

undue influence

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Undue Influence

A judicially created defense to **transactions that have been imposed upon weak and vulnerable persons** that allows the transactions to be set aside.

Virtually any act of persuasion that over-comes the free will and judgment of another, including exhortations, importunings, insinuations, flattery, trickery, and deception, **may amount to undue influence**. Undue influence differs from duress, which consists of the intentional use of force, or threat of force, to coerce another into a grossly unfair transaction. Blackmail, **Extortion**, bad faith threats of criminal prosecution, and oppressive **Abuse of Process** are **classic examples of duress**.

Four elements must be shown to establish undue influence. First, it must be demonstrated that the victim was susceptible to overreaching. Such conditions as **mental, psychological, or physical disability** or dependency may be used to show susceptibility. Second, there must be an **opportunity for exercising undue influence**. Typically, this **opportunity arises through a confidential relationship**. Courts have found opportunity for undue influence in confidential relationships between **Husband and Wife**, fiancé and fiancée, **Parent and Child**, **trustee and beneficiary**, **administrator** and legatee, **Guardian and Ward**, attorney and client, doctor and patient, and pastor and parishioner. Third, there must be evidence that the defendant was inclined to exercise undue influence over the victim. Defendants who **aggressively initiate a transaction**, **insulate a relationship from outside supervision**, or **discourage a weaker party from seeking independent advice** may be attempting to exercise undue influence. Fourth, the **record must reveal an unnatural or suspicious transaction**. Courts are wary, for example, of testators who make abrupt changes in their last will and testament after being **diagnosed with a terminal illness or being declared incompetent**, especially if the changes are **made at the behest of a beneficiary who stands to benefit** from the new or revised testamentary disposition.

Nevertheless, courts will examine the facts closely before finding that a transaction has been tainted by undue influence. Mere suspicion, surmise, or conjecture of overreaching is insufficient. **The law permits loved ones and confidants to advise and comfort** those in need of their support **without fear of litigation**. Courts are also aware that the doctrine of undue influence can be **used as a sword by the vindictive and avaricious** who seek to invalidate a perfectly legal transaction **for personal gain**. When undue influence is found to have altered a transaction, however, courts will make every effort to return the parties to the same position they would have occupied had the overreaching not occurred.