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Research Paper

Unraveling promissory estoppel as a shield and economic duress as a sword: navigating the complexities of contractual obligations and legal remedies

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ABSTRACT

In the intricate realm of contract law, the interplay between promissory estoppel and economic duress reveals fascinating dynamics of protection and power. Promissory estoppel stands as a shield, safeguarding the reliance of individuals on promises, thereby fostering trust and fairness in agreements. It ensures that those who act in good faith are not left vulnerable when others retract their commitments. Conversely, economic duress wields the sword of justice, empowering the aggrieved party to challenge contracts formed under coercion and unfair pressure. Together, these legal principles do not clarify the landscape of contractual obligations but also illuminate the pathways to legal remedies, ensuring that equity prevails in the face of exploitation. This exploration highlights the delicate balance between safeguarding expectations.

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1. INTRODUCTION

In the complex world of contract law, the doctrines of promissory estoppel and economic duress are able to protect rights and bring about justice through their powerful applications. Promissory estoppel is the least likely to be considered a sword, however, it does grant the right to individuals who have been

relying on promises to claim the benefit of those promises being unjustly taken away, and it ensures that justice prevails even when there is no formal consideration. On the other hand, economic duress is a sword, which enables the parties to declare void the contracts made under the influence of force or threats and thus, the consent-based transactions continue to be valid. The comprehension of the intricacies and the applications of these doctrines is very important in legal disputes and to achieve fair outcomes. It was held in that case, according Denning J that where one party makes a clear promise intended to be relied upon, and the other party acts upon that promise to their detriment, the promisor is estopped from going back on their word even in the absence of consideration promissory estoppel hence prevents injustice by enforcing reliance-based fairness. The other hand, the economic duress doctrine is going to perform a different but complementary function. In such circumstances, a party is allowed to contract that their consent was obtained through illegitimate economic pressure or coercion, thus maintaining the free will principle in contract formation. The case of Atlas Express Ltd v Kafco Ltd [1989] QB833 is a vivid example of this where a small company was almost compelled to accept the unfavorable delivery conditions on account of the threat to their business. The court decided that the contract was voidable due to economic duress since the party's consent was not given freely. So, while promissory estoppel secures the position of the party who has relied on the promise, the doctrine of economic duress allows the party who has suffered illegitimate pressure to challenge the validity of the contract and get it annulled.

2. RELATED WORK

As an equitable remedy, promissory estoppel based on fairness and justice rather than legal rights. It used in situations where it would be unfair or unjust to allow a party to enforce an agreement that is relied on by another party.

Promissory estoppel is a legal doctrine that prevents a party from going back on a promise made if the other party has relied on that promise or agreement to their detriment [1]. In other words, it prevents a party from reneging on a promise or agreement if the other party has acted by relying on that promise or agreement.

2.1 Elements of Promissory Estoppel

2.1.1 Promise

There must be a clear promise made by one party to another. This promise can be explicit or implied through words, conduct, or circumstances. The case of [2] established the doctrine of promissory estoppel in English law. The court held that a party be estopped from enforcing a contract if they had made a clear and definite promise to another who had reasonably relied on the promise.

2.1.2 Reliance

The party to whom the promise made must reasonably rely on the promise. This reliance can be in the form of actions omission or a change in position based on the promise. The case of [3] clarified that promissory estoppel could be applied to prevent a party from reneging on a promise, even if the promise was not legally binding. The court held that the doctrine be used to prevent unjust enrichment, even if the promise was not supported by consideration.

2.1.3 Detriment

The party relying on the promise must suffer some form of detriment because of that reliance. This detriment could be financial, loss of opportunity, or some other disadvantage. [4] Established that promissory estoppel could be used to prevent a party from reneging on a promise, even if the promise was not supported by consideration and that the doctrine be used to prevent unjust enrichment, even if the promise was not legally binding.

2.1.4 Unconscionability

The party that makes the promise should not be able to break their promise since the promise was relied upon and the promisee has suffered a loss which can be considered unfair or unjust. In [5] the court held that promissory estoppel does not make a cause of activity and as the necessity of thought in arrangement of contract is still important. The doctrine of promissory estoppel stops the promisor from claiming the reverse of the explanation the promisee had relied upon.

In deciding upon the enforcement of promissory estoppel, the courts generally assess the precision of the promise, the rationality of the reliance, and the degree of the loss that the promisee has suffered as the foremost factors. Promissory estoppel acts as a ground for the enforcement of promises when specific requirements are fulfilled [6].

2.1.5 Economic Duress

Economic duress is a term used in the law of contracts that refers to the situation when one party threatens to engage in a financial transaction that would result in a loss for the other party unless the latter consents to a contract or a change of an existing contract [7]. Such a threat has to be considered as an act of illegitimacy, and it has to take away the victim's free will in the matter of contract. Accordingly, a party is obliged to conclude a contract or to make a payment under a scenario where there is no other option left for them but to do so as illustrated by Occidental Worldwide Investment Corporation v Skibs [8], North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd [9], [10]. To put it another way, the party that experiences the threat is simply unable to avoid the payment or the signing of the contract, because they cannot handle the economic consequences or any other negative impacts

Economic duress as a defense in legal disputes, particularly in situations where one party claims the other has entered into a contract or made a payment under duress or coercion. A debtor who is threatened with a lawsuit or other negative repercussions due to non-payment of the debt can claim economic duress as a defense and assert that he/she was forced to enter the contract or make the payment because of the duress [11].

2.2 Elements of Economic Duress

2.2.1 Threat

One of the parties to a contract threatens the other party, either directly or indirectly, and this leads to the latter signing the contract or changing the terms of the existing contract. Generally, the threat comprises a kind of financial damage, like not paying the amount due, cutting off the relationship with the company, or going to court. The [12] case established the doctrine of economic duress in English law. A person uses duress when they harass, create awkwardness, or are exposed to undue pressure, which in turn forces the other party to enter into the contract.

2.2.2 Illegitimate Pressure

The threat must be wrongful or illegitimate. The party who was compelled to the contract has to be strongly convinced that the only way left for them to resolve the issue with the other party is through acceptance of the contract or change made under the pressure. The case of [13] provided clarification that a party might be able to avoid the contract if they had utilized economic duress on the counterparty to get into the contract.

2.2.3 Absence of Free will

The coerced party must enter the contract or modification with their free will being restricted. Thus, making them compelled to agree due to the pressure exerted by the other party and the apprehension of economic harm upon refusal [14]. It asserted in the case of [15] that, economic duress used to prevent a party from enforcing a contract if they had used coercion to force the other party to enter the contract.

The court held that the doctrine used to prevent unjust enrichment, even if the contract is without consideration.

2.2.4 No Reasonable Alternative

The coerced party must have no reasonable alternative than to agree to the contract or modification. This could be due to time constraints, financial vulnerability, or the lack of viable alternatives.

In the court held that to be capable of giving rise to duress, the threat had to be illegitimate either because threatening was a legal wrong, or because the threat itself was wrongful, though what was to be done was lawful or because it was contrary to public policy.

For duress to vitiate consent there must be proof of both coercion of the will and the existence of the duress at the time of making of the contract. In the case cited supra, it stood out glaringly that the sole purpose for the sale of the house was to enable the plaintiff, whose health was failing, to free himself from the hands of the police. Clearly, such a purpose was a vivid testimony of how the police unlawfully succeeded in completely breaking down the will of the plaintiff and forcing him by threats to sell his house to pay off his debt.

The right of a party to plead economic duress may be lost or denied if an application is not timeously made or sought by the coerced party. In the case of [16], Hyundai Construction threatened to breach a shipbuilding contract unless North Ocean Shipping Co. Limited agreed to pay an increased price due to currency devaluation. The court accepted the concept of economic duress but the ruling was unfavorable for North Ocean Shipping because of its long delay in asking for relief. Economic duress requires a coercive threat that leaves the pressured party with no practical alternative. Judicial intervention is necessary quickly to stop the contract from being validated.

In the event that economic duress is established, the party that was forced may be able to invalidate the contract or acquire remedies like rescission, restitution, and damages.

2.3 The Related Concepts of Economic Duress and Commercial Pressure

In Supreme Court of Appeal's unreported case of [17], the concept of duress explained as an undertaking extracted by an unlawful or unconscionable threat of considerable harm, which is voidable in general terms. Economic duress denotes an event during which one of the parties coerced into a contract or forced to make a payment under conditions where they have no real option but to obey. Conversely, commercial pressure is a term that describes a situation in which a party is subjected to economic or trade-related circumstances forcing him/her to either contract or pay.

Anson's Law of Contract (30th Ed.) [18], characterizes commercial pressure as the application of financial or economic Usages to sway the other party's decision-making, with one of the consequences being the distortion of the bargaining power or the making of the non-transparent agreements." The ruling in the case of CTN Cash & Carry Ltd v Gallaher Ltd is illustrative of this where Gallaher asked for repayment of goods that had been mistakenly delivered before credit extension would be granted and CTN complied but under protest. The court ruled that no duress was present as Gallaher's action was still a part of the normal commercial negotiations.

Economic duress is thus characterized by one party applying pressure that is wrongful or not permitted to the other party with the aim of getting them to contract or to approve a change in an existing contract [19]. The threat or the pressure has to be wrongful or not legitimate and examples include breaking a previous agreement or exploiting a very weak position of the other party in terms of negotiating [20].

2.4 Commercial Pressure

This is about the normal competitive pressures and negotiations to find out what to get in the course of performing a business transaction. The term "commercial pressure" signifies the use of legitimate negotiation and competitive strategies to acquire good terms, prices, or conditions in a contract.

3. METHODOLOGY

The legal methodology doctrinal was used in the manuscript where reference was made to common law jurisdictions' relevant case laws. The research first surveys early landmark ruling such as

Central London Property Trust Ltd v. High Tree House Ltd (1947) and Dunlop Pneumatic Tyre Co. v. New Garage & Motor Co.(1915), which highlighted the idea of estoppel as a protective "shield" against the enforcement of contractual rights whenever a party has relied on a promise to its detriment. Then it continues to consider more recent cases, such as Pao On v. Lau Yiu Long (1980) and Hughes v. Metropolitan Railway (1877), which demonstrate the development of the doctrine towards the proactive "sword" function. The courts are thus enabled to affix remedies according to reliance even when there is no enforceable contract existing under the doctrines of promissory estoppel and economic duress, examining their respective roles as defensive (shield) and offensive (sword) mechanisms in contractual disputes.

Table 1. Elements of Promissory Estoppel

Element	Description	Reference
Clear Promise	A clear and unequivocal promise is made by the promisor	Hughes v. Metropolitan Railway [21]
Reliance	The promisee reasonably relies on the promise	High Trees Case [22]
Detriment	The promisee suffers a detriment as a result of reliance	Brinkom Investments Ltd v. Carr [23]
Injustice	Court enforces to prevent unfairness	Durham Fancy Goods v. Michael Jackson [24]

Table 1 demonstrates that the doctrine of promissory estoppel protects the promisee and prevents the promisor from going back on his word with respect to the promise that the promisee has relied upon to his prejudice.

Using cases such as Hughes v. Metropolitan Railway and Central London Property Trust Ltd v. High Trees House Ltd, to highlight how courts use estoppel to prevent injustice in both contractual and pre-contractual settings.

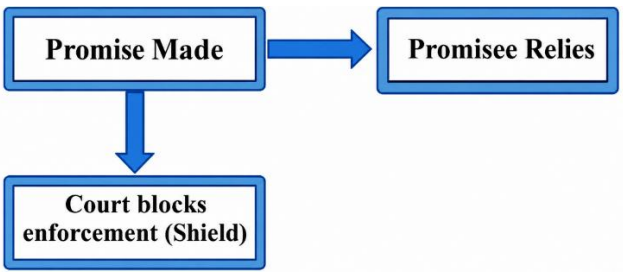


Figure 1. Promissory Estoppel as a Shield

As shown in Figure 1, evaluating the function of promissory estoppel as a shield against unfair enforcement of promises, illustrates its operation in protecting reliance interests.

Table 2. Remedies under Economic Duress

Remedy	Description	Purpose
Rescission	Cancelling coerced contract	Restore pre-contractual position
Restitution	Recovering benefits conferred	Prevent unjust enrichment
Damages	Compensatory or punitive awards	Address financial harm
Injunction	Court order restraining unfair conduct	Prevent further harm

Economic duress, as indicated by the data in Table 2, allows to correct the situation in the case of contracts that were formed by threats or other unlawful means. Courts have acknowledged this by treating it as a legitimate reason for canceling contractsxa and supporting it with case law.

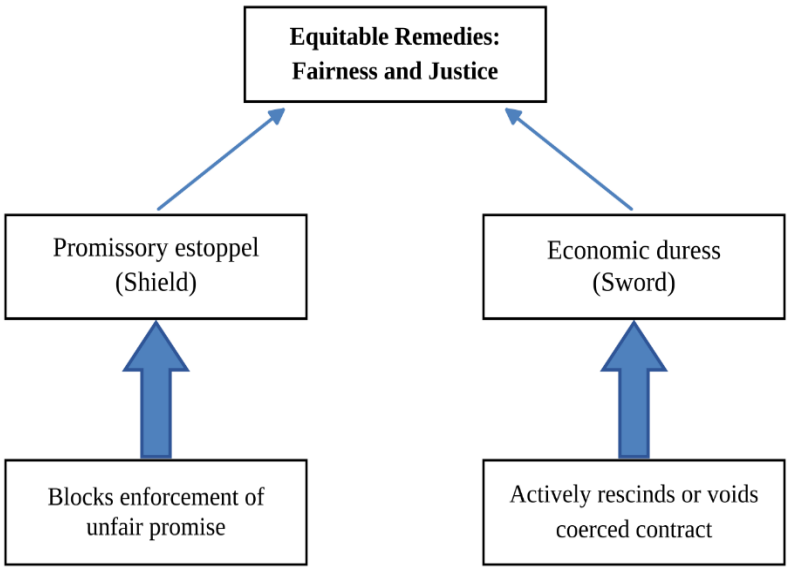


Figure 2. Sword vs. Shield in Equity

As shown in Figure 2, it depicts the distinction between promissory estoppel and economic duress in terms of their equitable remedies and procedural application. Figure *2* depicts the distinction between promissory estoppel and economic duress in terms of their equitable remedies and procedural application.

4. RESULTS AND DISCUSSION

Promissory estoppel is a legal doctrine that allows a party to seek legal remedies when another party has made a promise or agreement that they have no intention of fulfilling but the promise has been relied on by the recipient. In establishing a successful claim for promissory estoppel, the following elements identified.

To begin with, the promisor (the party who pledges) gives a direct and straightforward promise to the promisee (the party who receives the promise). This promise may be either express or implied [25].

The second condition is that the promisee is entitled to rely on the promisor's promise at least to some extent and in a reasonable way. Furthermore, it must be shown that the promisee has to endure a certain amount of detriment or damage as a consequence of the promise being relied upon. Such detriment could be in the form of an economic loss, a damage to one's reputation, or the forfeiting of a chance to gain something valuable. The promisor would be acting unjustly or unfairly if he then decided to renege on his promise after the promisee had relied on it to his detriment in a reasonable manner. The court evaluates whether enforcing the promise is necessary to prevent injustice or unfairness in the circumstances [26].

Promissory estoppel has its roots in the case of. A landlord allowed his tenant half a year to fix the place, at the same time informing him that if he did not comply, he would lose his rights over the property. They were negotiating for the assignment but when these negotiations collapsed and the tenant did not fix the property, the landlord tried to force the issue of lease forfeiture. The court decided that it was the landlord's actions that had made the tenant think it was reasonable not to expect the forfeiture to be enforced.

In the case of Central London Property Trust Ltd v High Trees House Ltd, the landlord agreed to accept half of the ground rent from the tenant due to difficulties in finding tenants during the wartime. After the war, the lessor decided to collect the rent that had not been paid during that time. By operating on the basis of promissory estoppel, the court ruled that the landlord was not entitled to rental income from the war period. Promissory estoppel is a legal principle that applies to mitioris between the parties to a contract, being thus a part of the law governing the promisor and the promisee. Whether it can be used in pre-contractual situations is still a matter of debate. In the case of Brinkom Investments Ltd v. Carr, Lord Denning opined that promissory estoppel could be the outcome of commitments given during contract

negotiations. Similarly, in Durham Fancy Goods v. Michael Jackson, Judge Donaldson stated that a contractual relationship is not essential, as long as there is a pre-existing legal relationship that could potentially lead to liabilities and penalties.

The purpose of promissory estoppel is to prevent the promisor from engaging in unjust behavior by reneging on their promise after the promisee has relied on it to their detriment. Normally, it is applied in circumstances where it would not be right or just to let one party make the promise or agreement that has been depended on by the other party stand.

4.1 Promissory Estoppel as a Shield

The legal principle of promissory estoppel is an equitable remedy that a party can use to stop the other party from enforcing a promise or contract if the latter party has relied on the promise or contract to their detriment. In other words, it prevents a party from reneging on a promise or agreement if the other party has acted in reliance on that promise or agreement.

Using promissory estoppel, a party can prevent another from enforcing a promise or agreement that has been relied on, even if the promise or agreement was legally binding.

Promissory estoppel can indeed be used as a shield in equitable remedies. Where a promisor reneges on their promise after the promisee has reasonably relied on to their detriment, the promisee can use promissory estoppel as a shield to prevent the promisor from benefiting unfairly from their breach of promise.

Promissory estoppel protects the reliance interests of the promise by invoking promissory estoppel as a shield. The promisee seeks to ensure that they are not unfairly prejudiced or harmed due to their reasonable reliance on the promisor's promise. In equity, courts may grant remedies such as specific performance or injunctions to enforce promises made under promissory estoppel. The promisee can use promissory estoppel, even though it is a weak defense, to claim equitable relief that would either enforce the promise or stop the promisor from doing anything inconsistent with it.

The case of The Post Chaser [27] involved a situation where one party had promised not to insist on the contractual term (the notice requirement for shipment dates) and, in fact, the other party relied on that promise but did not act very quickly to confirm the agreement. The Court of Appeal ruled that promissory estoppel applied because the reliance, though not immediate, was considerable enough to justify estoppel. It is a doctrine that is grounded in justice and equity, and its main purpose is to avoid the unprincipled drawing of reliance interests and make sure that the parties are held responsible for their promises and actions.

4.2 Economic Duress as a Sword

Economic duress is not a defense of preference but rather it is often the case that a party applying it as a sword can claim that the contract was made or the payment was done under duress or coercion and thus it should not be enforced against him/her. A party using economic duress as a sword can assert that the contract was or the payment was made under such demanding circumstances and therefore he/she should not bear the burden of that contract or payment. Such an argument rightly portrays the party as needing protection against the application of unfair or unjust consequences and also as needing to be given the opportunity to deal with the situation in an agreeable manner instead of being resorted to through payment or contract which they would not have accepted otherwise.

On the other hand, a sword in equitable remedy would be a legal remedy that allows a party to enforce a contract or payment that was made under duress or coercion. The term "using economic duress as a sword in equitable remedies" means invoking economic duress in order to come to the court for relief or remedies. This is different from using it as a shield, which means that it acts as a defense against the enforcement of a contract. When using economic duress as a sword, it is the party who has suffered the coercion or pressure who is actively seeking remedies or damages. Wrongful conduct of the other party [28].

Economic duress can be used as a sword in equitable remedies through rescission, where the coerced party may seek to rescind or cancel the contract entered under economic duress by demonstrating

that were forced into the contract due to wrongful threats or pressure, they can ask the court to void the contract and restore them to their pre-contractual position [29].

As a remedy to the extent that the other party benefited from the coerced contract, the forced party may claim restitution. This can be done through the recovery of money paid or the return of goods or services received under the contract. In certain cases, the coerced party may seek specific performance from the court to compel the other party to fulfill their obligations under the contract. This remedy may be sought if monetary damages are inadequate to remedy the harm caused by the coercion.

The party who was forced into the situation has the right to claim for damages to the extent of the losses caused by the economic duress.

The application of economic duress as a sword in the context of equitable remedies grants the coerced party the right to seek compensation for the damage done by the wrongful behavior of the other party. In the process of seeking equitable relief, the coerced party aims to lessen the impact of the coercion and attain a just result that has the effect of putting their rights and interests back to where they were.

Economic duress and promissory estoppel can both be used as a sword and a shield respectively in equitable remedy, depending on the circumstances of the legal dispute. As a sword, economic duress can be used to enforce a contract or payment that was made under duress or coercion.

As a shield, promissory estoppel may be a defense in legal disputes to prevent a party from enforcing a promise or agreement that has been relied on by another party.

5. CONCLUSION

In the context of contract law, this paper has analyzed promissory estoppel as a defensive equitable doctrine and economic duress as an offensive vitiating factor. The analysis brought out that both doctrines deal with inequality, pressure, and injustice in contracts but through different doctrinal spaces. They also serve different remedial purposes being triggered by different legal thresholds.

The main function of promissory estoppel is to act as a shield rather than a sword, that is, to stop a promisor from going back on a clear and unequivocal promise when the promisee has relied on it to their detriment. The paper emphasizes that the power of promissory estoppel lies in its flexibility and fairness, but also in its self-imposed limitations that prevent it from undermining the very essence of contractual principles.

On the contrary, economic duress is like a sword, giving an injured party the right to take the initiative by disputing and cancelling contracts obtained by illegal pressure. A major difference between economic duress and promissory estoppel is the former proceeding to the very root of consent and thus making it a case of free will vs coelrcion and contracts being voidable.

One of the key conclusions of this study is that the issue of separation between promissory estoppel and economic duress is both intentional and unavoidable. The two doctrines, while being, on different sides, slowly, will have the same effect of causing the judge to draw the line between the parties in the dispute by refusing all together to grant one of the parties a favorable remedy simply because it is a matter of priority. Promissory estoppel prevents enforcement in the name of fairness while economic duress invalidates contracts at their formation. The coexistence of the two aspects demonstrates the law's dual commitment to certainty and justice, which guarantees that the execution of contracts is always considerate of fairness, voluntariness, and good conscience.

Promissory estoppel and economic duress are still relevant in today's world as they can restore balance in a legal way without affecting the stability of contracts. It is necessary for the judiciary to meticulously enforce the doctrines, warding off the lure of using them in situations where their limits have already been defined. Unambiguously interpreted and applied, promissory estoppel continues to be a principled equitable shield, and economic duress a powerful sword of correction, both fortifying the integrity, justice, and moral power of contract law.

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Samuel Kofi Amoah										✓		✓		

C : **C**onceptualization
M : **M**ethodology
So : **So**ftware
Va : **Va**lidation
Fo : **Fo**rmal analysis
I : **I**nvestigation
R : **R**esources
D : **D**ata Curation
O : Writing - **O**riginal Draft
E : Writing - Review & **E**diting
Vi : **Vi**sualization
Su : **Su**pervision
P : **P**roject administration
Fu : **Fu**nding acquisition

Conflict of Interest Statement

The authors declare no competing financial interests or personal relationships that could have influenced the work.

Informed Consent

Not applicable; no human participants were involved.

Ethical Approval

Not applicable; the study used doctrinal legal analysis of publicly available case law.

Data Availability

The dataset analyzed during the current study is available from the corresponding author upon reasonable request

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