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A summary of the concept of ‘coercion’ in its context as a vitiating factor, statutorily codified in the Contracts Act 1950.

Free consent is one of the elements of a valid contract.¹

When a contract is entered into as a result of coercion, there is no free consent² and the agreement is voidable at the coerced party’s option.³

The Contracts Act 1950 defines ‘coercion’ as follows:

“... the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of

any person whatever, with the intention of causing any person to enter into an agreement.”
(emphasis ours)

In view of the use of the word “or” in the Contracts Act 1950’s definition of ‘coercion,’ the definition should be read disjunctively.⁴

Thus, coercion can occur where there has been:

- (i) the commission of, or threat to commit any act forbidden by the Penal Code [**“Commission/Threat of Commission of act forbidden by the Penal Code”**];

¹ See Section 10 of the Contracts Act 1950

² See Section 14(a) of the Contracts Act 1950

³ See Section 19(1) of the Contracts Act 1950; see also *Beca (Malaysia) Sdn Bhd v Tan Choong Kuang & Anor* [1986] 1 MLJ 390, at p. 395

⁴ See e.g. *Martego Sdn Bhd v Arkitek Meor & Chew Sdn Bhd and another appeal* [2018] 4 MLJ 496, at p. 537; *Teck Guan Trading Sdn Bhd v Hydroteck Engineering (S) Sdn Bhd & Ors* [1996] 4 MLJ 331, at pp. 337-338



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(ii) unlawful detaining or threat to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement [**“Unlawful Detention/Threat of Detention of property + Causal Intention”**].

Commission/Threat of Commission of act forbidden by the Penal Code

If a party contends that he/she was coerced by the Commission/Threat of Commission of act forbidden by the Penal Code, he/she has to “say what offence had been committed under the Code before the court [can] decide

whether such an offence had been committed.”⁵

Failing to provide the material particulars demonstrating the coercive act would likely be fatal to a claim of ‘coercion.’⁶

Unlawful Detention/Threat of Detention of property + Causal Intention

If the detention of a property is in exercise of a party’s legal right over its own property,⁷ such a detention would not be unlawful and coercion would not have occurred.

⁵ *Teck Guan Trading Sdn Bhd v Hydroteck Engineering (S) Sdn Bhd & Ors* [1996] 4 MLJ 331, at p. 337

⁶ *Mega Jozah Sdn. Bhd & Ors v True Expert Consultancy* [2019] MLJU 807, at paragraph 39

⁷ *Teck Guan Trading Sdn Bhd v Hydroteck Engineering (S) Sdn Bhd & Ors* [1996] 4 MLJ 331, at p. 338



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General

The issue of whether there was coercion, is admittedly “fact sensitive depending on the unique circumstances of each case.”⁸

However, some issues which can be considered in a claim of ‘coercion’⁹ include:

- (i) whether the person alleged to have been coerced did or did not protest;
- (ii) whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course

open to him such as an adequate legal remedy;

(iii) whether he was independently advised; and

(iv) whether after entering the contract he took steps to avoid it.

Obsolete?

Visu Sinnadurai in his *Law of Contract* (2nd Ed) commented that, “Acts which are offences other than under the Penal Code or which are merely a civil wrong will not amount to ‘coercion’ within the ambit of s 15. To a very large extent, this limited definition in the Contracts Act

⁸ *Bergamo Development (M) Sdn Bhd v Eck Development Sdn Bhd & Anor* [2018] MLJU 555, at paragraph 66

⁹ As laid down by Lord Scarman in *Pao On v Lau Yiu Long* [1980] AC 614, at pp. 635-636



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renders the scope of coercion obsolete.”¹⁰

Its arguable obsolescence notwithstanding, ‘coercion’ remains a vitiating factor codified in the Contracts Act 1950 and remains applicable till today.

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¹⁰ Visu Sinnadurai, *Law of Contract* (2nd Ed), at p. 256