**Duress and Undue Influence**

Welcome to this podcast on Duress and Undue Influence brought to you by CALI. I am Professor Jennifer S. Martin. There are three sets of defenses that might be used to avoid enforcement of a contract which is otherwise valid: (i) capacity related defenses; (ii) assent related defenses; and (iii) public policy related defenses. The topic of this podcast is the basic concepts related to two of the assent related defenses, duress and undue influence. The defense of duress exists to protect against contracts that are obtained by some type of threat or coercion. The defense of undue influence exists for a more specialized role, to protect against assent obtained by unfair persuasion. The other types of defenses and their elements are covered in other podcasts.

The defense of duress may result in a contract being *void or voidable* by the party protected by the defense (meaning the person who’s been threatened), depending upon the facts of the case, whereas the defense of undue influence results in a *voidable* contract. In cases where a contract is void, neither party can claim a remedy or enforce the contract. In cases where the contract is voidable, the party subject to the duress or undue influence has the power to affirm or disaffirm the contract, meaning they can elect to carry on with the contract or not to continue it. In the event that the party does seek to avoid the contract, the party will request that a court rescind the contract. Rescission will allow a party to avoid the contract by essentially unmaking it. In most cases, the court will place the parties in the position they would have been in if the contract had never existed, allowing the court to choose the remedy of restitution to effectuate this result.

Let’s turn to the defense of duress, which generally involves a wrongful threat or act overcoming the autonomy of a party in entering into a contract. Whether duress results in a contract being void or voidable depends on the type of duress involved. A contract where assent is obtained through duress by physical compulsion is void, with other types of threats resulting in the contract being voidable. Additionally, if the compulsion was done by someone who is not a party to the transaction, the contract is still voidable unless the other party to the transaction in good faith and without reason to know of the duress gave value or relies materially. Let’s look at an example of a contract that might be void due to duress.

Example #1. Husband applied for a loan, but Lender required Wife to also sign. Wife did not want to sign, but husband threatened her with a kitchen knife, grabbed her hand and forced her to sign the papers. Wife informed Lender of the behavior of Husband prior to Lender disbursing the loan. In the event that Lender disbursed the loan anyway, Wife’s best defense would be duress making the contract void because her manifestation of assent was physically compelled by duress. Notice here the victim of the duress is avoiding a contract with someone who did not commit the duress themselves, but had reason to know of the duress.

In situations where there is not physical compulsion, a contract may still be avoidable by the victim if their assent to the contract was obtained by an improper threat that leaves the victim no reasonable alternative.

Example #2. Joe was engaged to marry Jane, who did not speak English and who’s dependent on Joe for her support. Jane’s visa to be in the United States is due to expire. Jane discovered that she was pregnant. Joe agreed to marry Jane but told her he would make sure she was deported unless she signed a prenuptial agreement waiving all rights to his financial assets. Jane could not translate the agreement properly, had no money to hire an attorney and was fearful for herself and for the future of her child if she was deported. Jane signed the agreement. Jane might have a defense of duress due to an improper threat by Joe as to the prenuptial agreement, which she arguably signed because she had no reasonable alternative other than being deported. Jane would claim rescission of the contract. The contract might be voidable, but not void as there is no physical compulsion.

Of course, whether or not there is duress will turn on whether there’s an improper threat. According to the Restatement (Second) of Contracts, a threat is generally considered to be improper in the following four general circumstances where what is threatened is: (i) a crime or tort; (ii) criminal prosecution; (iii) the use of civil process made in bad faith; or (iv) a breach of the duty of good faith and fair dealing under a contract. Let’s look at an example where the threat is not improper.

Example #3. While driving his car, David was texting and accidentally hit Paula, a pedestrian, with the car. Paula hired Able, an attorney, to represent her in an action against David. Attorney contacted David and told him that if he did not pay for Paula’s medical expenses, she would bring a civil action against him. Fearing a civil suit, David entered into a settlement agreement with Paula. While Able made a threat to David, the threat here would not be improper because it would be a threat of legitimate civil suit on behalf of Paula. David would not have a defense of duress here.

Additionally, a threat may be improper in some cases of unfair economic exchanges. These cases include situations where a party threatens an act that will be particularly harmful to the other party, such as a release of embarrassing information and cases where the threat is particularly effective to provide an unfair advantage in dealing, basically where a party’s at the mercy of another. Let’s look at an example.

Example #4. Jerry entered into a contract with Kramer to purchase a 35-foot fishing boat for $30,000 that Jerry needed to compete in a boating competition taking place July 1. The contract provided for delivery of the boat on June 30. On the evening of June 30, the day before the competition, Jerry arrived to pick up the boat. Kramer refused to deliver the boat unless Jerry now also bought a fishing rod from him for $20,000. Jerry, feeling he had no choice in the matter since he urgently needed the boat, gave Kramer $50,000 and took away the rod and boat. Jerry might be able to assert a defense of duress here.

Let’s turn to the defense of undue influence. While duress involves an improper threat, undue influence is unfair persuasion. According to the Restatement, the unfair persuasion must be: (i) exercised against a person who is under the domination of the persuader; or (ii) exercised against a person who is justified in assuming that the persuader will not act in a manner inconsistent with his welfare. Relations of domination might include parent and child, husband and wife, and physician and patient, but the focus is on whether the relationship makes the weaker party particularly vulnerable to the stronger party’s attempts of persuasion. Keep in mind, weakness, age, or infirmity are not enough in the absence of other facts. Like with duress, if the persuasion was done by someone who is not a party to the transaction, the contract is still voidable unless the other party to the transaction in good faith and without reason to know of the undue influence gave value or relies materially. Let’s look at two examples.

Example #5. Annabel is elderly and lives with her niece, Beatrice, and depends upon her for assistance in day-to-day activities. Beatrice tells Annabel that she’ll no longer help her unless Annabel makes Beatrice a co-owner on all financial accounts. Annabel adds Beatrice to the accounts. Here, Annabel may have a defense of undue influence arising from the domination by Beatrice, making the contract voidable by Annabel.

Example #6. Husband who is very wealthy suffered a heart attack leaving him with significant health issues for the remainder of his life. Wife married Husband eight months ago and signed a prenuptial agreement waiving all rights to Husband’s assets. Husband was dependent on Wife for transportation and daily care as a result of his failing health. Wife convinced husband to transfer valuable real estate worth $10 million to her as compensation for her services. Husband’s adult daughter, Patricia, was the sole beneficiary under husband’s will and would have inherited the real estate otherwise. Husband died. Patricia, on behalf of the estate, might be able to claim a defense of undue influence in the property transaction arising from the domination of Wife.

At this point, you should be able to distinguish between duress (an improper threat) and undue influence (unfair persuasion). You should also be able to identify which types of threats are improper and distinguish between cases of duress involving physical compulsion making a contract void and other cases where the threat makes a contract voidable. You should also be able to identify relationships that might lead to a claim of undue influence. Finally, you should be able to describe how and when these defenses can be used to enable a party to rescind a contract otherwise validly entered into (or where the contract might be void as a result of duress resulting from physical compulsion).

I hope you’ve enjoyed this podcast on Duress and Undue Influence.

Lawdibles are produced and distributed by CALI, The Center for Computer-Assisted Legal Instruction. Find more Lawdibles at www.cali.org/lawdibles. Send your questions and feedback to lawdibles@cali.org. The Lawdibles theme music is “Ask Me No Question” by [Learning Music](http://freemusicarchive.org/music/Learning_Music/). Lawdibles are for educational purposes only. Please seek an attorney if you need legal advice.

CREDIT: Ask Me No Question by Learning Music is licensed under an [Attribution-Noncommercial-Share Alike 3.0 United States License.](http://creativecommons.org/licenses/by-nc-sa/3.0/us/)