

South Dakota Codified Laws
Title 53. Contracts
Chapter 53-4. Duress, Fraud, Undue Influence and Mistake (Refs & Annos)

SDCL § 53-4-3

53-4-3. Duress defined

Currentness

Duress consists in:

- (1) Actual or threatened unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife; or
- (2) Actual or threatened confinement of any such person or persons lawful in form but fraudulently obtained or fraudulently made unjustly harassing or oppressive; or
- (3) Actual or threatened unlawful violent injury to the person or property of any such person or persons; or
- (4) Actual or threatened injury to the character of any such person or persons; or
- (5) Actual unlawful detention of the property of any such person.

Credits

Source: CivC 1877, §§ 880, 881; CL 1887, §§ 3504, 3505; RCivC 1903, §§ 1198, 1199; RC 1919, §§ 813, 814; SDC 1939, § 10.0305.

Relevant Notes of Decisions (8)

View all 34


Notes of Decisions listed below contain your search terms.


In general



The question in each case of “duress” is, was the person so acted upon by **threats** of the person claiming benefit of the contract, for the purpose of obtaining such contract, as to be bereft of the quality of mind essential to the making of a contract, and was the contract thereby obtained? SDC 10.0305. Erck v. Bachand, 1943, 69 S.D. 330, 10 N.W.2d 518. Contracts ~~§~~ 95(3)


Coercion may be accomplished by a set of circumstances brought about by designing persons as effectually and as wrongfully as by direct **threats** and menace. Cochrane v. Nelson, 1922, 45 S.D. 609, 189 N.W. 700. Contracts ~~§~~ 95(1)


Criminal prosecution threat

A **threat** to press a prosecution already instigated, or a promise to desist, made to gain consent to a claimed obligation, would fall within statutory meaning of “duress”, which, when present, destroys consent necessary to a binding obligation. SDC 10.0305. *Kremer v. Black Hills Dude Ranch & Development Co.*, 1953, 75 S.D. 26, 58 N.W.2d 304. Contracts  95(5)


Threats of prosecution for crime fall within statutory **definition** of “duress”. SDC 10.0305. *Erck v. Bachand*, 1943, 69 S.D. 330, 10 N.W.2d 518. Contracts  95(5)

Settlements or contracts made under the coercive influence of **threats** of arrest and imprisonment will be set aside. *Meylink v. Minnehaha Co-op. Oil Co.*, 1938, 66 S.D. 351, 283 N.W. 161. *Compromise And Settlement*  8(3); Contracts  95(3)

If party who executed contract in settlement of claim for alleged embezzlements was put in duress by fear and **threats** of prosecution by other party and of disgrace and humiliation of his wife and son, and claims no crime has been committed, contract may be avoided by party coerced. *Daum v. Urquhart*, 1933, 61 S.D. 431, 249 N.W. 738. Contracts  95(5)

Threats, actual or implied, of prosecution of one in fact guilty of a crime will constitute such coercion as will avoid a contract induced by such coercion. *Cochrane v. Nelson*, 1922, 45 S.D. 609, 189 N.W. 700. Contracts  95(5)

Trusts and estates

Evidence that in a mutual outburst of temper, brother threatened to have sister arrested if she did not produce statement of indebtedness which brother had furnished father prior to father's decease, that brother would search the house, whereupon sister countered with a **threat** to shoot the brother, and another brother questioned her sanity, was insufficient to sustain finding that sister had been induced by duress some time later to sign an agreement for the division of father's estate among the children. Rev.Code 1919, §§ 813, 814. *Denbow v. Tesch*, 1938, 66 S.D. 21, 278 N.W. 16. *Descent And Distribution*  83

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S D C L § 53-4-3, SD ST § 53-4-3

Current through 2019 Session Laws, Executive Order 19-1 and Supreme Court Rule 19-18

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