

Undue Influence

Undue Influence

- Does not focus on defendant's action
 - rather on claimant and the quality of consent
- 'Person exerts undue influence on other if transaction entered into cannot fairly be treated as expression of [the other person's] freewill'
- Where person transfers property in circumstances where subject to improper dominion or 'psychological ascendancy' of another so that consent to transfer is not independent/voluntary (*Quek v Beggs*)
- Transfer may be set aside against 3rd party volunteers who received property jointly with person who exercised undue influence (*Quek v Beggs*)
- Not intended to set aside transfers made in gratitude to/our of affection for another person where transfer made voluntarily & with understanding of what is being done (*Bank of NSW v Rogers*)

Elements (*Union Bank of Australia v Whitelaw*)

1. Improper use by one party
2. Of control, domination influence or some other form of superiority over another
3. For the benefit of himself or a 3rd party
4. So that the acts of that person are not his free and voluntary acts
 - a. Fully informed – show independent advice – pertains to transaction

Burden of proof (*Johnson v Buttress* (1936) 56 CLR 113 at 133 per Dixon J)

- Relationship – status based
- Relationship of influence/'trust and confidence'
- Or 'fact-based' = influence presumed

Categories

5. Actual
 - a. Person claiming actual must show one party had capacity to influence another, influenced, and transfer was result of influence (*Johnson v Buttress*)
 - b. Elements (*Johnson v Buttress*) (P prove, D rebut)
 - i. Capacity of stronger party to influence weaker party
 - ii. Stronger party did exert influence
 1. Used their position to obtain unfair advantage, caused injury to other (*Poosathurdi v Kanappa Chettiar*)
 - iii. Exercise of that influence was undue
 - iv. Undue influence brought about transaction in question
6. Presumed
 - a. 2A – relationships that automatically raise a presumption of UI (D must rebut)
 - i. Solicitor – client
 - ii. Doctor – patient

- iii. Parent – child (*West v Public Trustee*)
- iv. Guardian – ward
- v. Religious leader – follower (*Allcard v Skinner*)
- b. 2B – if claimant manages to prove that the relationship warrants presumption of UI (P prove, D rebut) then go to show actual undue influence
 - i. Must prove – excessive dependence by claimant on D
 - 1. If relationship of habitual dependence or influence to such degree his/her judgement likely have been impaired – presumption of UI arise (*BCCI v Aboudy*)
 - ii. Factors (*Union Fidelity Trusts v Gibson*)
 - 1. Standard of intelligence/education, character/personality of donor
 - 2. Age, state of health, blood relationship, experience or lack of, business affairs of donor
 - 3. Length of friendship/acquaintance between donor and donee
 - 4. Intricacy of business affairs
 - 5. Equality, relative strength of character/personality of donee
 - 6. Period of closeness of relationship
 - 7. Opportunity afforded the donee to influence donor in business affair