



# Business/Marketing Virtual Learning

# 10-12 grade Business Law

April 27, 2020



Lesson: [April 27, 2020]

**Objective/Learning Target:**  
ASSENT

Recognize when Genuine Assent is not present and Duress

# Let's Get Started

Review This Video:

[Contracts: Duress](#)



# Genuine Assent and Duress

## Genuine Assent -

One of the most important requirements for a **valid** (legally binding and enforceable) contract is genuineness of assent. **Genuine assent** is true and complete agreement. Without genuine assent a contract typically is **voidable**. This means that, if the injured party desires, that party can cancel or avoid the contractual obligation. The party then has the legal right to get back what has already been put into the contract, which is called **rescission**.

Rescission must be carried out promptly after the injured party discovers that her or his assent was improperly obtained. In addition, it must occur before the injured party ratifies the contract. **Ratification** is conduct that confirms an intent to be bound by the contract. Grounds for a recession due to a lack of genuine assent include duress, undue influence, mistake, misrepresentation, and fraud.

# Genuine Assent and Duress

## Duress -

Actionable or legal **duress** only occurs when one party uses an improper threat or act to obtain an expression of agreement. The resulting contract is voidable. Much of the law of duress focuses on the nature of the threat. 4 common natures of threat are:

- 1) Threats of Illegal or Tortious Conduct - The threat to engage in illegal or tortious conduct, such as a crime or tort, to win agreement is always duress. Committing an act of violence (for example, stabbing), threatening a crime (threatening to stab), committing a tort (for example, unlawful detention), or threatening a tort to obtain a signature on a written contract is duress. The actual crime or tort, or the threat, may be to the physical life, liberty, or property of the victim, the victim's immediate family, or the victim's near relatives.
- 2) Threats to Report Crimes - If you observe a crime, you have a duty to report it to the proper authorities. If you use a threat of reporting to force the criminal to contract with you, this is actionable duress. It may also be the crime of extortion.

# Genuine Assent and Duress

- 3) Threats to Sue - The law encourages parties to settle conflicts without a suit. An important part of this process involves communicating a threat that you will sue if the other side doesn't settle. This happens frequently. However, when the threat to sue is made for a purpose unrelated to the current contractual negotiation, this may be duress.
- 4) Economic Threats - Often when parties are bound by a valid contract, they will seek to modify it. Parties then are tempted to use the economic power they have over one another to negotiate a favorable modification or settlement. If a manufacturer has a contract to pay a supplier \$15 for a computer part needed to maintain production, the supplier might threaten to withhold the parts unless the manufacturer agrees to a price of \$20 each. If a disruption in the flow of parts would cause substantial injury to the manufacturer, then the courts likely would find the agreement on the new price an economic threat voidable for duress. However, in economic duress cases, the courts look not only at the threat but at the alternatives available to the threatened party.

## ACTIVITY #16 (support your answers in Journals)

- 1) List the various forms of legal duress.
- 2) Manuela rented an apartment and later discovered that the roof leaked. She asked the landlord to make repairs, but he refused. Manuela said that she would move out unless the landlord either made the repairs or lowered the rent. The landlord lowered the rent. Does Manuela's conduct make the modification to the contract voidable due to duress?
- 3) Cameron owned a promising racehorse that Link had offered to buy for undisclosed parties. When Cameron refused to sell, Link lowered his voice and slowly said, "Listen, the people I represent don't take 'no' for an answer. If you don't sell, they'll hurt you. They'll hurt your family. Like a good friend, I'm telling you to sell. You're getting a fair price, just sign the contract." Cameron, who had secretly recorded the conversation, sold. Then he called the police. Can he now rescind and get his horse back?