

13-838. Duress.

If _____ entered into the contract under duress, then [he][she] is excused from performing [his][her] obligations under the contract.

[_____ is duress, if under the circumstances it induces the other person to enter into a contract that [he][she] otherwise would not have entered into.]

[Duress is intentional action by one person presenting such a serious business or financial loss or injury to the other person to the contract that he or she has no reasonable choice or alternative. _____ has the burden of proving duress by clear and convincing evidence.]

USE NOTE

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

[Adopted, effective November 1, 1991.]