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UNDOING CONTRACTS: A STUDY OF VITIATING FACTORS IN LEGAL DOCTRINE

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Abstract

This study examines the vitiating factors in contract law, which undermine the validity of agreements otherwise meeting the formal criteria of contract formation. It explores how elements like misrepresentation, mistake, undue influence, and duress render contracts void or voidable, with rescission or damages as potential remedies. Indian contract law, paralleling English common law, contextualizes these doctrines under statutory provisions, such as Sections 15, 16, 17, 18, 20, and 22 of the Indian Contract Act, 1872. By juxtaposing doctrinal principles with landmark case law, this paper emphasizes the balance between fairness and contractual certainty. It also highlights the judiciary's role in mitigating exploitation and safeguarding free consent, ensuring the equitable application of contractual obligations

Key Words- Duress, Misrepresentation, Mistake, Undue Influence, Indian Contract Act

Introduction

In common law, agreements between parties that meet the requirements of contract formation generate contractual rights and obligations; but only presumptively.[2] These rights and obligations may be defeated, in whole or in part, by recognized vitiating factors such as misrepresentations, mistake, duress and undue influence. A 'vitiating element of contract' is the technical term for the things which make a contract void or voidable. The standard remedy is rescission, but damages may also be available. By contrast, the standard remedy

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[2]Mindy Chen-Wishart, *The Nature of Vitiating Factors in Contract Law, in* PHILOSOPHICAL FOUNDATIONS OF CONTRACT LAW (Gregory Klass, George Letsas, & Prince Saprai eds., 2015)

for breach of contract is damages, with repudiation available for serious breach only.[3] There is a constant need to achieve a balance between certainty and fairness in the law of contract. In this respect, vitiating factors tend to focus on the latter. However, because of the consequent danger that contracts might be unravelled unnecessarily by the application of such factors, there is a need for doctrinal as well as conceptual clarity.[4] The main vitiating factors in the law of contract are: misrepresentation, mistake, undue influence and duress.

- *Misrepresentation*- A misrepresentation is an untrue or misleading statement[5] of fact which induces a person into a contract. The misled party may normally rescind the contract, and may be awarded damages as well. There are three categories of misrepresentation: fraudulent, negligent and innocent.
- *Mistake*- A mistake is an erroneous belief (at the time of contracting) that certain facts are true. If raised successfully, an allegation of mistake may lead to the contract being declared *void ab initio* or voidable; but to be effective the mistake must be "operative". There are three types of contractual mistake: unilateral mistake, mutual mistake and common mistake.
- *Undue influence*- Undue influence is an equitable doctrine whereby a person takes advantage of a position of power over another person. This inequality in bargaining power may vitiate the weaker party's consent.
- *Duress*- Duress in contract law involves illegitimate threats of a physical nature. Provided the threat is a contributing reason why a person enters an agreement, even if not the main reason, the agreement may be avoided.

Misrepresentation

A concept of English law, a misrepresentation is an untrue or misleading statement of fact made during negotiations by one party to another, the statement then inducing that other party into the contract. The misled party may normally rescind the contract, and sometimes may be awarded damages as well or instead of rescission. Furthermore, to pursue a claim against the person who made the misrepresentation, the claimant must show that he or she relied on the untrue statement of fact when deciding to enter the contract and that the misrepresentation led

[3] *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha* 1961] EWCA Civ 7
[4] G.H. Treitel, The Law of Contract (9th ed. 1995).
[5] *R v Kylsant* [1932] 1 K.B. 442

to damages to the claimant.An opinion, even if considered false, is not the same as a fact and generally does not figure in cases surrounding misrepresentation.The law of misrepresentation is an amalgam of contract and tort; and its sources are common law, equity and statute. The common law was amended by the Misrepresentation Act 1967.[6] A contract largely depends on the honesty and goodwill of those who have agreed to it. If a party to a contract makes a misrepresentation of fact without suffering any repercussions for that misrepresentation, then few people would feel comfortable binding themselves to that contract.

Section 17 and section 18 of The Indian Contract Act, 1872 defines fraud and misrepresentation. Section 18 states 'Misrepresentation' means and includes-

1. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
2. Any breach of duty which, without an intent to deceive, gains an advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;
3. Causing, however innocently a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement."

Section 17 states 'Fraud'- 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:- 'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:-

1. The suggestion of a fact which is not true, by one who does not believe it to be true;
2. The active concealment of a fact by one having knowledge or belief of the fact;
3. A promise made without any intention of performing it;
4. Any other act fitted to deceive;
5. Any such act or omission as the law specially declares to be fraudulent.

Therearethreemaintypesofmisrepresentation,fraudulent,negligent,andinnocent.

[6]Gareth Spark, Vitiation of Contracts: International Contractual Principles and English Law (2013).

Fraudulent misrepresentation

Fraudulent misrepresentation occurs when a party to a contract knowingly makes an untrue statement of fact which induces the other party to enter that contract. Fraudulent misrepresentation also occurs when the party either does not believe the truth of his or her statement of fact or is reckless as regards its truth. Even if the representation was made without knowledge of whether it was true, it can give rise to a fraudulent misrepresentation claim if it was made in a reckless way. In such instances, the party making the representation is acting recklessly solely to induce the other party into the contract. If the expressed terms arenot accurate, then anyagreement is based on a false premise and the contract is invalid.[7]The following six elements are generally required to prove fraudulent misrepresentation:

1. The defendant made a false representation or lied;
2. The misrepresentation is material to the transaction;
3. The defendant made the misrepresentation with malice i.e. the defendant made the statement with knowledge that the statement was false or the defendant made the statement with a reckless disregard as to the veracity of the statement;
4. The defendant made the misrepresentation with the intention of inducing the other party to enter into a contract;
5. The other party reasonably relied on the misrepresentation; and
6. The defendant's lie was the proximate cause for the plaintiff's injury.

Derry v Peek[8]established a 3-part test for fraudulent misrepresentation, whereby the defendant is fraudulent if he:

i. Knows the statement to be false, or
ii. Does not believe in the statement, or
iii. Is reckless as to its truth.

[7]F.J. Odgers, *Contract—Illegality—False Representation,* 16 Cambridge L.J. 18(1958)
[8]*Derry v Peek* (1889) LR 14 App Cas 337, [1889] UKHL 1

In the *R v Kylsant*[9]case, test in *Derry v Peek* was used by the court and held that the prospectus, though 'strictly true', was fraudulently intended to give a misleading impression and was thereby an 'untrue statement', allowing investors to sue.*Hadley v Baxendale*[10]set the leading rule to determine consequential damages from a breach of contract: a breaching party is liable for all losses that the contracting parties should have foreseen, but is not liable for any losses that the breaching party could not have foreseen on the information available to him. Later in the case of *Doyle v Olby*[11], it was declared that a person making a fraudulent misrepresentation was liable in damages for 'all direct consequences', whether loss was foreseeable or not.

According to Section 17[12] of the Indian Contract Act, 1872 'Fraud' means and includes any of the following acts committed by a party to a contract, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract.

- The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- The active concealment of a fact by one having knowledge or belief of the fact;
- A promise made without any intention of performing it;
- Any other act fitted to deceive;
- Any such act or omission as the law specially declares to be fraudulent.

In *Edington vs. Fitzmaurice*[13], a company was in great financial difficulties and needed funds to pay some pressing liabilities. The company raised the amount by the issue of debentures. Whileraisingthe loan, thedirectorsstatedthat theamount wasneeded bythecompanyfor its development, purchasing assets and completing buildings. It was held that the directors had committed a fraud. It has been noted above that to constitute fraud; there should be a

[9]*R v Kylsant* [1932] 1 K.B. 442
[10]*Hadley v Baxendale* [1854] EWHC J70
[11]*Doyle v Olby (Ironmongers) Ltd* [1969] 2 QB 158
[12]'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent', with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;(2)the active concealment of a fact by one having knowledge or belief of the fact;(3)a promise made without any intention of performing it;(4)any other act fitted to deceive;(5)any such act or omission as the law specially declares to be fraudulent.
Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speaks, or unless his silence, is, in itself, equivalent to speech.
[13]*Edgington v Fitzmaurice* (1885) 29 Ch D 459

representation as to be certain untrue facts. Active concealment has also been considered to be equivalent to a statement because in that case, there is a positive effort to conceal the truth and create an untrue impression on the mind of the other.

Mere silence, however, as to facts in no fraud. In *Keates vs. Lord Cadogan*[14], A let his house to B which he knew was in ruinous condition. He also knew that the house is going to be occupied by B immediately. A didn't disclose the condition ofthe house to B. It was held that he had committed no fraud. When the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, keeping silence in such a case amounts to fraud. When there is a duty to disclose facts, one should do so rather than to remain silent. In *Life Insurance Corporation of India v Asha Goel*[15], the apex court explained: "The contracts of insurance including the contract of life insurance *uberrima fides* and every fact of material must be disclosed, otherwise, there is good ground for rescission of the contract. When silence is, in itself, equivalent to speech, such silence is a fraud. Sometimes keeping silent as to certain facts may be capable of creating an impression as to the existenceofacertainsituation.Insuchacase,silenceamountstofraud.

Where a contract is induced by fraud, the representee is entitled to claim rescission or damages or both. He would have a remedy by way of such suit, even if *restutio in integrum* is not possible.In addition, the plaintiff is entitled to recover consequential losses caused by the transaction. The defendant is bound to make reparation for all the damage directly flowing from the transaction.

Negligent misrepresentation

A party that is trying to induce another party to a contract has a duty to ensure that reasonable care is taken as regards the accuracy of any representations of fact that may lead to the latter party to enter the contract. If such reasonable care to ensure the truth of a statement is not taken, then the wronged party may be the victim of negligent misrepresentation. Negligent misrepresentation can also occur in some cases when a party makes a careless statement of fact or does not have sufficient reason for believing in that statement's truth.Negligent misrepresentation is one made carelessly or without reasonable grounds for believing it to be

[14]*Keates v The Earl of Cadogan* (1851) 10 CB 591
[15]*Life Insurance Corporation of India v. Asha Goel* (2001) 2 SCC 160

true. But it cannot be regarded unless the representer owed a duty to the representee to be careful. The same above statement was given in the case *Derry v Peek*[16].

Looking back to the eighteenth century, Percy Winfield observed that liability for carelessly caused harm began in cases in which duty was "taken for granted." At this early juncture, negligence liability was confined to cases in which the defendant either "put himself in a position in which any sensible man would act carefully. The absence of duty as a separate element of negligence, much less anything resembling a general duty of care, limited the scope of the negligence action to specific categories of cases."[17] During the nineteenth century, liabilityfor carelesslycaused harmwas extended to new categories ofcases. The process was gradual, with courts generally working by analogy from established cases of liability. The language of duty first appeared in privity cases, which held that duty in a contractual undertaking ran only to the parties to the contract.Remedies for negligent misrepresentation are that of rescission or damages.

Innocent Misrepresentation

The term innocent misrepresentation is used for the misrepresentation in which no element of fraud or negligence is found or one for which the representee has good grounds of belief.Essentially, it is a misrepresentation made by someone who had reasonable grounds for believing that his false statement was true. In the real world, however, it is often the case that because the other two varieties of misrepresentation i.e. negligent and fraudulent. Under contracts law, innocent misrepresentation can serve as a valid cause of action. Thus, even if the defendant did not intend to make a misrepresentation, they may still be held liable for the plaintiff's losses under the innocent misrepresentation theory.In *Mackenize v Royal Bank of Canada*[18], it was held that the mere fact that the party making the representation has treated the contract as binding and had acted on it didn't preclude relief nor could it be said that the plaintiff received anything under the contract which she was unable to restore.In *Oriental Bank Corporation v John Fleming*[19]the court observed that 'constructed fraud', in which there is no intention to deceive, but where the circumstances are such as to make the party who derives a benefit from the transaction is equally answerable in effect as if he had been

[16] Supra *note 3*
[17]Percy H. Winfield, *Duty in Tortious Negligence*, 34 Colum. L. Rev. 41, (1934).
[18]*Mackenize v Royal Bank of Canada* (1934) AC 468
[19]*Oriental Bank Corporation v. Fleming* (1879) 3 Bom 242, 267

actuated by motives of fraud or deceit."The most common remedy for innocent misrepresentation in a contract claim is a contract rescission. In some cases, the parties may be allowed to write a new contract in light of the new facts regarding the subject matter, especially if the parties are still willing to work together. In some cases, a court may issue a monetary damages award for the plaintiff, if they decide that it is equitable to do so.

Mistake

In contract law, a mistake is an erroneous belief that certain facts are true. It can be argued as a defence, and if raised successfully can lead to the agreement in question being found void *ab initio* or voidable, or alternatively an equitable remedy may be provided by the courts. Mistake must be a matter of fact and not of law. However, a question on foreign law would become a matter of question of fact. Similarly, the existence of a particular private right though depends upon rules of law, is only a matter of fact.[20]Many legal systems provide for an action for damages available to the victim of mistake or to the other party if he suffered a prejudice by the invalidation of the contract. According to each specific remedy, justice is done more or less completely to the mistaken covenanter or to the other party and even to third parties who are involved. Furthermore, each remedy may assure the security of commerce or hinder it, and by so doing, further the development of the scope of operative mistake, or restrict it.Mistake can be of two kinds, mistake of law and mistake of the fact. The exact demarcation between mistake of law and mistake of fact is often blurred and difficult to determine. The position is even less clear for instance where the parties have to act on the interpretation not of an enactment or statutory regulation but of private written document.

Mistake of Fact

Mistake of fact is a ground of avoidance in the Law of Contract. This is when both the parties misunderstand each other leaving them at a crossroads. Such a mistake can be because of an error in understanding, or ignorance or omission etc.Section 20 of Indian Contract Act, 1872 defines this as follows: "Where both the parties to an agreement are under a mistake as to a matter of fact, essential to the agreement, the agreement is void."Common law has identified

[20]Melvin A. Eisenberg, *Mistake in Contract Law*, 91 Calif. L. Rev. 1573 (2003)

three different types of mistakes in contract: the unilateral mistake, the mutual mistake and the common mistake.

A unilateral mistake is where only one party to a contract is mistaken as to the terms or subject-matter contained in a contract. This kind of mistake is more common than other types of mistakes. Section 22 of The Indian Contract Act, 1872 defines a unilateral mistake as: "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact." In *Ayekam Angahal Singh v The Union of India*[21] it was held that since the mistake was unilateral, the contract was not affected thereby and the same could not be avoided. However, there are some exceptions to this. In certain conditions, even a unilateral mistake of fact can lead to a void or voidable agreement and these are:

1. When unilateral mistake is as to the nature of the contract the contract can be held as void. In *Dularia Devi v. Janardan Singh*[22], an illiterate woman mistook a sale deed intended to defraud her for a gift deed. This contract was held void by the court.
2. When the mistake is regarding the quality of the promise the contract can be held void. In the case *of Scriven Bros and Co. v Hindley and Co.*[23] therewasanauction being held by A to sell hemp and tow. B thinking the auction was only for hemp, mistakenly bid for atow. The amount bid was onpar for hemp but veryhigh for a tow. Hence the contract was held as voidable.
3. If the mistake is that of mistake of the identity of the person contracted with the contract can be held void. In determining whether a contract will be held void for mistake the courts draw a distinction between contracts made *inter absentes* (at a distance) and contracts made *inter praesentes* (face to face transactions).
    a. **Inter Absentes:** Where the parties are not physically present when the contract is made, e.g. where the contract is made through dealings through the post, telephone or over the internet, the courts will only make a finding of mistake if the claimant can demonstrate an identifiable person or business with whom they intended to deal with. In *Cundy v Lindsay*[24], it was held that the contract was void for unilateral mistake as the claimant was able to demonstrate an identifiable existing

[21] *Ayekam Angahal Singh v The Union of India* 1994 SCC, Supl. (2) 518
[22] *Dularia Devi v. Janardan Singh* 1990 AIR 1173
[23] *Scriven Bros and Co. v Hindley and Co.* [1913] 3 KB 564
[24] *Cundy v Lindsay* (1878) 3 App Cas 459

business with whom they intended to contract with.

b. **Inter Praesentes:** Where the parties agree to a contract in a face-to-face transaction the law raises a presumption that the parties intend to deal with the person in front of them. The identity of the person with whom one is contracting or proposing to contract may not be material in manycases.[25] In *Boulton v Jones*[26], Pollock, C.B., said: "It is rule of law that if a person intends to contract with A, B cannot give himself any rights under it".

A mutual mistake occurs when the parties to a contract are both mistaken about the same material fact within their contract. There is a meeting of the minds, but the parties are mistaken. Hence the contract is voidable.Collateral mistakes will not afford the right of rescission. A collateral mistake is one that does not go to the heart of the contract. For a mutual mistake to be void, then the item the parties are mistaken about must be material. The courts apply an objective test to see if the contract can be saved i.e. would a reasonable person looking at the correspondence betweenthe parties have understood the contract to have a single meaning. If yes, then the contract is valid. If a reasonable person could not determine the meaning then the contract will be void for mistake. In the case of *Raffles v Wichelhaus*[27]this test was used to find out if the contract was void or not. In *State Industrial & Investment Corporation of Maharashtra Ltd v Narang Hotels Pvt. Ltd*[28], the court held that there could be at least two opinions in respect of interpretation and onus of proof is on the plaintiff to prove that they made payments as a result of mistake. Since the onus has been discharged, the plaintiff neither could seek refund nor refuse to pay.

A common mistake occurs if both parties hold a similar misguided belief of fact. What makes a contract void is sufficient evidence to show that the mistake is satisfactorily fundamental to render its identity different from the terms of the contract. This is demonstrated in the case of *Bell v Lever Brothers Ltd*[29], which established that common mistake can only void a contract if the mistake of the subject-matter was sufficiently fundamental to render its identity different from what was contracted, making the

[25]A.H. Hudson, *Mistake Inter Praesentes*, 24 Mod. L. Rev. 267 (1961).
[26]*Boulton v Jones* (1857) 157 ER 232
[27]*Raffles v Wichelhaus* [1864] EWHC Exch J19
[28]*State Industrial & Investment Corporation of Maharashtra Ltd v Narang Hotels Pvt. Ltd* AIR 1995 Bom 275
[29]*Bell v Lever Brothers Ltd* [1931] All ER 1

performance of the contract impossible.[30] Three categories[31] have emerged as giving rise to a cause of action:

- ***Res extincta*** - the subject matter of the contract no longer exists. Res extincta will apply where both parties enter a contract with the belief that the subject matter exists when in fact it does not exist. In *Scott v Coulson*[32], the contract was void for the party getting life insurance was in fact, dead.
- ***Res sua*** - where the goods already belong to the purchaser. This applies where a party contracts to buy something which in fact belongs to him. This will generally render the contract void. Although if the action is based in equity this will render the contract voidable.
- **Mistake as to quality** - This is only used narrowly because it is only capable to render a contract void where the mistake is to the existence of the quality which renders the subject matter of the contract different to what it was believed to be. In *Leaf v International Galleries*[33] the claim was unsuccessful as the mistake related to the quality and did not render the subject matter something essentially different from that which it was believed to be.

Undue Influence

In jurisprudence, undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person. This inequity in power between the parties can vitiate one party's consent as they are unable to freely exercise their independent will. In *Mutual Finance Ltd. v. John Wetton & Sons Ltd*[34], Porter, J., after pointing out that the right to avoid a contract is not at the present time confined to cases of duress, remarks that "duress at common law could only be pleaded where the end arrived at was achieved by the use of something in the nature of unlawful force or the threat of unlawful force against the person of the other contracting party. Undue influence in the Chancery Courts might exist where a promise was extracted by a threat to prosecute certain third persons unless the

[30]J.W. Harris, *Common Mistake in Contract*, 32 Mod. L. Rev. 688 (1969).
[31]David Capper, *Common Mistake in Contract Law*, 2009 Sing. J. Legal Stud. 457.
[32]*Scott v Coulson* [1903] 2 Ch 439
[33]*Leaf v International Galleries* [1950] 2 KB 86
[34]*Mutual Finance Ltd. v. John Wetton & Sons Ltd* [I937] 3 2 K.B. 389

promise was given."[35] Although the term undue influence has sometimes been used in a very wide sense, even by Chancery judges, its meaning has now become fixed and definite**.** "Undue influence is where an agreement has been obtained by certain kinds of improper pressure which were thought not to amount to duress at common law because no element of violence to the person was involved."

Where it is established that a plaintiff was induced to enter into a contract or transaction by the undue influence of the defendant, the contract may be rendered voidable. If undue influence is proved in a contract, the innocent party is entitled to set aside the contract against the defendant, and the remedy is rescission. As the law of undue influence was applied and developed by the Court of Chancery, it developed into two distinct classes: 'actual' undue influence and 'presumed' undue influence.

Actual Undue Influence

In these cases, it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned. Most of the early cases relating to the development of the doctrine of undue influence related to actual pressure which was brought to bear on the victim, but which fell short of the legal requirements for duress. In *Williams v Bailey*[36] Bailey's son forged his father's signature on promissory notes and gave them to Williams. Williams threatened Bailey with criminal prosecution, so Bailey made an equitable mortgage to get back the notes. The court set aside the mortgage, and expressed itself as doing so for reasons of undue influence.

Presumed Undue Influence

In these cases, the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter the impugned transaction. In class 2 cases therefore, there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then

[35]W.H.D. Winder, *Undue Influence and Coercion*, 3 Mod. L. Rev. 97 (1939)
[36]*Williams v Bailey* (1866) LR 1 HL 200

shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely. Such a confidential relationship can be established in two ways:

- ***Class 2a*** **-** Certain relationships as a matter of law raise the presumption that undue influence has been exercised. The relationships where undue influence is presumed have been held to be: (i) parent & child[37], (ii) solicitor & client[38],

  (iii) Doctor & patient[39], (iv) Trustee & Beneficiary[40] and (v) religious adviser & disciple[41]. In *Allcard v Skinner*[42] it was said that the relationship of husband and wife does not, as a matter of law, raise a presumption of undue influence within class 2a.

- ***Class 2b*** **-** If the complainant proves the existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a class 2b case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned. The important distinction between class 2a and 2b is the fact that the trust and confidence relationship must be proved. In *Lloyds Bank v Bundy*[43]it was held that there was a relationship of trust and confidence between the father and the bank manager giving rise to a presumption of undue influence under class 2b.

The doctrine of undue influence under the common law was evolved by the Courts in England for granting protection against transactions procured by the exercise of insidious forms of influence, spiritual or temporal. The doctrine applies to acts of boundary as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian enactment is founded substantially on the rule of English common law. Section 16[44] of The Indian Contract Act, 1872 defines undue influence.

[37] *Wright v Vanderplank* (1855) 69 ER 669
[38] *Wright v Carter* [1903] 1 Ch 27
[39] *Mitchell v Homfray* (1881) 8 QBD 587
[40] *Ellis v Barker* (1871) LR 7 Ch App 104
[41] *Roche v Sherrington* [1982] 2 All ER 426
[42] *Allcard v Skinner* (1887) 36 Ch D 145
[43] *Lloyds Bank v Bundy* [1975] QB 326
[44] (1)A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an

A transaction is voidable as against a third party, if it is the result of undue influence and that party took the benefit either as a volunteer or with the knowledge of will of the executants. A person may be forced by circumstances to enter into a contract which he would rather not have entered into. If the circumstances are explained to him and it is pointed out that he ought to enter into the transaction either because his honour requires it, or he would have peace of mind and be saved from future worries, that would be pressure, but need not be undue influence or coercion so as to vitiate the transaction.

Duress

Duress is a situation whereby a person performs an act as a result of violence, threat or other pressure against the person. According to the Black's Law Dictionary, duress may be "any unlawful threat or coercion used to induce another to act (or not act) in a manner (they) otherwise would not (or would)". Duress in contract law relates to where a person enters an agreement as a result of threats. Where a party enters a contract because of duress they may have the contract set aside. Originally, the common law only recognised threats of unlawful physical violence however, in more recent times the courts have recognised economic duress as giving rise to a valid claim. Where the threat is to goods, the courts have been less willing to intervene, although analogous claims in restitution suggest that this position of the law may change. The basis of the duress as a vitiating factor in contract law is that there is an absence of free consent. Duress operates at common law. Pressure not amounting to duress may give rise to an action for undue influence. The effect of a finding of duress and undue influence is that the contract is voidable. The innocent party may rescind the contract and claim damages.[45]

The common law long allowed a claim if duress was of a physical nature. So long as a threat is just one of the reasons a person enters an agreement, even if not the main reason, the agreement may be avoided. The application of duress has since expanded and it is now

unfair advantage over the other. (2)In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—
(a)Where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (b)Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress (3)Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

[45]Jack Beatson, *Duress as a Vitiating Factor in Contract*, 33 Cambridge L.J. 97 (1974)

recognised that duress may be economic in nature and deal with threats of damage to property/goods and also threats or demands for money.

Duress of Person

Where a person enters a contract as a result of threats of physical violence, the contract may be set aside providing the threat was ***a*** cause of entering the contract. There is no need to establish that they would not have entered the contract but for the threat. In *Barton v Armstrong*[46]Mr Armstrong tried to "strong-arm" Mr Barton into paying him a large golden parachute to exit a business by getting his goons to make death threats to Barton's family. Even though Barton was tough, and would have probably done the pay-out regardless, he could avoid the agreement.

Duress of the person may consist in violence to the person, or threats of violence, or in imprisonment, whether actual or threatened. The threat of violence need not be directed at the claimant: a threat of violence against the claimant's spouse or near relations and a threat against the claimant's employees have been held to constitute duress. The complainant only needs to prove that the pressure was the reason why he entered into the contract and the court will conclude that illegitimate pressure induced the contract unless there is evidence that the illegitimate pressure in face contributed nothing to the decision to enter the contract. In the case of *Antonio v Antonio*[47]where a wife succumbed to a long campaign of threats of violence and intimidation by her husband and transferred him half the shares in her company and enter into a shareholders' agreement with him, the court found that the transfer and the agreement were both induced by duress.

Duress colore officii

In cases where the illegitimate pressure is in the form of an unlawful demand for payment by a public official, a distinction is to be drawn between cases where the complainant paid the money in order to obtain a service from the public official (such as granting of a license or permit) and cases where the complainant paid the money by way of tax or similar impost. In the first category, the court readily infers that the claimant had no practical alternative but to submit to the demand of the public official since, as Littledale J. put in the *Morgan v*

[46]*Barton v Armstrong* [1976] AC 104
[47]*Antonio v Antonio* [2010] EWHC 1199 (QB)

Palmer[48], the complainant could not otherwise obtain the services he required. But in cases where the payment is by way of tax, there is a practical alternative open to the claimant in the form of legal proceedings to challenge the legality of the public official's demand for tax.

Duress of goods

A threat to destroy or damage property may amount to duress. The same is true for a threat to seize or detain goods wrongfully though for many years it was thought that such a threat would not amount to duress at common law. When a person submits to the defendant's illegitimate pressure and pays money and enters into an agreement in order to recover his goods that has been wrongfully seized or detained by the defendant or in order to avoid immediate seizure or damage to his goods, it is recognized by the courts that in such a case the complainant normally has no practical alternative but to submit to the defendant's threat. In the case of *Astley v Reynolds*[49], where money was paid under duress of goods, the availability of a legal remedy did not prevent the court from reaching a conclusion that the payment was caused by illegitimate pressure. In *Maskell v. Horner*[50], tolls were levied on the plaintiff under a threat of seizure of goods. The tolls were in fact unlawfully demanded. Their payment was held to be recoverable as it had been made to avoid seizure of the goods and the plaintiff was entitled to recover the payments he had made under the illegal demand.

Economic duress

Certain threats or forms of pressure, not associated to the person, nor limited to the seizure or withholding of goods, may give grounds for relief to a party who enters into a contract as a result of threat or pressure. In cases of economic duress, the main question is whether the claimant had practical or adequate alternative or not. The alternative must be practical or reasonable in the sense that it was adequate for the claimant's purpose in the circumstances. In *North Ocean Shipping Company Limited v. Hyundai Construction Co. Ltd*[51], the builders building a ship under a contract for the plaintiffs, threatened, without any legal justification, to terminate the contract unless the plaintiffs agreed to increase the price by 10%. It was held that this amounted to a case of economic duress and that the plaintiff would be entitled, on that ground, to refuse payment of the additional 10%.

[48] *Morgan v Palmer* (1824) 2 B&C 729
[49] *Astley v. Reynolds* (1731) 2 Str 915
[50] *Maskell v. Horner* (1915) 3 K.B. 106
[51] *North Ocean Shipping Company Limited v. Hyundai Construction Co. Ltd* (1979) QB 705

Coercion and Duress are two commonly confused terms under the Law of Contract. Under Section 14 the Indian Contract Act, 1872 states that consent is free when it is not caused by coercion. Section 15 of the Act defines coercion as "the committing or threatening to commit any act forbidden by the penal laws of the country or the unlawful detaining, or threatening to detain any property to the prejudice of any person, with the intention to cause any person to enter into an agreement." The term 'Duress' corresponds to 'Coercion' in English law. However, Coercion under the Indian Contract Law has wider amplitude than Duress under the English Law. Coercion can be employed against any person including a stranger while duress can be employed only against the life or liability of other party to the contract or members of his family.

Conclusion

Vitiating factors are those that can render a contract void *ab initio* or voidable. These include misrepresentation, mistake, undue influence, duress. Special rules exist for interpreting contracts in which one contractor made a mistake or was tricked or pressured into making an agreement. If one party had misrepresented the facts to the other, there would be 'no meeting of the minds' between the parties or no *consensus ad idem* and the court would not normally uphold this agreement. If one party knows that the other party made a mistake as to the terms of the offer and fails to bring it to his notice, he will not be able to enforce the contract according to his version of its terms. Equally voidable are contracts entered into under duress. Duress can take the form of a physical threat to the person or an economic one, where a threat is made to break an existing contract or to commit a tort and the injured party has no practical alternative to agreeing to the terms proposed by the person making the threat. Undue influence is an equitable doctrine which arose independently of common-law duress. Undue influence is presumed in certain relationships, for example, between doctor and patient, solicitor and client, parent and child, where the weaker party might fall under too much influence of the stronger party so that it prevents him from exercising an independent judgment. If a client then decides to sue the professional for loss caused by wrong advice, the latter may rebut the presumption by presenting evidence that the client had access to independent advice. In the majority of cases the law is not concerned with the form in which the contract is made. However, some contracts must always be in writing in order to be legally binding.

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