

Position of Lawful Act Duress in Economic Duress in Hong Kong—Elephant in the Room?

Timothy Hoi Yan Chow

Faculty of Law, The University of Hong Kong, Hong Kong, China

Email: u3623714@connect.hku.hk

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Abstract

Eighteen years have passed since the Hong Kong Court of Appeal's judgment in *Esquire (Electronics) Ltd v Hong Kong and Shanghai Banking Corp Ltd* [2007] 3 HKLRD 439 laid a landmark decision in Hong Kong courts' ruling of economic duress. With *Esquire* being labelled cautionary treatment, the position of lawful act duress in Hong Kong has been rendered an elephant in the room until the Hong Kong Court of Final Appeal clarifies. Upon analyzing the historical development of economic duress under English law, problem of economic duress confined to unlawful acts only in Australia, this article aims at banishing the bona fide, yet incomprehensive concerns regarding making a determination was not essential to justice in this case and could have been seen as unnecessary obiter comments. Concluding by shedding light on the importance of providing certainty and guidance to lower courts as well as future litigants on the scope of the law in Hong Kong, it is proposed that a ruling in position of lawful act duress in economic duress should be made.

Keywords

Lawful Act Duress, Economic Duress, Contract Law, Private Law, Hong Kong

1. Introduction

The position of lawful act duress in economic duress under Hong Kong law has remained an unsettled issue. While the HKCA in *Esquire Electronics Ltd v Hong Kong and Shanghai Banking Corp Ltd* declined to decide on this point, the question of whether the duress act must be unlawful or if it could be lawful continues to loom large. This issue, described metaphorically as the “elephant in the room,” takes on particular significance given Hong Kong's common law system and the relevant developments in English law.

As *Treitel* observes, economic duress developed at common law to allow avoidance

of contracts where apparent consent was induced by illegitimate pressure from another party (Peel, 2015). Economic pressure will amount to duress if it is “illegitimate” and “has constituted a significant cause inducing the decision.”

In *Universe Tankships Inc of Monrovia v International Transport Workers Federation*, Lord Diplock described economic duress as involving “threats or pressure... which the law does not regard as legitimate.” Yet he did not state the threat had to be unlawful. Other key English cases including *CTN Cash & Carry Ltd v Gallaher Ltd* (1994) and *Huyton SA v Peter Cremer GmbH* (1999) have considered scenarios of lawful act duress, suggesting lawful acts could potentially found such claims.

Nevertheless, it is warned that restricting economic duress to unlawful acts alone could allow those devising “outrageous but technically lawful means of compulsion” to escape liability. Taking a step further, this may imply that Hong Kong could have moved towards accepting lawful acts could induce illegitimate pressure. Authorities such as *Crescendo Management v Westpac Banking Corp* (1988) have proposed pressure must consist of “unlawful threats or amounts to unconscionable conduct”, leaving open if lawful act duress is considered. However, the CA in *Esquire* explicitly declined to decide on this point of Hong Kong law.

Albeit preserving flexibility, this approach propagates a lack of certainty for parties and lower courts. Without resolution, divergent approaches remain possible. As the law in other common law nations such as Australia and England have gravitated towards accepting lawful act duress, Hong Kong risks being out of step by maintaining ambiguity on this issue. Ultimately, clarification is needed to fill this conspicuous gap in Hong Kong’s economic duress jurisprudence.

2. Historical Development of Economic Duress

2.1. Pre-Pakistan *International Airlines Corp.* Position

The seminal case of *Barton v Armstrong* (1976) acts as a pivotal juncture in the advancement of economic duress. In this instance, Barton was coerced into selling his shares at an undervalued price due to the economic pressure exerted by Armstrong. The latter resorted to withholding payment of a substantial debt to compel Barton’s acquiescence to unfavorable terms. The court, recognizing the absence of freely given consent, established economic duress as a valid ground for nullifying a contract.

Subsequent cases post-*Barton* broadened the scope of economic duress. The judiciary acknowledged that economic duress could arise not only from the threat of withholding payment for an existing debt but also from the menace of contract termination or infliction of financial harm through alternative means. This expanded understanding aptly accounted for the diverse array of economic coercion that parties might confront. In *Universe Tankships Inc. of Monrovia v. International Transport Workers’ Federation* (The Universe Sentinel, 1983), it further refined the prerequisites for establishing economic duress. The UKHL emphasized the necessity of illegitimate pressure which coerces the victim’s volition.

Furthermore, economic duress could only be deemed valid if the victim had no reasonable alternative but to capitulate to the coercion. The court also underscored that a mere opportunistic leveraging of economic vulnerabilities does not suffice to warrant a claim of economic duress; a genuine element of coercion must be present.

In addition, the *Atlantic Baron* (*North Ocean Shipping Co v Hyundai Construction Co*, 1979) demonstrated that economic duress extends beyond immediate threats of economic harm. The court established that economic duress may stem from a party's wrongful renunciation of its contractual obligations, particularly when such a breach would have severe financial repercussions for the counterparty. This precedent widened the purview of economic duress to encompass scenarios where the actions of one party, rather than explicit threats, engendered economic coercion.

2.2. Pakistan International Airlines Corp.

In 2021, *Pakistan International Airlines Corp v. Times Travel (UK) Ltd* (2021) stands as a significant milestone in the evolution of economic duress in English law. In the present case, an airline company sought to recover outstanding payments owed by a travel agency. The agency counterclaimed, arguing that the airline had exerted economic duress by threatening to terminate their contract and withhold future business opportunities unless the agency paid the outstanding amount.

The UKSC examined the elements of economic duress. It emphasized that economic duress could arise from a threat of economic harm, such as contract termination or the denial of future business, that coerces a party into accepting unfavorable terms. The court recognized that economic duress could invalidate a contract if the party claiming duress had no reasonable alternative but to accede to the coercive demands (*Royal Bank of Scotland Plc v Etridge (No. 2)*, 2001). *Pakistan International Airlines Corp.* marked a significant departure from the limited recognition of economic duress before *Barton*. It expanded the understanding of economic duress beyond physical force, acknowledging the coercive power of economic pressure. This case contributed to the gradual development of economic duress as a distinct ground for contract nullification in English law.

2.3. Status Quo in Hong Kong—Esquire

2.3.1. Doctrine of Economic Duress

The legal doctrine of economic duress, also known as coercion or business compulsion, allows parties to challenge the validity of agreements entered under illegitimate pressure or threat. This equitable doctrine developed at common law to protect against situations where apparent consent was not truly freely given. While economic duress is a well-established concept in many common law jurisdictions, its precise contours and application remain an ongoing point of development and refinement. In Hong Kong, a high-profile case provides helpful insight into the status quo and understanding of economic duress within the local legal system.

2.3.2. *Esquire*

In this instance, the CA overruled a lower court decision that had found in favor of plaintiff Esquire Electronics on claims of breach of fiduciary duty, economic duress, and undue influence against defendant HSBC bank. The lengthy case centred around HSBC's insistence that a key commercial property, Li Fung House, owned by Esquire but mortgaged to HSBC, be sold in 1987 amidst Esquire's ongoing financial difficulties.

Esquire argued it only agreed to the sale due to illegitimate pressure from HSBC threatening to pursue full repayment of debts, including a disputed \$30 million sum. However, the Court of Appeal rejected this narrative, finding no evidence of illegitimate threats or pressure. Critically, the alleged \$30 million demand was never truly at issue between the parties and did not causally lead to the sale agreement. With no impropriety established, Esquire's claims of economic coercion failed.

In gist, the CA provided important guidance on interpreting and applying the doctrine of economic duress under Hong Kong law. While not definitively resolving ongoing debates around lawful versus unlawful threats, the ruling affirmed the necessity of proving illegitimate pressure as the lynchpin of any duress claim. Mere commercial hard bargaining is generally insufficient.

2.3.3. *Essence of Claim*

As elucidated in *Esquire* and other cases globally, the essence of a viable economic duress defence remains illegitimate pressure or threat so profound as to override a party's free will. Legitimate business pressure, no matter how "overwhelming," is generally accepted. The difficulty lies in discerning the boundary between permissible hard bargaining and truly improper coercion.

On the flip side, the test applied also varies. Some advocate only unlawful threats can ground duress, while others accept even lawful acts, if unconscionable. Australia has adopted a concept of "special disadvantage" to define impropriety (*Australia and New Zealand Banking Group Ltd v Karam*, 2005). Still, most recognize the doctrine aims to curb exploitatively restricting another's autonomy through disproportionate leverage. Causation between the pressure and consent is another hurdle claimants must clear.

In particular, Hong Kong adopts a pragmatic, commercial approach emphasizing substance over form. Rather than technical definitions, courts inspect facts holistically for impropriety, focusing on power disparity, disadvantaged position, and severity of threats. The *Esquire* ruling underscored this flexible, party-neutral methodology. While declining to choose laws lawful or unlawful tests, the CA nullified duress allegations by probing documentation and inherent probabilities.

Going forward, further appellate guidance may better delineate contextual factors indicating when pressure crosses into improper coercion. For example, threats to terminate "at-will" contracts are rarely duress, whereas jeopardizing another's livelihood or company survival requires heightened scrutiny. Ongoing issues also include applying duress to corporations versus individuals and the influence of preexisting relationships on power dynamics between parties.

In a nutshell, Hong Kong economic duress jurisprudence follows common law trends embracing flexibility over formalism. Continual commercial disputes will shape future evolutionary twists and turns. However, the overarching purpose remains preventing exploitation through illegitimately overbearing demands undermining true consent. So long as this equitable aim guides case-by-case analyses anchored firmly in objective facts rather than speculative character attacks, the doctrine should retain legitimacy serving justice for parties in Hong Kong.

3. Analysis

3.1. Certainty

The main criticism of the settlement revolves upon its lack of flexibility, rendering the miss of equity's aim. Be that as it may, it is believed that the argument is fundamentally flawed, by virtue of the need of recognition in concerns as to certainty (Handley, 2022). As famously remarked by Lord Scott in *The Golden Victory (Golden Strait Corp v Nippon Yusen Kubishika Kaisha, 2007)* that "certainty is a desideratum and a very important one, particularly in commercial contracts", certainty of the law is of utmost importance for businesses. In this connection, the principle of certainty and predictability in law would be investigated, followed by the elucidation in which the settlement of position of lawful act duress upholds certainty.

While pragmatic to keep flexibility, such continuing ambiguity corrodes foundational principles. Over two decades after the landmark ruling spotlighted this vacuum, inconsistent application persists eroding stability across litigation, transactions, and advisory landscapes. Counterarguments caution stretching doctrines, yet experience demonstrates balance attainable through stable frameworks governing impropriety rather than unlawful acts alone. Increasingly isolated, resolution aligns Hong Kong jurisprudence with predominant international norms serving valid policy aims through gradual, principled evolution.

The repercussions of legal limbo became clear through *Esquire* where the CA found duress failed factually rather than determine lawful coercion's validity. Left adrift somewhere between acceptance and rejection even within appellate consensus, this produced uncertain guidance perpetuated through conflicting lower interpretations like *Wong Lai-Ying v Chinachem Group* decades later.

Not unpredictability alone but unfair advantages raise concerns as ambiguity risks emboldening sharp commercial practices through techniques technically lawful yet unconscionably coercive. Enticing capitulation through proportionally exploitative leverage disproportionately endangers consent's sanctity wherever power imbalance obtains regardless status (Ogilvie, 1981). True autonomy demands protection broader than technicalities, instead shielding on equitable terms substantive voluntariness law focuses yet open rules leave unguarded.

Counterpoints rightly flagging cautionary scenarios nevertheless miss equity's aim: Not mechanically branding strategies unacceptable but probing fairness qualitatively through contextual review of evidence rather than rote legalisms

alone. Consent emerges the paramount concern, not whether tactics surpass strictly defined categories but whether coercive effect so overrode autonomy that justice demands intervention. Flexibility pairs principles appropriately by embedding strict evidentiary burdens within frameworks guiding judicial discernment (Lee, 2005).

Recent experience gives helpful guidance balancing interests fairly. Australia adapted decades ago, achieving stability via an established test centering “disproportionate advantage-taking” rather than lawfulness per se. No floodgates opened as claims require proving unconscionability, a “special disadvantage” seriously hindering autonomous choice exploited through illegitimate means the stronger party knew impaired consent. Outcomes align with equitable principles through nuanced, non-dogmatic review of impropriety not presence of specific categories alone. No jurisdiction stagnates through following proven methods facilitating justice and progress coherently together.

Counterarguments emphasize “unsettled” jurisdictions leave resolution open, yet patchwork approaches fragment rather than honoring local autonomy where consensus demands resolution for orderly evolution (Morgan, 2022). Equity’s nature embraces gradual yet purposeful change through principled balancing new with established, not inertia. Stability ensures equitable protections reasonably meet commerce’s expectations rather than lag indefinitely through legal risk aversion that serves none. Other fields faced comparable transitions through fair yet settled interpretation maintaining order during modernization.

Global commercial law looks beyond labels to substance, yet substance warrants departure from reservations holding back principled development through dated literalism alone. Sound standards focusing impropriety, not mere rule versus discretion debates, offer way forward that promotes both justice and predictability merits. Local conditions, precedent and flexibilities amply empower definitive settlement through the HKCFA without disruption, finally closing an inexplicable, self-inflicted wound in Hong Kong equitable safeguards that has lingered too long unnecessarily in equitable terrain it is uniquely positioned to guide constructively into light.

3.2. Deterrence of Improper Conduct

As a leading international commercial hub, Hong Kong prides itself on fostering a just and predictable legal system supporting vibrant business activity. One of equity’s protective bulwarks, as *Chitty* observes, the doctrine of economic duress shields parties from coercively compelled agreements impairing autonomous consent. Yet ambiguity lingers within this important safeguard’s scope. Specifically, the question remains open whether pressure grounding a defence must constitute an unlawful act, or if proven lawful acts could qualify under exceptional circumstance: An issue left outstanding for too long.

To commence, this uncertainty creates legal risks incompatible with order and fairness in diverse commercial relationships spanning Hong Kong’s dynamic

economy. While flexibility respects organic doctrinal evolution, interminable ambiguity breeds risks where none need exist. Global experience demonstrates balance feasible between rights and stability through reasoned, empirically informed development settling key uncertainties. Such settlement aligns Hong Kong's equitable protections more coherently with both local needs and international norms elevating predictability without stagnating progress. The time has come for resolution via precedent confirming lawful act duress as a proportionate solution serving justice equitably together

While upholding HSBC factually, the CA found duress failed on causation rather than confirm lawful or unlawful coercion's validity. Tang JA seemed to contemplate narrow lawful coercion viability, yet views differed even within appellate consensus. Debate continues spurred by inconclusive rulings rehearsing identical lawful act questions left unanswered. Other major jurisdictions transitioned decades prior via precedents establishing coherent yet adaptive standards via experience Hong Kong's highest court is ideally positioned rectify through equally prudent resolution.

Ambiguity compromises equitable aims by corrosively undermining predictability's foundations over the long term in Hong Kong's commercially oriented system. Legal certainty allows parties reasonable ability foresee consequences and plan accordingly without gambling upon future courts' divergent musings. Without guideposts surrounding coercion's nature, contracting risks remain impossible quantify through prudent negotiation or counsel sought in good faith wishing avoid impropriety.

As for another opprobrium, unbridled discretion invites inconsistent rulings bleeding integrity through perception favoring result over predictably principled process (Phang, 1997). Stakeholders reasonably expect equity evolve responsively yet rationally to changing needs through foreseeable, channeled progression rather than fortuitous shifts courting distrust. Precedent shapes equity's equitable identity through grounded vision nourished by balanced, thoroughly reasoned interpretation in step with economic vitality rather consenting stagnation leaving rights' safeguards hostage to historical coincidence. Orderliness fulfils equity constitutionally through stability assuring protections progress coherently, acclimating to complexity through empirical policymaking not seeming caprice.

A just system maintains ordered liberty through fair yet decisive resolution reconciling coexistence between competing interests respecting rights' diversity. Pragmatic flexibility affirms progress through adaptive standards permitting diversity within reasonableness, not uncertainty. Experience supports developing stable, empirically honed lawful act duress standards as Australia accomplished without incident (*Commercial Bank of Australia Ltd v Amadio*, 1983). Consensus approves focusing oppression rather than technical compliance, aligning safeguards sensibly to protect against disproportion rather than status or mere legality in artificial isolation.

Such equitable doctrines necessarily eschew rigidity embracing thoughtful yet

governed evolution through principled balancing between established and developing wisdoms in each contextual instance. Prudence tempers ambitions yet fears change through learning drawn from others' experience just as Australia's approach offers evidence-based model facilitating gradual, yet coherent evolution Hong Kong is well equipped implement through contextually attuned independence. Continued silence maintains anachronistic semblance motion forestalling only reasonable resolution benefiting all system users through ordered development honors justice dynamically yet prudently through established means.

Settled standards' benefits far exceed speculative gambles stalling progress by hypothesizing intractable objections speculative in character. Precedent cultivates certainty through regularly balanced, holistic review mindful lessons from cooperative jurisprudential exposure informs adaptation's rational pace. Established norms promote equity systematically attending diversity through experience within principled constraints leaving undue influence or coercive pressure rightfully intact for considered review while disallowing oppressive leverage cunningly masquerading through "technical lawfulness" alone.

To sum up, the benefits of properly guided lawful act duress standards offer proportionate means promoting both access to justice and predictability through reasonable yet definitive precedent serving Hong Kong's highest traditions. Global exchange of ideas enhances all through cooperation, yet independence gives authority resolving issues whose time has come by rightfully considering positions yet settling through authority vested locally to oversee progressive yet prudent evolution. With perspectives adduced, the imperative is clear—Hong Kong's Court of Final Appeal should bravely grasp this opportunity to remedy an imperfect that has lingered too long by definitively aligning local protections through carefully crafted yet established guidance in timely resolution promoting order and integrity together for all stakeholders through jurisprudence anchored at once in common law foundations and the forward-looking spirit within they properly facilitate through principled continuity and change.

3.3. Alignments with Hong Kong's Situation

Pivotal to Hong Kong's renown is enabling predictable interactions founded on integrity, consensus and cooperation over narrow self-interest or formalism alone. Substance must align with appearance to uphold trust long term. While certainty underpins assessments, credibility also depends accommodating stakeholder consensus views equitably through proportionate, evidence-based means.

Progress Bulk Carriers v Tube City (2012) displayed technical non-liability cannot override impropriety inferences from maneuvering control undermining truly voluntary agreement. Strict formalism risks implying integrity play second role if uncalibrated to accommodate societal cooperation standards commerce relies upon. Outcomes contradicting reasonable expectations diminish welfare over time through unstable confidence if unaddressed by oversight attuned to real impacts.

Adopting a nuanced yet robust multi-factor analysis promotes consensus norms alignment flexibly. Procedural justice safeguards foster cooperative spirit superior to prioritizing singular interests void of balanced safeguards. Mechanistic rules alone fail regulating increased complexity and interdependence which contextual judging manages soundly while preserving systematic method.

At one end of the spectrum, while mishandling empowered dealing exposes disharmony, lawful act duress acknowledgment counterbalances overt leveraging of weaknesses disproportionately through narrowly delimited, substantiated claims. As emphasized from *CTN Cash*, evidence-based standards obligating independent consent promotes principled interactions versus zero-tolerance theory risking consent erosion indirectly tolerating questionable maneuvers technically aligned with letters yet contrary to societal ethics spirit.

At the other end, stringent thresholds containing exceptions reassure typically autonomous risk assessments remain respected. Pressure subverting consent require exceeding typical negotiations influence to qualify through robust criteria established in *Pao On v Lau Yiu Long* (1980). Alternatives preclusion, demand proportionality and especially independence underscore pressure quality and quantity transcending reason to safeguard actual volunteerism basis.

Concerns regarding residual uncertainty diminish upon recognizing precedents disciplining interpretation scope. Multi-factorial analysis deters trivial claims while affording hearings proportionately. Moreover, flexibility matches relationship nuances better than rigidity potentially enabling harms if discounting imbalance impacts. Judicious, consensus-aligned decision making stabilizes expectations superior to absolutism prone excluding real world citizenship considerations.

In a nutshell, finely modulating doctrine through intrinsic constraints reinforces Hong Kong's reputation as a principled hub prioritizing cooperative dealings anchored in autonomy, fairness and integrity for long term investment confidence not served by technical loyalty alone if contradicting rule of law spirit. Upright, public interest-centric navigation maintains global prominence foundationally.

4. The Unsettled Position in Hong Kong and the Proposed Doctrinal Argument

Doctrinal refinement positioning Hong Kong participation framework constructively involves lawful act inclusion through robust yet calibrated evidentiary strictures promoting principled dealings. A multi-step examination incorporates procedural safeguards maintaining administrability apart from unfettered discretion potentially disrupting ordinary cooperation or process coherence regionally. A proposed doctrinal argument is hereby introduced.

4.1. Doctrinal Basis

To commence with, the doctrinal basis revolves upon the safeguard of consent by allowing avoidance of agreements resulting from illegitimate pressure impairing true voluntariness. While initially focused on unlawful threats, jurisprudence

acknowledges lawful acts could theoretically vitiate consent based on surrounding circumstances and disproportionate effects.

4.2. Alignments with Hong Kong's Situation

4.2.1 General Influence of Lawful Act Duress on Hong Kong's Economy

Legal certainty is important for Hong Kong's economy. As a global financial centre, when there are unsettled areas of commercial law, it breeds uncertainty and legal risk for businesses. This lack of clarity can undermine confidence and planning, discouraging investment and deal-making activity.

Business ethics is crucial to corporates' subsistence and development (Chen, 2019). Although Corporate Social Responsibility (CSR) emerges as a panacea seemingly to holding businesses accountable for the impact of their activities, it is by resolving the issue of lawful act duress by clarifying the law that enhances predictability for companies operating in and considering Hong Kong. With increased certainty around coercion and consent in business agreements, it removes a ambiguity that has lingered for too long. This promotes Hong Kong as a stable and reliable place to carry out business.

Consent-focused, evidence-based interpretation of lawful act duress deters impropriety while allowing flexibility for reasonable negotiations. This balanced approach promotes cooperative business interactions anchored in principled standards aligned with societal ethics. Such a legal framework fostering cooperative dealings through proportionate oversight supports continued economic dynamism. It signals Hong Kong as a place where commercial activity can thrive sustainably through cooperation under orderly rule of law.

Altogether, resolving this long-standing issue injects needed certainty while strengthening protections integral to maintaining integrity in the local commercial system. These foundations enhance Hong Kong's profile as an attractive destination that administers justice for all participants fairly—a compelling proposition that draws long term investment, deals and prosperity to the city.

4.2.2. Proven Pressure

The claimant must lead clear and cogent evidence establishing, on a balance of probabilities, that the defendant affirmatively exerted pressure through the impugned lawful acts with the intent of compelling the claimant to agree to the transaction terms. Mere hard bargaining or assertion of legal rights is insufficient.

4.2.3. Context of Pressure

The court thoroughly examines the total surrounding circumstances, including:

- 1) Any significant disparity in bargaining power or knowledge between the parties;
- 2) The claimant's relative strengths or vulnerabilities in the situation;
- 3) The defendant's awareness of the claimant's disadvantage and ability to resist demands;
- 4) Timing and nature of the pressure in relation to the agreement.

4.2.4. Disproportionate Demands

The court analyses whether the pressure tactics extracted transactional terms or concessions markedly exceeding typical expectations in similarly situated commercial deals. It considers if the demands were proportionate to any legitimate countervailing business interests claimed by the defendant.

By flexibly accommodating relationships protection responsibilities sensitively, lawful act inclusion reinforces jurisdiction integrity core duties and Hong Kong leadership role directly through equilibrium exhibiting sobriety against proven impropriety substantively through multi-step, evidence-based examinations that address abnormal anomalies public interest protection necessitates constructively for confidence, coherence and continued prosperity into subsequent generations regionally and worldwide.

Participation reliability equitably safeguarded through principled determination accessibility fosters cooperative relationships spirit necessary foundationally. Short term disruption risks connected understandably yet practically mitigated through constraints balancing rights and responsibilities symmetrically for stability promoting partnership mutuality into the foreseeable era progressively. By judiciously modulating economic duress interpretation substantively, Hong Kong reputation reinforcement durably connects directly to ethics prioritization that merits continued recognition, trust and investment flows internationally coherently.

5. Conclusion

When all is said than done, the ongoing ambiguity surrounding the position of lawful act duress in economic duress under Hong Kong law represents an incongruity that calls for resolution. As this article has discussed, the doctrine of economic duress emerged in common law to protect against coercively compelled agreements that impair true consent. While early interpretations centered on unlawful threats, modern jurisprudence from leading financial jurisdictions has trended towards a more flexible and contextual analysis. The predominant focus is now on whether proven pressure establishes disproportion overriding autonomy substantively, rather than rigid categorization based on technical legality alone.

By maintaining ambiguity on this issue for over two decades since the seminal *Esquire* first highlighted the gap, Hong Kong risks losing step with this evolution. Continued lack of clarity breeds legal uncertainty that undermines integrity and order in commercial dealings—values central to Hong Kong’s standing as a premier hub. It also misses opportunities to reinforce ethical business practices by deterring questionable maneuvering that may exploit bargaining disparities through “technically lawful” yet unconscionable means.

In order to reinforce ethical business practices, developing a principled yet flexible multi-factor test allows for nuanced, evidence-based evaluations of particular scenarios is of paramount importance. A contextual analysis examines objective circumstances rather than relying on arbitrary categorizations alone. This discou-

rages opportunistic behavior at the margins of propriety by scrutinizing disproportionate effects and knowledge of disadvantage. It also reassures typically autonomous negotiations that ordinary competitive practices will not be penalized.

Other common law nations demonstrate that lawful act economic duress can be incorporated without unpredictably impacting ordinary transactions through prudent, evidence-based mechanisms. Jurisprudence from these equivalents, particularly Australia, provides helpful guidance on crafting nuanced, contextual tests maintaining appropriate safeguards. Such a balanced, flexible yet robust interpretation of economic duress aligns local law coherently with both global legal norms and Hong Kong's commercial realities.

Consequently, it is time for the HKCFA to seize this opportunity to remedy the inconclusive treatment past appellate rulings have afforded this issue. By definitively clarifying lawful act economic duress through a carefully considered precedent, it can inject needed certainty while promoting principled interactions anchored in consent's voluntary foundations. Such judicious movement would reinforce Hong Kong's hard-earned image as a respected hub administering equitable, ordered protections for all participants under its banner. Ultimately, calibrating local doctrine by filling this longstanding gap represents an overdue step that charts a constructive path forward for continued prosperity and leadership in global financial governance.

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Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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