§ 7:1. Undue influence generally

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Chapter 7. Undue Influence

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In an earlier chapter, we set out the early English and American history of the doctrine of undue influence as a basis for voiding a will. By the end of the 19th century, American courts were willing to set aside a will if the contestant could show that someone had induced the testator to make that will by means of undue influence. The notion of undue influence upon a testator is a slippery concept at best. The courts have never been consistent in their definitions of the term, nor in the judicial tests used to evaluate proof of undue influence.

This chapter attempts to create a working definition of undue influence as grounds for invalidating a will from elements derived from the vast majority of modern undue influence cases. Specifically, in order to prove that a testator's will should be voided as the product of undue influence, the contestant must show that the testator was susceptible to the influence of others. 1 The contestant will be required to establish that the testator and the alleged influencer had some type of confidential relationship, 2 and that the alleged influencer used that confidential relationship in order to secure a change in the testator's post-death distribution of property. 3 The contestant must show that the testator actually did change his or her post-death distribution plan as a result of the alleged influencer's actions, 4 and must persuade the court that the change was unconscionable. 5 If the contestant proves these elements to the satisfaction of the trier of fact, the contestant will have met his or her burden of proof. On the other hand, the proponent may present rebuttal evidence against any of these five elements of undue influence and defeat a claim that the testator's post-death distribution plans were the product of undue influence.

An influencer need not be a direct beneficiary of the testator's post-death distribution plans to be culpable. 6 Further, the type of activities which the influencer engages in may be perfectly lawful. The courts have not drawn a sharp distinction between undue influence and duress, but the courts find wills to have been the product of undue influence without finding that any threat of physical force or coercion has been made against the testator by the alleged influencer.

The courts have also enshrined the law of undue influence in a number of presumptions. Many courts hold that when a contestant proves that the testator and the alleged influencer enjoyed a confidential relationship, and the alleged influencer procured a change of post-death distribution plans by the testator in favor of the alleged influencer, undue influence is presumed. 7 This presumption is an evidentiary crutch, allowing the contestant to get to the jury by proving a confidential relationship, importuning for a change of plans and benefits inuring to the confidant. 8 It may survive contrary evidence offered by the proponent, and the jury may, in some states, be required to weigh the strength of the presumption of undue influence against contrary evidence. 9 However, not all jurisdictions recognize this presumption. Some states hold that a change of testamentary plans in favor of a confidant is only circumstantial proof of undue influence. 10
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Many courts presume that a will drawn by a beneficiary or a close relative of the beneficiary is the product of undue influence. Some courts also speak of disinheriting wills as “unnatural devises,” as though there is presumption against the validity of such instruments.

Another way of understanding the concept of undue influence is to isolate the kinds of relationships between testator and influencer which courts have routinely treated as susceptible to undue influence. There are five distinct types of relationships in which the issue of undue influence is commonly raised when there is a change of post-death planning by the testator in favor of the alleged influencer. The most common scenario is that of a second spouse who allegedly obtains the disinheriting of children of an earlier marriage (the “David and Bathsheba” case). The second scenario involves a child of the testator who allegedly obtains the disinheriting of one or more siblings (the “Esau and Jacob” case). In the third scenario, one sibling, niece, nephew or cousin of the testator receives the bulk of the estate at the expense of other collateral kinfolk (the “Judge Jaffrey Pynecheon” case). The fourth situation involves a helping professional who receives all or part of the testator's estate at the expense of the testator's heirs (the “Uriah Heep” case). In the fifth scenario, a neighbor or acquaintance obtains the testator's vestate at the expense of the testator's heirs (the “Mary Worth” case). Courts tend to be more hostile to Judge Pyncheon, Uriah Heep and Mary Worth cases of undue influence than they are to David and Bathsheba and Esau and Jacob cases.

The early English ruling cases, such as Casborn v. Barsham, defined undue influence in terms of domination and control. The victim of undue influence had to be dominated and controlled by the influencer in order for the courts to intervene and cancel post-death distributions of property to the influencer. The courts looked upon the influencer's abuse of his or her power over the testator as the reason for canceling a will, rather than some antisocial outcome such as the disinheriting of heirs. This was also true in early American decisions such as Williams v. Goude. These American cases looked for facts indicating such domination as would destroy the testator's free agency.

Around the end of the 19th century, however, courts began to scrutinize the change of post-death distribution plans itself as an indicator of undue influence. The cases demonstrating increased concern for the shifting of assets away from heirs at law to other parties were typically those involving an importuning second spouse or greedy child who obtained a greater share of a victim's estate than that provided by the laws of intestate succession.

By the turn of the century, most courts had developed a working definition of undue influence and applied it more or less successfully to will contests and to actions to cancel deeds and contracts on account of the undue influence of a favored beneficiary.

Footnotes
1 See § 7:4.
2 See § 7:5.
3 See § 7:6.
4 See § 7:7.
5 See § 7:8.
6 See, e.g., Appeal of Drake, 45 Conn. 9, 1877 WL 1903 (1877) (testator's will drawn by vestryman of church that received large legacy); Matter of Estate of Maheras, 1995 OK 40, 897 P.2d 268 (Okla. 1995) (pastor of church named in a will unduly influenced
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the testator, even though he received no personal benefit from the will); Walters v. Walters, 89 Va. 849, 17 S.E. 515 (1893) (testator's son procured the will, which gave his sons the balance of the estate). But see Henry v. Hall, 106 Ala. 84, 17 So. 187 (1895) (will was procured by a person having no confidential relationship to the testatrix; although the will benefitted the procurer's son, no undue influence was found); Waddington v. Buzby, 45 N.J. Eq. 173, 16 A. 690 (Ct. Err. & App. 1889) (no undue influence was found where the draftsman of the will was the executor and the draftsman's wife and children were legatees; there was no certain evidence of fraud or undue influence and the testatrix had previously excluded other relatives in a former will and provided explanations, and the draftsman was the husband of the testatrix's granddaughter and advised her on business matters).

Louisiana has adopted a statute that includes third-party undue influence as well as beneficiary undue influence. La. Civ. Code art. 1479, effective Jul 1, 1991. Other state courts have considered actions of a nonbeneficiary in determining whether to invalidate a will due to undue influence. Harper v. Harper, 274 Ga. 542, 554 S.E.2d 454 (2001) (it was error to conclude that evidence of undue influence from a third party was irrelevant to the issue of undue influence). But see In re Estate of Baright, 1994 WL 123586 (Neb. Ct. App. 1994) in which the alleged undue influencers were a banker and an attorney whose only interests in the estate were potential management fees as trustees of a charitable foundation set up by testator after the testator became angry with York College, beneficiary of a residuary devise under a prior will.

1. See § 7:11.
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11. See § 7:11.

The authors' survey of will contests based on undue influence from 1900–1990 reflect this.

15. See, e.g., Bulger v. Ross, 98 Ala. 267, 12 So. 803 (1893) (husband-wife relationship does not raise presumption of undue influence when the wife is favored over the children); In re Storey's Will, 20 Ill. App. 183, 1886 WL 5471 (1st Dist. 1886), rev'd on other grounds, 120 Ill. 244, 11 N.E. 209 (1887) (testator believed in spiritualism; his second wife, present at the will's execution, said to the testator that a spirit guide had told him to provide for his second wife rather than the children of his first marriage); Storer v. Zimmerman, 28 Minn. 9, 8 N.W. 827 (1881) (evidence of unequal distribution of the testator's property was not admissible to prove undue influence without direct evidence of undue influence).
16. See, e.g., Eastis v. Montgomery, 93 Ala. 293, 9 So. 311 (1891) (fact that one child resided with an aged mother and managed her business did not raise a presumption of undue influence); Simpler v. Lord, 28 Ga. 52, 1859 WL 2499 (1859) (a son, the principal legatee of his mother, was obliged to rebut proof of his undue influence); Bundy v. McKnight, 48 Ind. 502, 1874 WL 5905 (1874); Blake v. Rourke, 74 Iowa 519, 38 N.W. 392 (1888); Gay v. Gilliland, 92 Mo. 250, 5 S.W. 7 (1887) (the testator was under the undue influence of a son who threatened the testator with violence); Moore's Ex'rs v. Blauvelt, 15 N.J. Eq. 367, 1862 WL 2750 (Prerog. Ct. 1862) (threats by one child to shun a parent if not given more under a will, along with threats of litigation against the other children); In re Budlong's Will, 126 N.Y. 423, 27 N.E. 945 (1891) (false charges by one child against another).
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All the elements of a working definition of undue influence or a cause of action to set aside a will because of undue influence were present in the great New York case of Rollwagen v. Rollwagen, 63 N.Y. 504, 1876 WL 12077 (1876). The testator was an illiterate...
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German immigrant butcher who had amassed a sizable fortune (from $600,000 to $800,000) by shrewd trading in New York City real estate. The principal beneficiary of his will, Magdalena Herrman Rollwagen, was a niece of his first wife. She became his housekeeper in 1869. She then married the testator when she was 42 and he was 64 and seriously ill from a recent stroke. Although the court found that the testator had testamentary capacity, it held that the testator was “undoubtedly impaired and his will enfeebled by paralysis and disease,” making the testator susceptible to undue influence. Rollwagen at 517. The court found that Mrs. Rollwagen took advantage of her confidential position to assume control of the testator’s business affairs. Rollwagen at 520–21. Mrs. Rollwagen also procured the will and gave instructions to the drafting attorney that benefitted her. Rollwagen at 521. Although Magdalena was the testator's wife, the court characterized their marriage as a “matter of convenience,” and evinced considerable shock that Rollwagen would partially disinherit the children of his first marriage to benefit her. Rollwagen at 520.

See also Thompson: The Law of Wills and the Manner of Their Drafting, Execution, Probate and Contest Together with Testamentary Forms, § 530 (1916). According to Thompson, undue influence is that kind of influence which amounts to overpersuasion, coercion or force, which destroys the testator's free agency and willpower. Undue influence maybe exercised without any fraud or misrepresentation by the influencer to the testator. It may be flattery, overpersuasion, fear or desire for peace, but mere advice, argument or persuasion is not undue influence.

A recently published article in the University of Michigan Journal of Law Reform by Prof. Daniel B. Kelly argued for an economic analysis ex ante and ex post principles derived from law and economics to be applied to generate legal rules (universal principles that admit no exceptions) and legal standards (variable factor analysis governing decisions) be applied to will contests. Although Prof. Kelly did not by any stretch of imagination fully articulate the transactional costs of commencing a will contest or defending a will contest, he suggested that such a matrix may be useful to judges (appellate judges in particular) in defining legal rules and applying legal standards in will contests. See Kelly, Symposium: The Uniform Probate Code: Remaking American Succession Law; Article Toward Economic Analysis of the Uniform Probate Code, 45 U. Mich. J.L. Reform 855 894-95 (2012).


See, e.g., Bancroft v. Bancroft, 5 Cal. Unrep. 31, 40 P. 488 (Cal. 1895) (sale of livestock); Tucke v. Buchholz, 43 Iowa 415, 1876 WL 564 (1876); Ingersoll v. Roe, 65 Barb. 346, 1873 WL 9999 (N.Y. Gen. Term 1873); Sour Mash Distilling Co. v. Cavanagh, 4 Pa. C.C. 373, 1887 WL 5089 (Pa. C.P. 1887); Millican v. Millican, 24 Tex. 426, 1859 WL 6450 (1859) (undue influence not found). Several cases also found a cause of action to set aside a trust declaration. See, e.g., Emily O. Gibbes v. The New York Life Insurance And Trust Company, &c., and others., 67 How. Pr. 207, 1883 WL 14434 (N.Y. Sup 1883); In re Greenfield's Estate, 14 Pa. 489, 1850 WL 5927 (1850) (provision in trust to compensate scrivener); Caffey's Ex'rs v. Caffey, 12 Tex. Civ. App. 616, 35 S.W. 738 (1896) (trust made upon separation of husband and wife). Inter vivos gifts could also be set aside by proof of undue influence used to extract the gift. See, e.g., Norris v. Norris, 3 Ind. App. 500, 28 N.E. 1014 (1891); Muir v. Miller, 72 Iowa 585, 34 N.W. 429 (1887) (disapproving trial court instruction on undue influence); Caspari v. First German Church, 12 Mo. App. 293, 1882 WL 9858 (1882) (gift of cash to church).