

# 'You Can't Always Get What You Want' - When Lawful Actions Amount to Economic Duress

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**PRACTICES** International Arbitration, Litigation

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What are the limits of commercial pressure that can be applied in a contractual relationship to get what you want?

This question has been considered by the English Courts in a number of recent decisions. They have looked at the limits of the doctrine of economic duress, a developing area of the law that has given rise to some uncertainty. Let us give you an overview of where things are at present.

In *Times Travel (UK) Ltd v Pakistan International Airlines Corporation* [2019] EWCA Civ 828, the Court of Appeal has sought to place the law in this area on a more stable footing. It disagreed with two recent first instances decisions which had applied, or advocated the application of, a wider notion of economic duress.

## **The Importance of the Enforceability of Contracts**

English law places a great deal of importance on the enforceability of contracts. It goes without saying that for a contract to be enforceable, it must first have been validly made. The basic ingredients for a valid contract are of course 'offer and acceptance' leading to an agreement on all the essential terms, consideration, an intention to create legal relations - something that is generally found to exist in the commercial arena - and capacity or authority to bind the contracting party.

## **Setting Aside an Enforceable Contract**

A party may have the right to set aside an enforceable contract. English law recognises few grounds on which an otherwise binding contract can be set aside or rescinded. A number of these grounds are fault-based. One example of a fault-based vitiating factor is fraudulent misrepresentation, where one party induces the other to enter into the contract in reliance on statements that it either knew to be false, or in respect of which it was reckless as to whether they were true. The law governing fraudulent misrepresentation is well-settled. Most businessmen would agree that a party who has been deceived as to the contract should have recourse against the fraudster. Parliament has enacted the Misrepresentation Act 1967, under which a contract can be rescinded if it was induced by negligent or even innocent misrepresentation, though the right to rescission can of course be lost (for example if the contract is affirmed, through delay in claiming the remedy, or where it is impossible to restore the parties to the position prior to the contract). A second example of a ground for rescission is unilateral mistake, where one party to the contract is mistaken about a fundamental matter affecting the bargain, and the other party is aware of this, but says nothing. These vitiating factors are not concerned with commercial pressure or the unfairness of the transaction.

Equity views some transactions as unconscionable and will set them aside because impermissible pressure has been brought to bear on a contracting party. The operation of this equitable doctrine, sometimes referred to as 'undue influence' depends on the abuse of a relationship of trust and

confidence between the parties (such as doctor and patient, solicitor and client, or husband and wife), or the exploitation of a particular vulnerability affecting a party. Equity assists because a vulnerable party has been taken advantage of, but it will not lend assistance where a party has merely made a bad, or even terrible, bargain.

To read the full article, see the PDF linked below.

[You-Can't-Always-Get-What-You-Want-Lawful-Actions-Amount-to-Economic-Duress.PDF](#)