Duress – Contract Law

- Two types of duress:
  1. **Duress to the person** – threat or act of violence
  2. **Economic duress** – duress to goods; threats to economic or business interests

**Duress to the person**

- Actual or threatened violence (*Barton v Armstrong*)
- Threats / violence must be one of the reasons for contracting (i.e. contribute to decision to contract)
- Burden of proof on party exerting threat/force to show did not contribute

**Duress to goods & economic duress**

**Duress to goods**

- Contract voidable where threat to seize or damage property (*Occidental Worldwide Investments v Skibs (The Sibeon & The Sibotre)*)

**Economic duress**

- *DSND Subsea Ltd v Petroleum Geo Services ASA* – Dyson J
- Pressure:
  - (a) whose practical effect is compulsion or a lack of practical choice for the victim,
  - (b) which is illegitimate, and
  - (c) which is a significant cause inducing the claimant to enter into the contract
Lack of practical choice

Carillion Construction Ltd v Felix

- Carillion subcontracted supply of cladding to Felix
- Felix was delayed in completing
- Felix knew Carillion could not find another supplier in time + that trades were dependent on completing this work on time
- Carillion agreed to pay more in return for Felix delivering by original date
- **Carillion sent letter expressing dissatisfaction to Felix – this was material in claim succeeding**
- They had no practical choice but to pay Felix more if they were to avoid late fees
  - Delay of injunction = injunction not possible

B & S Contracts and Design Ltd v Victor Green Publications Ltd

- Contract to erect stands, with strike by workmen – plaintiff (B & S) asked for £4,500 extra to complete work
- **Cancellation of event would have been economically damaging for D**
- Given no choice but to pay, this was paid under duress, so D did not have to pay £4,500 it had deducted from final payment

Atlas Express v Kafco Ltd

- D basket producer supplying Woolworths had agreed price with Atlas Express for delivery of them
- Atlas demanded minimum contract price of £440 after had agreed price of £1.10 per carton
- D was reliant on Woolworths + could not find another carrier, so had to agree
- = economic duress where a party has no alternative but to accept revised terms detrimental to its interest

Kolmar Group AG v Traxpo Enterprises PVT Ltd

- Agreement to sell methanol
- Knew P needed it for important client
- “Take it or leave it” proposal for lesser quantity for more money
- C had no alternative but to accept – demands backed by coercive and unlawful threats they would not perform their obligations
Illegitimate Pressure

DSND Subsea Ltd v Petroleum Geo Services ASA – Dyson J

1. Actual or threatened breach of contract?
2. Exertion of pressure in good or bad faith?
3. Victim protested at the time?
4. Victim affirmed and sought to rely on contract? – could be delay in claim implies affirmation of contract

These factors accumulate – it is not the case that if one is satisfied = illegitimate pressure.
E.g. North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd (The Atlantic Baron) – asked for 10% to build ships without legitimate reason (so in bad faith), but failure to protest + delay in making the claim (8 months) ≠ duress.

#1 Threatened breach of contract

- BoC = In general, unlawful threat = duress (see above cases)

#2 Good or bad faith to threat of breach of contract

- Is there a legitimate basis for threat of breach of contract?

Bad Faith

- See Atlantic Baron above = bad faith, as no legitimate reason to breach contract

- Universe Tankships Inc of Monrovia v ITWF – P paid $6,480 to worker welfare fund after ship ‘blacked’ by trade union
  - No practical alternative
  - Workers threatened breach of contract was in bad faith as had no legal basis for payment into union welfare fund

Not bad faith

- CTN Cash and Carry Ltd v Gallaher Ltd – bulk cigarettes bought from Gallaher, with a batch (£17,000 worth) stolen from a warehouse
  - Unclear who bore this risk
  - Gallaher said would end CTN’s credit with them (permitted by the contract) if did not pay £17,000 – they paid
  - Gallaher, it was later decided, bore risk for lost consignment
  - Threat to remove credit was not made in bad faith – it was coercive on the basis of money Gallaher believed they were owed +, importantly, threat was lawful (no BoC threatened)
• **DSND Subsea Ltd v Petroleum Geo Services ASA** – DSND threatened breach of contract (suspension of work) until Petroleum Geo’s provision of insurance covering deep sea divers was clarified = bona fide action in difficult situation to protect employees

• **R v Attorney General of England and Wales** – SAS soldier told he would be returned to unit (RTU) if he did not sign a confidentiality contract
  - Signed, and later claimed that this was duress
  - HELD: threat of RTU was lawful and justifiable as anyone who was unwilling to accept obligation of confidentiality was unsuitable for the SAS

• **Alec Lobb v Total Oil** – ‘hard bargain’
  - Garage under considerable financial strain of its own making
  - May (although may not) have had no other practical choice but to accept Total’s lease and leaseback arrangement
  - However, pressure was exerted by creditors and not by Total
  - They drove a hard bargain as the prospect did not appear particularly attractive = not bad faith

#3 Victim protests

• **Atlantic Baron (see above)** – no protest = no duress
• **Carillion Construction Ltd v Felix** – Carillion wrote letter protesting against demand = material in claim’s success

#4 Victim affirmation

• **Atlantic Baron (see above)** – 8 month delay in claim, as also concerned about delivery of another ship, *The Atlantic Baroness*
• **B & S v Victor Green** – £4,500 deducted from subsequent payment = **victim avoided affirmation by avoiding new agreement immediately after duress lifted**

**Significant cause**

• Contract would not have been made on these terms **but for** the pressure; the pressure must be ‘decisive’ or ‘clinching’ (*Huyton SA v Peter Cremer GmbH & Co*)

**Result of finding duress**

• Contract w/duress is voidable (can be set aside) but **not void** (*Pao On v Lau Yiu Long*)
  - Remedy: **rescission** – if contract affirmed, may act as bar to rescission, as an equitable remedy