

The Recognition of Economic Duress in the Case Law System

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Abstract: Economic duress has been a long-standing and controversial issue in both the Anglo American and Continental legal systems. This concept originated from equity law, and its rise is due to the development of modern market economy theory and contract system. This article mainly discusses the origin and forms of economic duress, explains the definition and composition of economic act duress, and further explores the existence and constituent elements of legal economic behavior duress by combining classic historical cases.

1. Introduction

The concept of economic duress originates from equity law in the case law system, and the interpretation and application of economic duress in the case law system and the civil law system are not the same. With the development of the commercial industry, economic duress cases have become more common. However, the ambiguity of the boundary of the concept of economic duress leads to the complexity of the necessary conditions for establishing economic duress. This article aims to discuss the recognition and establishment conditions of economic duress.

The first part of this article gives an introduction to the concept 'economic duress'. The second part lists several related concepts and research methods used in this article. Source and some basic forms of economic duress are expounded in the third part and in the fourth part, identification and composition of economic duress are discussed. The fifth part of this article confirms the existence of lawful act economic duress and focuses on the component of lawful act economic duress.

2. Related Concepts and Research Methods

2.1 Related concepts

Economic duress: Economic duress can be explained as commercial duress, which refers to illegal intimidation that threatens to cause financial losses to someone when they are unable to exercise their will. In the practice of case law, economic duress has become the third form of duress besides personal duress and threat of goods. **Undue influence:** The concept of undue influence in the case law system originates from equity, which is a similar concept to economic duress and a supplement to equity. **Unfair influence** refers to an illegal act in which one party exerts undue

indirect pressure on the other party in a spiritual or other way, relying on their superior position, will, or thoughts, in order to force the other party to sign a contract. The view of most scholars is that the harm of undue influence is lighter than duress because victims in such situations still have independent will, although they may be weak willed[1].Economic pressure: The broad sense of business pressure includes all the pressures that individuals or legal entities may face after entering into commercial interactions, and this pressure is objective and universal. Economic duress must be distinguished from commercial pressure. The difference between the two is that, in appropriate circumstances, the former can serve as a reason for revoking the contract or a defense against non-performance of the contract, while the latter is not sufficient to invalidate the promise of the reason for the contract under any circumstances [2].

2.2 Research methods

This article adopts a literature research method, analyzing and studying the current achievements and research status related to economic stress by collecting, reading, and organizing relevant literature; adopts a case study method, introducing relevant cases from the Anglo-American legal system and the Continental legal system, and analyzing the cases. This article also adopts a comparative analysis method to further understand the economic duress system by comparing the different treatment methods of economic duress in the Anglo-American legal system and the Chinese Contract Law.

3. Source and Forms of Economic Duress

3.1 Source

The concept of duress was initially limited to physical violence, and its scope was mainly limited to the scope of human and goods. Personal duress refers to the use of irresistible force or intimidation to coerce someone; Goods duress refers to the use of force to seize someone's property. "Force" or "violence" was emphasized in these two concepts. With the development of goods trade and capitalist economy, the ways and forms of trade have undergone changes, and other forms of duress such as spiritual and moral duress have gradually been recognized in case law[3].

The concept of economic duress originated from equity. The rapid development of commercial trade in capitalist countries after the 12th century, especially in the 16th century, promoted the emergence and development of equity, while the emergence and development of market economy provided development requirements and conditions for the theory of economic duress. With the increase of trade, the emergence of standard format contracts has had a certain impact on the previously prevalent concept of contract freedom, which requires the resolution of constraints and regulations, especially in the field of labor law. For the disadvantaged party in the market economy, absolute contractual freedom is constrained by the law and then the concept economic duress emerged.

3.2 Forms

The existing research roughly divides the forms of economic duress into the following: verbal threats, direct economic pressure, threats of breach or non-performance, threats of non-payment by debtors, and threats of termination or suspension of work causing losses to the other party [4].

4. Identification and Composition of Economic Duress

4.1 Identification

Compared to undue influence, economic duress focuses on acts of intimidation or threat, while undue influence is more of an abuse of its own influence. In *CTN Cash and Carry Ltd v Gallaher Ltd*, the appellate court refused to allow the retailer to set the contract aside on the grounds of economic duress. The court pointed out several characteristics of this case: firstly, the distributor's refusal to enter into future contractual relationships is completely legal because it is a purely commercial act; Secondly, the distributor believes in good faith that there is a risk to the goods. One party in the contract took legal measures with the intention of self-preservation, and the other party did not suffer any losses as a result. In *Progress Bulk Carriers Ltd v Tube City IMS LLC*, the perpetrator carried obvious malice, resulting in the coerced party having no other reasonable choice. In this case, the focus of the dispute between the two parties is whether the lessor imposed illegal pressure, which is related to whether economic duress is established in this case and whether the agreement is invalid as a result. The court believes that legal actions may also cause illegal pressure, so the lessor's defense that their means are legal and do not constitute economic duress is unfounded [5].

4.2 Composition

From the above two cases, it can be concluded that the legality of means is not the only factor determining whether it constitutes economic duress, even if this indirectly acknowledges the existence of lawful act economic duress. In *Progress Bulk Carriers Ltd v Tube City IMS LLC*, the court held that factors that need to be considered in determining whether it constitutes economic duress include whether there is a breach of contract threat, whether the pressure is subjectively good faith or malicious, and whether the injured party has other reasonable alternatives when under pressure[6].

Some scholars believe that the conditions for establishing economic duress include degree of duress, fear, and apparent unfairness. The degree of duress refers to the suppression of the free will of the coerced party, who has no other reasonable choice but to act according to the coercer's intention. If the target and outcome of the coercer are illegal, even with legal means, economic duress may still be valid. Fear refers to whether fear is a sufficient condition for causing economic duress in reality. Or, in the absence of fear, can economic duress still be established. In the above case, if there is no fear, economic duress does not exist. Obvious unfairness refers to the fact that the outcome of a contract must be intentionally unfair.

5. Existence and Composition of Lawful Act Economic Duress

5.1 Existence

A special situation of economic duress which has been defined as lawful act economic duress has attracted widespread attention from scholars. It is a legal concept under common law and also a relatively new concept in field of unjust enrichment law. Prior to this, it was often recognized as undue influence in equity. However, the key factor that establishing undue influence is there must be a 'relationship', while in cases of lawful act duress refers to using someone's legal rights to exert pressure to others.

There have been some arguments stating that unlawful act duress is enough in practical applications, but some practices in the case law system still affirmed the existence of this concept.

In *Pakistan International Airlines Corp v Times Travel (UK) Ltd*, Lord Burrows confirmed the existence of lawful act economic duress in that case. He believed the nature of lawful act lies on the fact that the threatened person understands the content of the contract but still enter into that contract due to illegitimate pressure.

5.2 Composition

To make out lawful act economic duress, the lawful action threat must be illegitimate and be an important cause of the decision of the other party to enter into a contract. In *Pakistan International Airlines Corp v Times Travel (UK) Ltd*, Lord Burrows established a basic framework in deciding whether there is a lawful act economic duress. He summarized the main elements for setting up lawful act duress and structured his methods in following steps (see Figure 1).

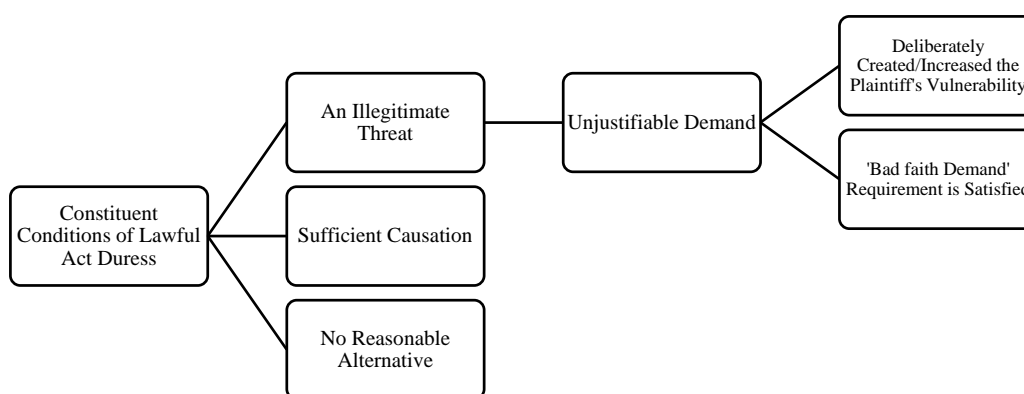


Figure 1: The main elements for setting up lawful act duress

The first element is that there must be an illegitimate threat. When it involves lawful act threat, the justification of the demand must be focused on. Specially, a demand aiming to gain pure economic self-interest is justified in the majority of cases, so the lawful act duress would not be made out. At the same time, to made out lawful act duress there should be the circumstance that ‘the threatening party has deliberately created, or increased, the threatened party’s vulnerability to the demand’ and ‘the demand is made in bad faith where the threatening party does not genuinely believe that it has any defense (and there is no defence) to the claim being waived, which is called ‘bad faith demand’ requirement’. In fact, the ‘good faith’ requirement is used more frequently in practice, which can be used to induce the disproportion between the demand and the threat. If an apparent disproportion is found in the case, it is highly likely an illegitimate pressure.

The second element is that there must be sufficient causation between the illegitimate threat of the defendant and the next conduction of the plaintiff, which mainly refers to entering into the relevant contract.

The third element is that the claimant must have no reasonable alternative but to enter into that contract. Lord Burrows invoked the concept in *Borrelli v Ting*, in which Lord Saville stated that the inappropriate means adopt by the defendant made the claimant have to other reasonable choice unless entering into the contract, and it was a factor that made the settlement contract voidable. In *Progress Bulk Carriers Ltd v Tube City IMS LLC*, another case related to the ‘no reasonable alternative’ requirement, lawful act duress has been made out as the defendant left the plaintiff with no choice but to enter into the contract with the defendant. Have that there are other reasonable alternatives for the plaintiff, the lawful act duress may have not been made out as the plaintiff could have made another choice instead of entering into the contract.

6. Conclusion

Although the system of duress has been developed for a long time in various legal systems, the system of economic duress has emerged as a new concept in recent years. Economic duress originates from equity and is a different concept from undue influence and commercial pressure. When determining whether economic duress is valid, one cannot only consider whether the means of economic duress are legitimate, as legitimate means may also lead to illegal purposes and results. In addition, the establishment of economic duress should also consider factors such as whether the threat of breach exists, whether the pressure is subjectively good faith or malicious, and whether the victim has other reasonable alternatives when under pressure.

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