

Contract – Undue influence

An agreement may be avoided where it was entered into as a result of unfair influence due to the parties' relationships.

Undue influence is an equitable doctrine which can arise in two ways – actual undue influence which arises out of illegitimate pressure and abuse exerted by one party to the other, and circumstances which is where there is evidential presumption that influence has been exercised which may become an evidential presumption of undue influence.

Where undue influence is established between parties, the victim can have the transaction set aside.

Undue influence is an equitable doctrine allowing for a contract to be set aside (remedy of rescission) at the court's direction where there was a wrongful (undue) exercise by one party to the other. There are 2 types – actual and presumed.

Actual undue influence

Claimant must prove that at the time of the transaction that undue influence was exercised so that it was not the exercise of free will.

Presumed undue influence 2a.

Claimant has to show that there was a special relationship between the claimant and the wrongdoer. This leads to the presumption of influence in the law. The presumption of undue influence arises when there is something suspicious about the transaction which calls for an explanation. The burden then falls on the wrongdoer to prove that there was not any undue influence exercised i.e. it could be shown that the transaction was entered into freely.

Protected relationships:

Religious advisor and disciple: **Allcard v Skinner 1887**

Parent and child: **Bainbridge v Browne 1881**

Solicitor and client: **Wright v Carter**

BUT NOT husband and wife: **Bank of Montreal v Stuart**

Presumed undue influence 2b.

Claimant is able to establish the existence of a relationship of trust and confidence on the facts. This raises a presumption that influence has been exercised and that presumption will be undue, where there is something in the nature of the transaction that calls for explanation.

Lloyds Bank Ltd v Bundy 1975

- Bank customer placed trust and confidence in bank manager for financial advice.

A wife may place trust in her husband with regard to financial affairs.