

1 **13-838. Duress.**

2 If _____ (*name of party claiming duress*) entered into the contract under
3 duress, then ~~[[he][she]]~~ _____ (*name of party claiming duress*) is excused from
4 performing ~~[[his][her]]~~their obligations under the contract.

5 [_____ is duress, if under the circumstances it induces the other person to
6 enter into a contract that ~~[[he][she]]~~ _____ (*name of party claiming duress*)
7 otherwise would not have entered into.]

8 [Duress is intentional action by one person presenting such a serious business or financial
9 loss or injury to the other person to the contract that ~~[[he or she]]~~ _____ (*name of*
10 *party claiming duress*) has no reasonable choice or alternative. _____ (*name of*
11 *party claiming duress*) has the burden of proving duress by clear and convincing evidence.]

12 USE NOTES

13 This instruction should be given when a party has raised a triable issue of duress as a
14 defense to the obligations to perform a contract duty. The bracketed paragraphs are alternatives.
15 The second alternative bracketed paragraph should be used when the claim of duress arises from
16 ~~["]"business duress["]" or ["]"economic compulsion["]"~~] The first alternative bracketed paragraph
17 should be used in all other instances. In the first alternative, the court should fill in the wrongful
18 conduct which is claimed to constitute the act causing duress. *See* Commentary for examples of
19 wrongful conduct.

20 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-2025-
21 00126, effective for all cases pending or filed on or after December 31, 2025.]

22 **Committee commentary.** — Contracts entered into by the force of duress are not enforceable
23 against the party whose conduct was influenced by the duress. *See* Restatement (Second) of

1 Contracts § 174. Wrongful acts which will constitute duress extend to [“]“economic
2 compulsion[”]” or [“]“business duress,[”]” in which a person is presented with such a severe
3 business or financial loss as to present no reasonable alternative but to enter into a contract which
4 ~~[he or she]~~person claiming duress otherwise would not have. In the case of [“]“business duress,[”]”
5 at least, the party claiming the defense must prove its elements by clear and convincing evidence.
6 The conduct claimed to cause the duress must be wrongful, although not necessarily criminal. *See*
7 Restatement (Second) of Contracts § 176. Examples of wrongful conduct are (1) physical threats
8 to life or safety; (2) imprisonment; (3) destruction of goods or things of value; (4) institution of
9 criminal proceedings; or (5) bad faith threat to breach a contract or fail to perform a duty. *See*
10 *generally* J. A. Farnsworth, Contracts §§ 4.16, 4.17.
11 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]