

Undue Influence

Trust, confidence, reliance, victimisation, exploitation, relationships.

1. Statement of Principle

- Equity will prevent a person from exploiting a relationship of trust and confidence, or a position of ascendancy to improperly influence a person into a course of action so that the acts of the person influenced are not free, voluntary acts.
 - Undue Influence is the improper use by the ascendent person of such ascendancy for the benefit of himself or someone else, so that the act of the person influenced are not, in the fullest sense of the word, his free, voluntary acts.
 - *Union Bank of Australia Ltd v Whitelaw*
 - Influence will be undue when it can no longer be said that the gift/transaction represents the party's independent and informed judgement
 - *Carey v Norton*
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2. Position of Ascendency

Was X in a position to influence Y (that being a position of ascendancy?)

3 Categories: *Barclays Bank Plc v O'Brien*

Presumed undue influence

Onus is on the 'influencer' to prove that undue influence didn't exist

1. Class 2A

- X and Y fit within established category
- Law automatically presumes that undue influence arises if a transaction occurs within them
- "It will be found that in none of these relations it is natural to expect the one party to give property to the other. That is to say, the character of the relation itself is never enough to explain the transaction and to account for it without suspicion of confidence abused."
 - *Yerkey v Jones*
- Includes: Doctor/Patient, Parent/Child, Trustee/Beneficiary, Solicitor/Client, Guardian/Ward

2. Class 2B

- No established category
- X is in a position to exercise dominion over Y by reason of the trust and confidence reposed in X
 - *Johnson v Buttress*
- Includes: poor intelligence, low education, personality, age, health, lack of relevant experience, complexity.

Actual Undue Influence

Onus is on the influenced to prove that undue influence did exist.

3. Class 1

- Ascendancy can be found 'in a particular situation, or in the deliberate contrivance of X'
 - *Johnson v Buttress*
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3. Improper Use = Not Free/Voluntary

Was that position used improperly, such that the act of Y was not the 'independent and well understood act of a person in a position to exercise a free judgement based on information as full as the purported influencer's own?'

- Position of ascendancy was used improperly so as to the acts were not free and voluntary
 - *Johnson v Buttress*
- Class 2A & 2B: Presumed that there is improper use. Presumption can be rebutted
 - Rebutted by proving that the stronger party 'took no advantage of the donor, but that the gift was the independent and well understood act of a man in a position to exercise a free judgement based on information as full as that of the donee'
 - *Johnson v Buttress*
- Class 1: P has to prove that improper use existed

Important Considerations

- Pressure, coercion, concealment: *Dunbar Bank PLC v Nadeem*
 - Whose idea was it: *Spong v Song*
 - How improvident was the gift/transaction from Y's perspective; *Allcard v Skinner*
 - Was independent advice received?: *Brusewitz v Brown*
 - Must be given in knowledge of all relevant circumstances by competent, honest, independent advisor
 - Nature of transaction indicates the necessity of advice
 - Gifts that go beyond suitable recognition/not relative to means: *Union Fidelity Trustee v Gibson*
 - Spite: *Baker v Affoo*
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4. Third Parties

- Undue influence taints the claims of persons other than the influencer who are volunteers, or who had notice of the relationship/influence
- Not the person who exercised the influence but benefited in some way and had notice of the influence
 - *Bainbrigge v Browne*

5. Defences

6. Remedies

Particular Relationships

Husband & Wife/ De Facto Spouses

- No presumption under 2A
- Natural for gifts/transactions to simply occur out of love and affection
 - *Yerkey v Jones*
- Easy to find a 2B relationship
 - *Barclays Bank Plc v O'Brien*

Man & Fiance

- 2A Relationship
 - *Zamet v Hyman; Louth v Diprose*

Parent & Child

- 2A Relationship
- A child is presumed to be under the influence of parent as long as the dominion of the parent lasts
 - *Wright v Vanderplank*
- Presumption ceases to apply once the child has become emancipated from control of the authority of the parent
 - *Powell v Powell*
- *Considerations: Age, living arrangements, financial dependence, intelligence, personality*
- Child over parent may be 2B relationship
- Presumption can arise in a 2B relationship for people who aren't parents but in a parental position/role
 - *Bank of NSW v Rogers*