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**School of Law**

**Assessment Cover Sheet and Academic Integrity Statement**

**Module: LAW4008M**

**Title: Contract Law and The Civil Justice System 2**

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2. This submission consists of my own original work and no part of it has been copied from another source without that source and its author having been properly acknowledged. I understand that presenting the work or ideas of another person as though they were my own is plagiarism.
3. No component of this work has been submitted in support of another qualification in this University or elsewhere.
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**1.)**

**Adam – Issue:**

Adam is in a desperate financial situation, with regards to his bakery. His supplier, Sunflower Corporation (SC) is aware of such and decides to take advantage. SC has threatened to cease future deliveries of essential goods unless Adam agrees to purchase additional goods from the supplier (which are significantly higher than the market rate). With Adam reluctantly agreeing to these demands, does Adam have any right to dispute the contract?

**Rule:**

When examining the circumstances upon which Adam has agreed to the demands made by SC, it is clear that a form of duress is in play. Duress renders a contract voidable and thus allows the innocent party to rescind the contract. There are three types of duress: duress to the person (through threats or use of violence), to goods (through threats of damage to goods) and economic duress (which arises from illegitimate pressure surrounding the financial situation of the victim)[1]. It is most likely that Adam has been a victim of economic duress based on the events that occurred, however, it is vital to determine whether that is the case by examining what constitutes as such.

Economic duress relies on Lord Dyson's three-part test, where this is defined as pressure

"(a) whose practical effect is that there is compulsion on, or 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"[2]

Thus, it must first be established as to whether there is any "lack of a practical choice" or alternative for Adam based on SC's actions.

**Lack of practical choice**

[1] Ewan McKendrick, *Contract Law: Text, Cases and Materials* (10th edn, OUP 2022).
[2] *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] Build LR 530

When examining the case facts, it is clear that Adam has a trade which requires specialist goods to perform. His “special vegan bread” has requirements that are thus unlikely to be found elsewhere, with this being expressed in Adam’s fear that his business will collapse without access to SC’s delivery and the materials they contain. As a result of this, a practical choice is likely unable to be found effectively; Adam is likely to feel compelled towards the need for SC’s goods, especially with his financial situation and how this is in despair.

With a lack of an alternative practical choice, it must now be determined if SC’s demands were illegitimate.

**Illegitimacy – Rule**

The concept of illegitimacy is defined within the case of *DSND Subsea v Petroleum Geo-Services* [2000], where the court must determine that there has been an "actual, or threatened, breach of contract" and whether the person has acted unlawfully or in "bad faith" when doing so[3]. These factors both play a role, alongside the previously established rule with regards to a lack of alternative practical choice, to determine whether a court will rule that one's actions are illegitimate.

**Application:**

When examining the case facts, it is said that SC has threatened to "cease all future deliveries" and thus has very clearly threatened a breach of contract; had SC merely asked to negotiate terms, then this would have not occurred. While it is clear that no unlawful actions have occurred, it is also clear from the case facts that SC appears to be willing to, and has, acted in bad faith when taking advantage of Adam's financial situation. 'Bad faith' is defined in multiple cases, but generally takes the image of a dishonest action or a lack of transparency between parties; this was particularly highlighted in the case of *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003], where Lord Bingham states that: "each party will assume the honesty and good faith of the other; absent such an assumption they would not deal."[4] SC has shown a clear lack of honesty in their advantage-seeking behaviour surrounding Adam's precarious financial situation and thus their action would likely be seen as illegitimate, although this is to the court's discretion.

With SC's actions potentially determined as illegitimate, it is now vital to determine whether their demands were a significant enough cause to induce Adam into entering the contract.

**Rule – Significance and inducement**

In order to fully determine as to whether economic duress is present within Adam's case, the demands or threats from SC must be "a significant cause inducing the claimant to enter into the contract"[5].

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[3] *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530
[4] *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6
[5] *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530

**Application:**

When examining the case notes, it is clear that SC has threatened to cease all future deliveries such that Adam does not agree to a higher purchase price. This would likely be seen as significant by Adam, as he risks losing essential materials such that the new contract is not made; with this being the case it is clear that SC's demands and threats have been a significant cause inducing a new contract's formation.

**Conclusion:**

With the three parts seen in Lord Dyson's test for economic duress highly likely to have been determined, it is clear that SC's illegitimate actions have been a significant cause in inducing Adam to enter into a contract for higher prices where no other reasonable option was available to him. Sunflower Corporation has likely taken advantage of Adam's poor financial situation and thus constituted economic duress. However, the decision regarding whether this is the case and whether Adam has a right to challenge the contract is at the court's discretion, where they may offer rescission[6] of the contract to put the parties back to their previous positions.

**Sarah – Issue:**

Sarah, whom runs the bakery with Adam, has entered into a contract with John to rent a venue for £1,500. She makes a deposit of £750, however, due to unforeseen circumstances, the venue is destroyed, and no suitable alternative venue can be found. As such, she informs John that the contract can no longer proceed. It must be determined as to what Sarah's contractual position is, and what remedies may be accessible to her.

[6] LexisNexis, 'Rescission definition' (LexisNexis, 2024) <https://www.lexisnexis.co.uk/legal/glossary/rescission> accessed 21 May 2024

**Rule:**

From the case facts, it is quite clear that an element of frustration has occurred. Frustration is a method upon which a contract can be discharged; it occurs when the performance of a contract becomes impossible or radically different as a result of an unforeseen event that is the fault of neither party. For example, this principle was expressed in *Taylor v Caldwell* (1863), where a hall burnt down which was to host a series of concerts; as such, both parties were relieved of their contractual obligations as it would be impossible to continue[7]. There exist three main methods behind which frustration can occur: if it is impossible[8], illegal[9], or pointless[10] to continue, and when examining the case facts behind Sarah's legal inquiry it is most likely that due to a lack of means behind which a new venue can be procured, there is frustration by impossibility present.

**Application:**

The case facts tell us that the venue, upon which was the subject matter of the contract, was destroyed; Sarah likely finds herself in a similar situation as to the events of *Taylor v Caldwell* (1863), wherein the destruction of the subject matter has led to an impossibility for the contract to continue[11]. With no alternative venues that can be offered, an impossibility is likely prevalent.

**Conclusion:**

With frustration, by impossibility, the most likely conclusion to Sarah's contractual arrangement with John, remedies must now be discussed. With frustration, although previously a deposit could not be recovered[12], the Law Reform (Frustrated Contracts) Act 1943, section 1(2), states that "all sums paid or payable to any party… before the time when the parties were so discharged… shall be recoverable from him"[13]; Sarah will be able to recover her £750 which she has paid initially. Furthermore, as the contract is discharged, no further obligations are required from either party.

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[7] *Taylor v Caldwell* (1863) 3 B&S 826
[8] Ibid
[9] *Fibrosa Spolka v Fairbairn* [1943] AC 32
[10] *Krell v Henry* [1903] 2 KB 740
[11] *Taylor v Caldwell* (1863) 3 B&S 826
[12] *Chandler v Webster* [1904] 1KB 493
[13] Law Reform (Frustrated Contracts) Act 1943, s. 1(2)

3.)

**Issue:**

James has entered a contract with Susan for the sale of a believed Picasso painting. This contract specifies details of the painting, including the title, description, and price. Both parties are under the belief that the painting is genuine. After the sale however, the painting is found to be a forgery by an art expert. Susan and James are thus seeking legal advice on the consequences of such a mistake.

**Rule:**

When initially examining the case facts, it is important to discuss the doctrine of mistake. Mistake in a contract is an error made before or during the contract by one or both parties which can affect the operation of such. In essence, a contract can be made void such that a fundamental mistake (significantly impacting the root of the contract) is made which removes any validity surrounding the parties' consent[14]. There are three types of mistakes:

**Common Mistake:** where the parties both make the same mistake.

**Mutual Mistake:** Where both parties make a mistake, but they are different from one another.

**Unilateral Mistake:** Where a party makes a mistake and the other uses this to their advantage.[15]

In the case of James and Susan, it is quite clear that both parties have made the same mistake in relation to the genuineness of the painting and thus we can classify the situation as having a common mistake; both parties have made a false assumption, without an allocation of risk wherein neither party is at fault, and thus performance is impossible as the mistake is fundamental[16]. Furthermore, it is clear that the common mistake between the parties is in relation to the quality of the painting and thus we can refer to the definition of such as told by Lord Atkin:

> "[Mistake as to quality] will not affect assent unless it is the mistake of both parties, and is as to the existence of some quality which makes the thing without the quality essentially different from the thing as it was believed to be"[17]

**Application:**

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[14] André Naidoo, *Complete Contract Law: Text, Cases and Materials* (1st edn, OUP 2021)
[15] Ibid
[16] *Great Peace Shipping Ltd v Tsavliris Salvage International) Ltd* [2003] QB 679
[17] *Bell v Lever Bros Ltd* [1932] AC 161

It is very clear that the painting is of a quality that is “essentially different from the thing it was believed to be”. The painting is not a genuine Picasso piece and thus has lost any value it gained from the belief in its painter. As further mentioned by Lord Atkin: “a sound horse would not be 'essentially different' from an unsound horse. But a racehorse is essentially different from a carthorse.”[18] While the painting is nearly identical to the true Picasso piece, the appeal and value of it rests within the painter’s notoriety; without such, the painting remains a “carthorse”.

However, it is important to note that the principle of caveat emptor would be a valid defence for Susan. This principle, also known as buyer beware, is the idea that the “buyer alone is responsible for checking the quality and suitability of goods before a purchase is made”[19]. With this in mind, it may be possible for Susan to argue that the quality of the painting was to be verified by James’ due diligence. While this may not have been possible, as both parties believe the painting to match the description of an authentic Picasso piece, Susan could perhaps raise the defence to avoid potential damages.

[18] Ibid

[19] Oxford Reference, ‘caveat emptor’ (Oxford Reference, 2024) <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095556307>accessed 25 May 2024

**Conclusion:**

Both parties have made a common mistake as to the subject quality of the painting. With the painting being a forgery it has, referring to Lord Atkin's quote, being demoted from a "racehorse" to a "carthorse"; the painting has become different from what it was believed to be, and thus has been a vitiating factor in the contract. With the court likely to rule that the contract is thus void, with the mistake reaching the root of the agreement, it is likely that they may issue a rescission. While restitution would recover all monies paid such that a transaction occurred[20], an equitable remedy alongside this in the form of rescission would place both parties back to the positions they were in prior to the contract's formation[21]. Furthermore, repudiation would allow both parties to refuse further performance and thus prevent the obligation on James to purchase the forged piece[22]. This is conclusively as to the court's discretion. Susan may be able to use the principle of caveat emptor as a defence to any damages she may incur as due diligence should have been conducted by James.

[20] Thomson Reuters, 'Restitution' (Thomson Reuters, 2024) <https://uk.practicallaw.thomsonreuters.com/1-107-7154> accessed 23 May 2024

[21] LexisNexis, 'Rescission definition' (LexisNexis, 2024) <https://www.lexisnexis.co.uk/legal/glossary/rescission> accessed 23 May 2024

[22] LexisNexis, 'Repudiatory breach definition' <https://www.lexisnexis.co.uk/legal/glossary/repudiatory-breach> accessed 23 May 2024

**Cases**

- *Chandler v Webster* [1904] 1KB 493
- *DSND Subsea Ltd v Petroleum Geo-Services ASA* [2000] BLR 530
- *Fibrosa Spolka v Fairbairn* [1943] AC 32
- *Great Peace Shipping Ltd v Tsavliris Salvage International) Ltd* [2003] QB 679
- *HIH Casualty and General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6
- *Krell v Henry* [1903] 2 KB 740
- *Taylor v Caldwell* (1863) 3 B&S 826

**Statute**

- Law Reform (Frustrated Contracts) Act 1943, s. 1(2)

**Bibliography**


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