1. **UNDUE INFLUENCE**

- Equity recognizes, where the common law does not, that party’s to a transaction may not have equal bargaining power.
- Equity can set aside a transaction where it can be shown that the relationship between the parties was tainted by inequality, unfairness or actual abuse.
- Calls into question the quality of the consent given by one party to a transaction.
- Case: Commercial Bank of Australia v Amadio (1983)
  - “undue influence, like common law duress, looks to the quality of the consent or assent of the weaker party” (Deane J)

To find undue influence: influence must be ‘undue’ but need not be outright dominion.

**Categories of Undue Influence**
- distinguishing characteristic is whether there is, or is not, a special relationship between the parties to the transaction.

**1.1 ACTUAL UNDUE INFLUENCE (No special relationship between the parties)**
- focus of attention is the nature and extent of influence that must be established
- in cases where there is no special relationship between the parties, a person who is seeking equitable relief on the principles of undue influence must establish that actual undue influence was exerted by the other party to the transaction
- Difficult to prove, and cases are uncommon

**Occurs when:**

i. dominant party had influence
ii. the influence instigated the transaction
iii. the transaction was inequitable because of the influence

or

i. the dominate party had the capacity to influence
ii. the dominant party exercised the influence
iii. the influence was undue