Asif Tufal

DURESS

In order for there to be a valid contract the parties must act freely. If one of the parties is forced to make the contract by violence or the threat of violence, that is duress, and renders the contract voidable.

DURESS TO THE PERSON

The original common law of duress confined the doctrine within very narrow limits. Only duress to the person was recognised during the nineteenth century, and this required actual or threatened violence to the victim. For example, see:

Barton v Armstrong [1976] AC 104.

DURESS TO GOODS

The nineteenth century limitation on duress meant that it could not be applied to 'duress of goods'. If a person, unlawfully detained, or threatened to detain, another's goods, this was not considered to be sufficient duress to enable a contract to be avoided. See:

Skeate v Beale (1840) 11 Ad&El 983.

Although this case lays down the rule that a contract entered into in pursuance of a threat to retain goods cannot be thereby set aside, there is a restitutionary rule to the effect that money paid to obtain the release of goods wrongfully retained, or to avoid their seizure, may be recovered. See:

Maskell v Horner [1915] 3 KB 106

The decision in *Skeate v Beale* was strongly criticised (though obiter) by Kerr J in:

Occidental Worldwide Investment Corp v Skibs A/S Avanti (The Sibeon and The Sibotre) [1976] 1 Lloyd's Rep 293.

This view was endorsed by Mocatta J in *The Atlantic Baron* [1979] QB 705, and by Lord Scarman in *Pao On v Lau Yiu Long* (below). In the light of the modern developments of duress, it would seem that *Skeate v Beale* is no longer good law.

ECONOMIC DURESS

In recent times, the courts have extended the concept of duress from its earlier limits so as to recognise that certain forms of commercial pressure could amount to economic duress. **The first modern case to make this clear was:**

The Sibeon and The Sibotre [1976] 1 Lloyd's Rep 293.

A subsequent case confirmed that duress could take the form of economic duress:

North Ocean Shipping v Hyundai Construction (The Atlantic Baron) [1979] QB 705.

The Privy Council had an opportunity to consider economic duress, and agreed with the observations in *The Sibeon and The Sibotre*, in:

Pao On v Lau Yiu Long [1980] AC 614.

A further important development was the decision of the House of Lords, which modified the approach previously taken, in:

Universe Tankships v ITWF (The Universe Sentinel) [1982] 2 All ER 67.

A significant feature of this judgment is its departure from the previously stringent requirement *of The Sibeon* and *Pao On* that the victim's will and consent should have been 'overborne' by the pressure. This approach of Lord Scarman was cited and approved by the Court of Appeal in:

B&S Contractors v Victor Green Publications [1984] ICR 419.

The concept of economic duress was considered in two High Court cases:

Atlas Express Ltd v Kafco (Importers and Distributors) Ltd [1989] 1 All ER 641
Vantage Navigation Corp v Bahwan Building Materials (The Alev) [1989] 1 Lloyd's Rep 138.

It can be seen that from the cases since *Pao On* (1980) there has been a considerable relaxation of the criteria needed to prove economic duress. All that is now required is a suppression of the victim's will and voluntary consent.

The following case, considered by the House of Lords, is a useful reminder of the fact that the pressure applied must be improper in the legal sense:

Dimskal Shipping Co v ITWF (The Evia Luck) [1991] 4 All ER 871.

See also:

CTN Cash & Carry Ltd v Gallagher Ltd [1994] 4 All ER 714.

REMEDIES FOR DURESS

(A) The effect of duress is to make the contract voidable (not void). The injured party will, therefore, be entitled to have the contract set aside for operative duress, unless he has expressly or impliedly affirmed it. The victim of duress must seek rescission as soon as possible after the original pressure has ceased to operate (*The Atlantic Baron* (above)).

(B) As duress has been equated with the tort of intimidation (see the judgments of Lord Denning MR in *D&C Builders v Rees* [1966] and Lord Scarman in *Universe Tankships* [1982]), it would follow that a remedy for damages would lie in tort. See:

Morgan v Fry [1968] 2 QB 710 (for the definition of the tort of intimidation)
D&C Builders v Rees [1966] 2 QB 617
Universe Tankships v ITWF [1982] 2 All ER 67.

(For the measure of damages for the tort of intimidation, see *Rookes v Barnard* [1964] AC 1129.)

(C) There is, as yet, no authority on the question of whether or not an injured party who has affirmed the contract may nevertheless recover damages in tort. Chitty (para 501) has the view that damages should be recoverable, since otherwise a party who has lost the right to avoid the contract is left without a remedy for a clearly unlawful act.