



(full form)

“ASSEVERATION”

I-I/FCA/021

NOTICE & LAWFUL DECLARATION

In the matter of the question as to: “The legal standing of coercion and duress?”

This matter being brought to the Integrity Ireland Findings Commission (‘I-IFC’) for consideration and assessment according to; (i) the Rule of Law; (ii) to existing positive (written) law; and (iii) as per the respective rights, authorities and jurisdiction granted under Irish & international law, as laid out in the I-IFC foundation publications quoted in I-I/FCA/001/3; the Integrity Ireland Association hereby finds and determines as follows:

1. Coercion is defined in the Law Dictionary as: “The intimidation of a victim to compel the individual to do some act against his or her will by the use of psychological pressure, physical force, or threats. [Coercion is] the crime of intentionally and unlawfully restraining another’s freedom by threatening to commit a crime, accusing the victim of a crime, disclosing any secret that would seriously impair the victim’s reputation in the community, or by performing or refusing to perform an official action lawfully requested by the victim, or by causing an official to do so. The coercer can also be prosecuted for the separate crime of coercion.”¹

2. The Dictionary of Irish Law defines ‘coercion’: “It is an offence for a person to take specified actions, without lawful authority, with a view to compelling another person to abstain from doing or to do any act which that other person has a right to do or to abstain from doing.”²

3. ‘Duress’ is defined as: “Actual or threatened physical violence, or unlawful imprisonment, or threat of criminal proceedings. An act done under duress is generally not valid. A contract entered into under duress is voidable at the option of the party coerced. The person threatened need not be the actual contracting party, but may be the near husband or wife or near relative of that party: *Kaufman v Gerson* [1904] 1 KB 591.”³

4. Acting under duress: “Duress *per minas* may be a good defence to some crimes.” [*Per minas*, in English Common Law, is to engage in behaviour by means of menaces or threats]. “Threats of **immediate death or serious personal violence** which is so great as to overbear the ordinary power of human resistance will be accepted as a justification for acts which would otherwise be criminal, but not for murder, no matter how great the duress. *Attorney General vs Whelan* [1934] IR 526.”⁴

¹ *West’s Encyclopedia of American Law, edition 2.*

² *Murdoch & Hunt’s Dictionary of Irish Law, 6th Ed.*

³ *Ibid.*

⁴ *Ibid.*

5. The Law Reform Commission has recommended that the threat which underpins the defence of duress should be one of death or serious harm.⁵

5a. **Exception:** It has however been held in Northern Ireland that it is open to a person accused of murder as *a principal in the second degree* to plead duress.⁶

6. Section 9 of the *NON-FATAL OFFENCES AGAINST THE PERSON ACT, 1997* (IRL) defines ‘**coercion**’ as an offence:

(1) A person who, with a view to compel another to abstain from doing or to do any act which that other has a lawful right to do or to abstain from doing, wrongfully and without lawful authority;

(a) Uses violence to or intimidates that other person or a member of the family of the other, or

(b) Injures or damages the property of that other, or

(c) Persistently follows that other about from place to place, or

(d) Watches or besets the premises or other place where that other resides, works or carries on business, or happens to be, or the approach to such business or place, or

(e) Follows that other with one or more other persons in a disorderly manner in or through any public place, shall be guilty of an offence.

7. The offence of ‘**coercive control**’ is defined in *Section 39 of the DOMESTIC VIOLENCE ACT 2018*:

(1) A person commits an offence where he or she knowingly and persistently engages in behaviour that:

(a) is controlling or coercive,

(b) has a serious effect on a relevant person, and

(c) a reasonable person would consider likely to have a serious effect on a relevant person.

(2) For the purposes of subsection (1), a person’s behaviour has a serious effect on a relevant person if the behaviour causes the relevant person:

(a) to fear that violence will be used against him or her, or

(b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

(4) In this section, a person is a “relevant person” in respect of another person if he or she:

(a) is the spouse or civil partner of that other person, or

(b) is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.

⁵ “*Consultation Paper on Duress and Necessity*” (LRC – CP39 – 2006)

⁶ *Lynch vs DPP for Northern Ireland* [1975] AC 653.

Finding / Determination:

1. It is unlawful for any person(s) to coerce or attempt to coerce other person(s) through physical or psychological pressure or threats thereof, for the purposes of compelling the said other(s) to do some act against their will.
2. With the exception of murder, any person who commits a crime in the Irish State under threat of immediate death or serious personal violence, may claim the defence of duress.

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Date of Approval	10.11.2021	Served by	

I hereby declare that this is a true copy of the original PDF version.

Submitted / served by

The signed and sealed original of this Asseveration is on file at the Integrity Ireland Association.

