世的加冕仪式）未发生，租房观看该事件的目的无法实现，导致合同目的挫折。

合同挫折一旦发生，原本的合同义务对双方而言都会自动终止，因为履行已经变得不可能或无意义。这是合同法中的一个重要原则，它体现了当事人对于不可抗力事件的法律回应。

**风险分配**

商业活动追求确定性。在商业合同中，通常的做法是双方之间分配潜在的挫折事件风险——即双方商定的潜在挫折事件风险将由谁承担。这就是所谓的不可抗力条款（force majeure clause）。这种条款必须起草得足够广泛，以覆盖各种情况，在实际操作中，这通常是谈判的重点。

不可抗力条款的目的是在发生不可预见或不可避免的外部事件时，明确规定哪一方将承担由此导致的合同不能履行或延迟履行的风险。这类条款通常会详细列出哪些情况被视为不可抗力，例如自然灾害、战争、罢工、政府行为等，以及在这些情况发生时各方的权利和义务。

**过错与合同挫折**

* 如果合同挫折是由于某一方违反了合同条款，或者是由于该方自己引起的事件，那么这一方就不能声称合同挫折。换句话说，如果一方有选择的余地导致了合同不能履行的情况，那么他们通常无法依据挫折原则来解除自己的义务。
* 当事人不能因为自己的过错或有意识的选择而导致的情况而主张合同挫折。如果当事人自身的行为是导致合同无法履行的原因，那么他们就不能利用合同挫折来逃避责任。

**合同挫折的后果**

根据《1943年法律改革（挫折合同）法案》，当合同由于挫折而终止时，涉及财务事项的处理如下：

1. **预先支付的款项可以追回**：如果合同挫折前，一方已经支付了款项，他们可以要求返还这些款项。
2. **尚未支付但到期的款项不必支付**：如果合同挫折时，尚有款项到期但未支付，那么这部分款项不需要支付。
3. **法院有酌情权**：法院有酌情权决定收款方是否可以保留或索回这些款项中的一部分，具体取决于法院认为什么是公正的。
4. **已履行部分合同的一方**：如果一方已经以某种方式履行了合同的一部分，并因此为另一方提供了有价值的利益，法院有酌情权授予执行方一笔法院认为公正的金额。

**三个法律领域处理签订合同中的不当行为**

1. 失实陈述
2. 胁迫和经济胁迫
3. 不当影响

**1. 失实陈述（Misrepresentation）**

* 一方向另一方作出虚假陈述，诱使另一方签订合同。
* 错误陈述 = 该陈述实质上正确吗？ 如果是这样，那就不假了。
* 声明可以口头或书面形式作出。 可以包括行为。 因此，如果房产的卖方在买方检查时欺骗性地隐瞒了干腐病，则可能会被认为歪曲该房产没有遭受干腐病。
* 一般来说，由于“买方当心”的原则，沉默并不构成虚假陈述，尽管该规则有一些例外，例如自上次陈述以来情况发生变化的情况。
* 失实陈述通常适用于事实陈述。 因此，意见、信念或未来意图的陈述通常不受虚假陈述法的约束。
* 然而，专家根据其特定领域的特殊技能和知识做出的意见陈述也被认为是事实陈述。
* 一项陈述是否诱导对方订立合同涉及多种要素。

声明是否诱使另一方签订合同涉及各种因素:

1. 陈述必须是实质性的。 这是一种形式，目的是为了排除微不足道的错误陈述。
2. 该声明必须为另一方所知，才能被认为是诱使他们签订合同。
3. 声明的制定者还必须希望该声明将被依赖，而且必须确实被依赖。

**虚假陈述分为三种类型**：欺诈、疏忽和无辜。

* 欺诈性虚假陈述是基于缺乏诚实的信念，即该陈述是真实的，无论是故意的还是鲁莽的。由于欺诈索赔的严重性，法院可能会要求索赔人承担更高的举证责任。
* 疏忽失实陈述是指制作者认为该陈述是真实的，但在得出该结论时疏忽大意。这有两个方面。
  1. 普通法 - 受害方可就疏忽错误陈述提出[侵权]索赔。这里的主要案例是Hedley Byrne & Co. Ltd v Heller & Partners Ltd （1964） - 客户提供的银行参考不准确。
     1. 声明的制作者和接受者之间必须有密切的关系才能提出索赔;对整个世界不负有准确性义务。可适用于工程师和客户。
  2. 其次，根据《1967年失实陈述法令》第2（1）条，任何人如诱使另一人与其订立合约，便须就疏忽失实陈述负上法律责任。
     1. 这不需要任何形式的“特殊关系”，但 它确实需要签订合同。
     2. 与普通法相比，本条的优点在于，一旦该陈述被证明是虚假的，并且该陈述促使订立合同，则该陈述的制作者有责任证明他们有合理的理由相信该陈述的真实性。
* 最后一种虚假陈述是无辜的虚假陈述。这适用于虚假陈述的制作者能够证明他们有合理的理由相信陈述的真实性。

**2.1. 胁迫（Duress）**

胁迫指的是一方因为暴力威胁或暴力的威胁而被迫签订合同的情形。这意味着该方没有出于自由意志签订合同，从而违反了合同自由的原则。重要的是，这种暴力或威胁必须是非法的。

**2.2. 经济胁迫（Economic Duress）**

* **定义**：经济胁迫是指一方因为经济压力或威胁而被迫签订或改变合同的情形。这种压力可能是金钱要求或其他形式的经济利益威胁。
* 有关胁迫的法律因过于狭隘而受到批评，法院将其扩展至涵盖现在所谓的经济胁迫。
* 北洋航运公司诉现代公司案（The North Ocean Shipping Co v Hyundai）确立了经济胁迫。
* 大西洋男爵 (Atlantic Baron)，其中一艘油轮的建造者以美元支付报酬, 坚持要求额外支付10%，以补偿美元贬值。 当时正在就油轮租赁合同进行谈判的船东回复造船商说，虽然他们没有义务支付额外费用，但他们会“在不损害”其权利的情况下这样做。 各种分期付款均按增加的利率支付，且没有抗议。 法院认为，造船厂在没有任何法律依据的情况下威胁要解除合同，除非船东将付款增加 10%，这确实构成经济压力形式的胁迫，因此，该协议是可撤销的合同。然而，一方在另一方威胁违反或以其他方式改变合同条款后同意合同变更这一事实并不一定意味着经济胁迫原则将适用。 除了因果关系问题之外，还需要两个要素。 首先，威胁或压力必须使同意无效；其次，威胁或压力必须是“非法的”。
  1. 必须撤销同意

斯卡曼勋爵 (Lord Scarman) 诉 炮安诉刘耀朗“必须存在某种因素，‘在法律上可以被视为对他的意志的胁迫，从而使他的同意无效。’” ....在确定是否存在意志强迫以致没有真正同意时，重要的是要询问是否：

* + 据称受到胁迫的人是否提出抗议；
  + 据称，在他被迫签订合同时，他是否有其他选择，例如充分的法律补救措施；
  + 他是否得到独立建议；
  + 签订合同后他是否采取措施避免签订合同。
  1. 非法威胁/压力

“必须将非法压力与乱七八糟的行为区分开来。正常商业谈判的压力。” （Dyson, J，DSND Subsea Ltd 诉 Petroleum地理服务 ASA）。在此情况下，戴森表示，在判定压力是否不合法时，相关因素包括：

* + 1. 是否存在实际或威胁违反合同的情况；
    2. 据称施加压力的人的行为是善意还是恶意；
    3. 除了屈服于压力之外，受害人是否还有其他现实可行的选择；
    4. 受害人当时是否提出抗议； 和
    5. 他是否确认并寻求依赖该合同。

**3. 不当影响（Undue Influence）**

* 不正当影响的公平原则允许法院在两方之间的关系被一方利用以获得不公平优势的情况下进行干预。
* 当一方滥用特定信任或该方对受害者具有支配地位时，就会出现这种剥削。
* 如果一方无法自由行使其独立意志，双方之间的这种权力不平等可能会导致一方的同意失效
* 因此，如果滥用这种信任或支配地位来强迫一方签订合同，法院可能会发现存在不当影响。
* 在遗嘱认证法中，关于遗嘱的制定，不当影响发挥着更大的作用。 然而，它也适用于合同法。
* 例如，男朋友威胁说，如果她不同意卖掉她的汽车以便他们去度假，他就会与她分手；母亲威胁她的女儿，如果她不签订出售房产的合同，她就会与她断绝关系。 继承自一位失散已久的叔叔。
* 注意到与胁迫的相似之处，但不当影响涵盖那些不涉及暴力或经济损失威胁的情况。
* 该法律将不当影响分为两类：实际影响和推定影响（BCCI v Aboody）。
* **第 1 类 – 实际不当影响**

在这里，索赔人必须证明：

1. 受害者和不法行为者之间的信任或信心关系，以及
2. 不法行为者施加的压力导致受害者进行特定交易。

* **2A 级——推定不当影响**

对于 2 类不当影响，重点是各方关系的性质。

在某些情况下，按照 2A 类分类，存在一种在法律上自动推定影响地位的关系（即医生/患者、律师/委托人、父母/儿童）。

这意味着法律将假定受害者与不法行为者之间存在信任或信心关系，并且不法行为者施加压力导致受害者进行特定交易。

在此，被告应通过证明对方是自愿签订合同并意识到所涉及的风险来反驳这些推定。 例如，表明他们在签署合同之前收到了独立的法律建议可能就足够了。

* **2B 级——推定不当影响**

在其他情况下，可能存在不属于第 2A 类给出的关系但仍然很重要的关系，例如同居者之间或雇主/雇员之间的关系。 在这里，如果原告能够证明这种关系是对不法行为者的信任/信心，那么法律将推定该人受到不当影响而签订合同，除非被告可以证明相反。

**不当行为的补救措施**

在所有三种情况下（虚假陈述、胁迫和不当影响），补救措施是撤销，这意味着无过错方（索赔人）可以选择终止合同，如果他或她愿意。除无辜的虚假陈述外，还可以补充或代替撤销损害赔偿。

**仲裁**

* 双方可以决定在合同中规定出现问题时会发生的情况。
* 常见于商业协议中。
* 常见的做法是规定双方将进行仲裁。
* 同意将自己提交给独立专家。
* 需要一种选择仲裁员的方法——双方协议或第三方指定。
* 决定通常具有约束力，但上诉权利有限，例如未遵守商定的程序或做出不确定的裁决。
* 如果提起诉讼，则可以中止（AA 的第 9 条）直至仲裁进行。
* AA 1996 提供了一个框架来确保：

1. 争议得到公平解决，
2. 各方应能够就如何解决争议达成一致，以及
3. 除非常有限的情况外，法院不应干预。

* 仲裁的优点

1. 仲裁员是专家
2. 选择退出状态系统——速度、控制和隐私。
3. 此外，非正式 = 维持关系而不是全有或全无
4. 通常更便宜，但由于仲裁员的专业知识，仍然很昂贵。