15. Duress, undue influence, and unconscionability
Jill Poole

The Casebook series provides a comprehensive selection of case law that addresses all aspects of the subject encountered on undergraduate courses. This chapter examines further vitiating factors which relate to the way in which the contract was entered into and render it voidable. It discusses the doctrines of duress and undue influence and whether contracts are affected by a general doctrine of unconscionability relating to the manner of formation and content relative to the nature and position of the contracting parties. The doctrine of economic duress allows for any contract to be set aside where unlawful threats to financial position were made in order to secure agreement. This doctrine is still evolving but represents a mechanism to prevent the enforceability of promises not freely given. Under the doctrine of undue influence, a contract may be set aside if one party has put unfair and improper pressure on the other in the negotiations leading up to the contract. The courts of equity have developed undue influence as one of the grounds of relief to prevent abuse of the influence of one person over another, particularly where the influence results from the nature of the relationship between the parties. The chapter examines types of undue influence, actual undue influence, presumed (or evidential) undue influence, undue influence exercised by a third party, the legal effect of undue influence, and the relationship between undue influence and unconscionability.

18. Undue influence
Paul S. Davies

This chapter examines ‘undue influence’. In a typical case, C claims that a transaction should be set aside because he reposed trust and confidence in D, and the influence that D had upon C was exerted in a way which was ‘undue’. The effect is to render a contract voidable such that it can be rescinded. The basis of undue influence is controversial: it has been argued both that undue influence is based upon D’s exploitation of the relationship, and that the focus is solely upon C’s impaired consent. There are two ways of proving undue influence, which explains actual undue influence and presumed undue influence.
Actual undue influence is distinct, though there are overlapping areas, from duress since there is no need to prove a threat or illegitimate pressure. Presumed undue influence requires C to prove that C placed trust in D and that the transaction calls for explanation.

10. Undue influence

Jill Poole

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 doctrine of undue influence is an equitable doctrine allowing a contract to be set aside (the remedy of rescission) at the court’s discretion where there has been a wrongful (undue) exercise of influence by one party over the other. This chapter focuses on instances where the agreement cannot stand in light of undue influence, including instances where the undue influence was exercised by a third party and the contracting party had notice of that undue influence.

18. Undue influence

Paul S Davies

This chapter examines doctrine of ‘undue influence’. In a typical case of undue influence, C claims that a transaction should be set aside because he reposed trust and confidence in D, and the influence that D had upon C was exerted in a way which was ‘undue’. The effect of undue influence is to render a contract voidable such that it can be rescinded. The basis
of undue influence is controversial: it has been argued both that undue influence is based upon D's exploitation of the relationship, and that the focus is solely upon C's impaired consent. There are two ways of proving undue influence, which explains the traditional categories of actual undue influence and presumed undue influence. Actual undue influence comprises overt acts of improper pressure or coercion such as unlawful threats. Presumed undue influence requires C to prove that C placed trust and confidence in D and that the transaction calls for explanation.

15. Duress, undue influence, and unconscionable bargains

Jill Poole

Course-focused and comprehensive, the Textbook on series provides an accessible overview of the key areas on the law curriculum. This chapter examines the doctrines of duress and undue influence, both of which provide a means for a person to avoid a concluded contract into which he entered due to threats or unfair pressures or influence exerted on him. It also looks at the circumstances in which the courts or Parliament have intervened to prevent one party from taking advantage of another. Duress refers to some form of coercion or threat to the person, property, or to a person’s financial interests (economic duress). Undue influence can arise if there is illegitimate pressure and abuse exerted by one party over the other (actual undue influence) or if something in the transaction is suspicious or calls for an explanation (evidential undue influence). The chapter also considers unconscionable bargaining, procedural and substantive unfairness, consumer legislation, and the link between unconscionability and undue influence.

9. Duress, undue influence and unconscionable bargains

Richard Taylor and Damian Taylor

Without assuming prior legal knowledge, books in the Directions series introduce and guide readers through key points of law and legal debate. Questions, diagrams and exercises help readers to engage fully with each subject and check their understanding as they progress. This chapter focuses on the principles applicable where a contract is entered into after there have been threats or improper influence brought to bear on one party or where the one-sided nature of the contract suggests that one party has been taken advantage of. The discussions cover duress (duress and pressure, threats against the person, threats against goods and economic duress); undue influence (actual undue influence, presumed undue influence and third-party cases); and unfairness and unconscionable bargains.
Royal Bank of Scotland v Etridge [2001] UKHL 44
Nicola Jackson

Essential Cases: Contract Law provides a bridge between course textbooks and key case judgments. This case document summarizes the facts and decision in Royal Bank of Scotland v Etridge [2001] UKHL 44. The document also includes supporting commentary from author Nicola Jackson.

9. Unfairness: undue influence, non-commercial guarantees, unconscionable bargains
Mindy Chen-Wishart

This chapter examines three doctrines that allow a party to set aside a contract: (i) undue influence, which deals with the abuse of relationships of trust and confidence; (ii) a doctrine protecting non-commercial parties who guarantee another’s debts; and (iii) unconscionable bargains, which deals with the exploitation of bargaining weaknesses. It addresses the following questions: (1) What is the justification for these doctrines? (2) What is the burden of proof for undue influence, unfair non-commercial guarantees, and unconscionable bargains? (3) In practice, how is each element of the respective burdens of proof satisfied? (4) Is the law satisfactory? If not, how might it be developed in the future?

14. Duress and undue influence
Elizabeth Macdonald, and Ruth Atkins

This chapter looks at the effect of duress or undue influence on the making of a contract. The difficulty is identified of distinguishing hard bargaining from economic duress, when the ‘threat’ is to the economic interest of the party ‘threatened’. This raises the question of what amounts to an illegitimate threat; whether a threat which is not otherwise legally labelled as wrongful will suffice, and whether all threatened breaches of contract do so. The question also arises as to a test of a ‘reasonable’, or ‘practical’, alternative to agreeing. Undue influence is concerned with the surrender of decision making because of the relationship of the parties whether through domination or trust. The presumptions that arise in relation to undue influence, and when they arise, are examined. Consideration is given to the treatment of aggressive and misleading trade practices under the Consumer Protection
from Unfair Trading Regulations (as amended by the Consumer Protection (Amendment) Regulations 2014).