14. Duress and undue influence

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).