

# Undue influence in law of contract



The House of Lords, in the case *Royal Bank of Scotland v Etridge* dismissed the appeal of the latter on the grounds that there was no evidence of undue influence or manifest disadvantage. The case that involved seven other similar circumstances of wives claiming undue influence, the learned judges noted a bank should advise a wife to take independent advice in such cases where she is providing an asset of hers as a security to her husband. As per the decision, " There was no evidence of undue influence or manifest disadvantage. The solicitors were not the banks agents for the purpose of advising Mrs Etridge and the bank was entitled to rely on the solicitors assurances, even though those were false" (*United Settlement n. d.*). Under English law, undue influence is a reason for rescinding a contract if it can be proved by the victim. There are many relationships where one party can hold influence over another due to its inherent nature. An employer can have influence over an employee or a husband can have influence over his wife. But it need be undue influence or through duress for a contract to be set aside. According to Lord Nicholls, one of the judges in this case, " The law has set limits to the means properly employable for this purpose. To this end the common law developed a principle of duress" (*United Kingdom House of Lords 2001*). Under English law there is no precise definition as to what constitutes undue influence and will depend upon the circumstances of each case. But what should be proved is that a relationship with influence has been to abused or exploited to claim undue influence (*e-lawresources. co. uk n. d.*). In this particular case, since there was no evidence of undue influence by Mrs Etridge's husband, the fact that she had sought independent advice is not relevant. So it can be said that unless undue influence existed and the same is proved by the wronged party, there is no recourse and a contract is

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valid.

In any relationship, either of the parties can be in a position to receive information that should not be made public. It can be between a lawyer and client, between a doctor and patient, or a banker and customer (O'Neill 2007). So if a relationship has this feature, then it is a confidential relationship. Here again there is no formal definition, and the fact whether a relationship is confidential will depend on the facts of each case. In that sense, the relation between husband and wife can be deemed to be confidential in nature since they may share information which should not be made public. For duress to take place there must be either threats or coercion according to Black's Law Dictionary. In the case of duress, there must be instances of physical violence or at least threat of physical violence while in coercion this is not needed. Coercion happens when a person happens to be made to act outside of free will and is forced to act in a way that is morally and legally wrong. It can be said that coercion has a wider connotation and can include physical violence and threats.

There is no firm definition of 'some personal relationship' in English law. But from a review of literature on the area, such relationships can occur between any two classes of persons. It can occur between a husband and wife, between a company and a customer or in any instance where two parties form a partnership, contract, friendship or marriage. There are other countless examples of such relationships. It can occur between an employer and employee, between a doctor and patient, or between a lawyer and client. There appears to be no specific clause or statute in contract law that has significance with regard the concept of 'some personal relationship' which can influence a decision of a court in the country.

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Setting aside a contract means that it will not be binding on the parties to the contract. Courts can set aside contracts for various reasons like mistakes, proved existence of coercion, threat, duress etc. For example, English courts will set aside a contract for mistakes which are common, mutual or unilateral subject to certain conditions and stipulations. If the above factors exist and can be proved in a court of law, contracts can be set aside. Here also, it will depend on the circumstances of each case. The book, 'Restitution at the crossroads: a comparative study', states that English law is prone to set aside contracts on mistaken identity. It will ultimately depend on the statute and the facts of each case in deciding whether a contract can be set aside.

#### References

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