

Seeking to answer:

Is it fair to say that undue influence, unconscionable conduct and estoppel are all cut of the same cloth or are they three separate and independent principles?

Can be used interchangeably or entirely separate and distinct?

- Three principles had a separate historical development – mistake to say they're all really one in the other

Undue influence is all about the nature and quality of consent

There are relationships, and where they exist, presumption that undue influence exists

There are also other relationships where the presumption doesn't arise

Unconscionable conduct has nothing to do with the nature and quality of consent, but instead, the actions of the stronger party and whether the stronger party knew or ought to have known that the other party with whom their dealing with was acting under a special disadvantage

Undue Influence

Nature and quality of consent

- Main objective of undue influence is protecting the vulnerable
- The common law generally assumes that the parties to particular transactions have equal bargaining power, whereas equity recognises that often this may not be the case, and it may enable a party to set aside a transaction where it can be shown that the relationship between the parties was tainted by inequality, unfairness, or actual abuse
- Two main equitable rules which aim to examine the circumstances in which a transaction is made, for the purpose of assessing whether it offends equity's insistence on good conscience. Those rules are:
 - The doctrine against unconscionable conduct; and
 - The doctrine of undue influence
- A written contract will be void if it is radically different in nature to that which the party signing the contract believed he or she was signing, and a contract can be set aside if procured as the result of duress
- In equity, the principle of undue influence is 'to protect people from being forced, tricked or misled in any way by others into parting with their property'
- The fact that the proposal to enter a contract or make a gift came from the weaker party, does not preclude a finding of undue influence
- Parties usually already in an existing relationship before any such agreement is struck
- Equity presumes that in some relationships, any transactions that have occurred, are the product of undue influence. Onus of disproving undue influence is on the party benefiting from the transaction
- In analysing cases of presumed undue influence, the two critical matters to be discussed are:
 - Establishing the special relationship; and
 - Rebutting the presumption of undue influence

Establishing the Special Relationship

- Two ways in which the special relationship in presumed undue influence cases can be established. The first relates to cases where the relationship falls into one of the traditionally accepted relationships of influence. The second relates to cases where. A relationship of influence has to be proved on the individual facts of any given case
- Following the decision in *Barclays Bank plc v O'Brien* [1994] these two groups of cases have been respectively referred to as 'Class 2A undue influence' and Class 2B undue influence'
- Established categories of special relationships include:

- Trustee and beneficiary;
- Legal practitioner and client;
- Medical practitioner and patient; and
- Religious advisor and follower

New categories are always arising

Rebuttal of Undue Influence

- Once the applicant has satisfied the court that there's a case of actual undue influence or the existence of a special relationship of influence, the stronger party to the transaction has the task of rebutting the presumption that the transaction was the result of undue influence