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**ECONOMIC DURESS: WHEN CAN ACTING LAWFULLY BE DEEMED TO BE ILLEGAL?**  
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**AGENDA**

**01** Overview: What is economic duress?  
**02** *Morley (trading as Morley Estates) v The Royal Bank of Scotland plc* [2020] EWHC 88 (Ch)  
**03** *Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40.

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**Overview: What is economic duress?**

- In contract law there are various vitiating factors which can render a contract void or voidable, e.g., fraud, misrepresentation, undue influence, and duress.
- If a person threatens you with violence to agree to something, that is obviously illegitimate pressure, and the court will set aside the agreement.
- Economic pressure may be sufficient to amount to duress.
- Legitimate and illegitimate pressure.

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***Morley (trading as Morley Estates) v The Royal Bank of Scotland plc* [2020] EWHC 88 (Ch)**

- Set a high bar for establishing a cause of action based on intimidation or economic duress.
- There must be clear illegality specifically threatened giving rise to a compulsion which is illegitimate.
- It has long been an established principle of the law in this area that duress is difficult to establish unless the course of action threatened is an illegal act.
- "lawful act duress" (i.e., where the thing threatened is a legal action) is very hard to establish and that is particularly so in the context of contracts and transactions concluded between commercial persons.

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

- Facts
- Lower courts decisions:
  - TT was successful at first instance in the Chancery Division of the High Court, with Warren J holding that TT was entitled to rescind the contract for economic duress.
  - However, that decision was overturned by the Court of Appeal which held that duress could only be established if PIAC had been acting in bad faith on the basis that it had not genuinely believed that it had a defence to TT's claims for past commission.
  - The Court of Appeal judgment therefore appeared to introduce an element of "bad faith" into "lawful act duress".
  - TT appealed the decision of the Court of Appeal to the Supreme Court.

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

- Split Decision
- The Majority Decision
  - Lawful act duress, including lawful act economic duress, exists in English law.
  - Three elements need to be established for lawful act economic duress:
    - an illegitimate threat;
    - sufficient causation - in other words, that the illegitimate threat caused the threatened party to enter into the contract; and
    - that the threatened party had no reasonable alternative to giving in to the threat.
  - As the threat is lawful, the illegitimacy of the threat is determined by focusing on the justification of the demand.
  - A demand motivated by commercial self-interest is, in general, justified.

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

- Bad Faith
  - a) This was the point of disagreement between Lord Burrows and Lord Hodge (with whom the others agreed).
  - b) Lord Burrows's opinion was that it would be possible to make out a claim for lawful act economic duress if the claimant could establish that the threatening party was in bad faith when it made its demand of the threatened party.
  - c) Lord Hodge rejected this bad faith element.

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

- Lord Hodge and the Majority's reasoning:
  - a) No doctrine of inequality of bargaining power.
  - b) No general principle of good faith in contractual dealings.
  - c) The scope for "lawful act economic duress" in commercial dealings is therefore, in Lord Hodge's judgment, "extremely limited."
  - d) The court was not keen on extending the law of lawful act economic duress.
  - e) Therefore, even if the court found that a party was acting in bad faith, that would not be sufficient to lead to a finding of economic duress.

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

- Where does that leave the doctrine of lawful act economic duress?:
  - a) Existing examples where lawful act economic duress have been made out:
    - i. where the threatening party uses his knowledge of criminal activity by a person or a member of that person's close family in order to obtain a personal benefit through an express or implicit threat to report that crime to the authorities.
    - ii. where a person, having exposed himself to a civil claim by another person (e.g. a damages claim for breach of contract), deliberately manoeuvres the claimant into a position of vulnerability by means which the law regards as illegitimate and thereby forces the claimant to waive his claim.

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

- Where does that leave the doctrine of lawful act economic duress?:
  - b) *Borrell v Ting* [2010] UKPC 21
  - c) *Progress Bulk Carriers Ltd v Tube City IMS LLC (The Cenk Kaptanoglu)* [2012] EWHC 273 (Comm)

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***Pakistan International Airline Corporation v Times Travel (UK) Ltd* [2021] UKSC 40**

Conclusions:

1. The fact that one party is in a much stronger bargaining position is irrelevant.
2. No "bad faith" exception.
3. Clarity on the legal position.
4. The court is not asked to be asked to impose an objective analysis in respect of what was a subjective decision making process or negotiating tactic.
5. Although "lawful act economic duress" exists in English law, it only exists in very restricted circumstances in which the actions of the threatening party are morally reprehensible or repugnant, or the behaviour is unconscionable or bordering on criminality.
6. A very high bar has been set by the Supreme Court.

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**PERSONAL GUARANTEES**  
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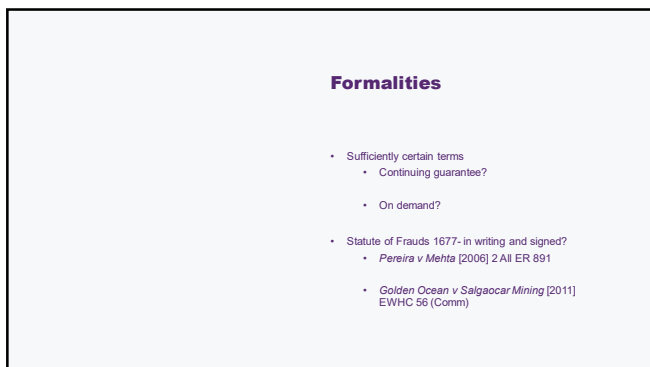
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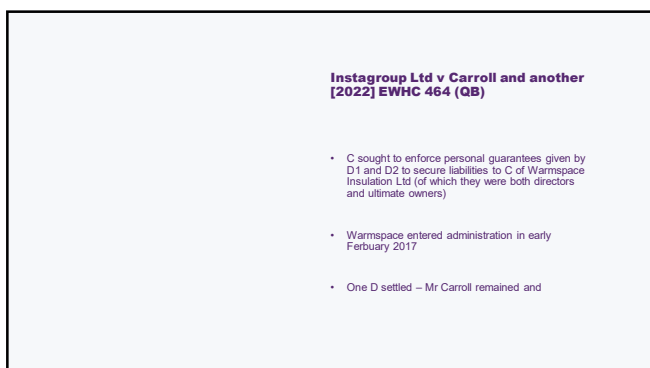
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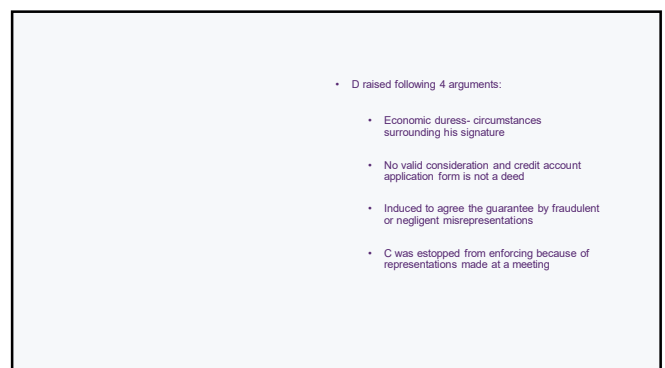
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### Economic duress

- C's representatives stated unless Ds signed credit account application forms incorporating personal guarantees, C would stop supplying materials to WarmSpace and take immediate steps to enforce WarmSpace's obligations
- D said this would have stopped a proposed management buy-out from proceeding and constituted illegitimate pressure

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- 3 elements for economic duress:
  - Illegitimate, albeit lawful, threat
  - Threat caused entry into contract
  - Lack of reasonable alternative
- Threat- C stop supplying WarmSpace, which was critical to survival of WarmSpace
- Held: No such threat was made on the facts
- Demands were not 'reprehensible or unconscionable'
- "[82] The request for personal guarantees was one, which would be justified by the commercial self-interest of Instagroup.
- There were alternative suppliers
- Mr Carroll's evidence was he signed on legal advice that the guarantee was unenforceable- therefore threat not causative

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### Failure of consideration

- Unless by deed, must provide consideration- not concerned with whether 'adequate'
- Consideration does not need to 'move to the promisor'. Satisfied when benefit conferred on a third party
- D: credit account application form contained a unilateral promise, consideration was C agreeing to supply goods on credit, which was not adequate consideration

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- "[89] the promise by [C] to supply goods on credit is in principle good consideration for the personal guarantee... [C] is promising they will continue to supply goods to the company of which the guarantor is a director in return for the promise by the guarantor that they will stand as surety for the company's debts"
- [90]- also part of larger transaction- condition of C agreeing to reschedule payments owed by WarmSpace

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### Misrepresentation

- Contracts can be rescinded for both negligent and fraudulent misrepresentation
- Person seeking to rescind must establish:
  - Statement of fact amounting to a representation
  - Statement is false
  - Statement must be by or known to the other contracting party
- Negligent- representation must be one which representor had no reasonable grounds to believe AND induced representee to enter into contract (but for, would not have entered)
- Fraudulent -- sufficient that it is a factor in decision. Must also establish it was made knowingly, without belief in its truth, or recklessly

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- D relying on representation alleged to have been made at meeting on 7 May 2015
- Various pleaded:
  - "don't worry, it is not our policy to use this as a way of holding you personally responsible for the debt. To be honest, as a guarantee it is not worth the paper it is written on."
  - "we would never come after your properties like that"
- None had clear recollection of meeting given the time that had passed
- On balance not representations made:
  - [94] inherently unlikely a company would have standard form credit application with a personal guarantee if never enforce
  - Might have said C 'would not enforce the personal guarantees except as a last resort'
- Even if were, would have failed on causation- was accepted on those terms to get change of payment schedule

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**Estoppel**

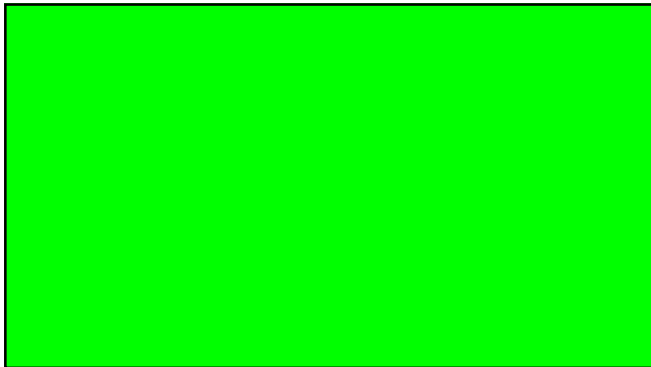
- Based on the alleged representations
  
- Therefore also failed on finding no such representations were made

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**Checklist**


- Section 4, Statute of Frauds 1677 complied with?
- Terms sufficiently clear?
- Specific guarantee or 'all monies'?
- Deed or identifiable consideration?
- Was independent legal advice suggested?
- Circumstances in which it was given- any duress?
- If 'on demand', have the demand requirements been complied with?
- Has the underlying contract been varied? If so, are they material changes, were they communicated to the guarantor, and was consent obtained?
- Would the principal have a counterclaim/set-off the guarantor may rely upon?
- Cap on liability within the guarantee?

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