

Definitions of Undue Influence in Statute or Case Law

ABA Commission on Law and Aging

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Non-state specific definitions of UI:

Under Black's Law dictionary, undue influence can be defined in 3 different ways:

"Undue influence consists (1) in the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority, for the purpose of obtaining an unfair advantage over him; (2) in taking an unfair advantage of another's weakness of mind; or (3) in taking a grossly oppressive and unfair advantage of another's necessities or distress."

Undue influence is the exercise of sufficient control over a person that: (1) deprives that person of freedom of choice or overcomes that person's free will and substitutes the will of another in its place; (2) "precludes [that person's] exercise of free and deliberate judgment"; or (3) "coerces [that] person into doing something" that would not have been done absent the influence. 25 AM.JUR.2D *Duress and Undue Influence* § 36 (2004); The basic elements of undue influence are: (1) "a susceptible party"; (2) the opportunity for another "to exert influence"; (3) the exertion of improper influence; and (4) a result showing the effect of the improper influence. *Id.*

The most common form of UI occurs within the context of estate planning, whether that be UI being exercised over the course of creating testamentary documents (wills, trusts, etc.) or in decision-making documents such as different powers-of-attorney. UI is also often referred to in statutes defining financial exploitation. For the purposes of our research, we will focus on each state's statutory and/or case law that sheds light on UI, with the understanding that much of the legal precedent on UI has been primarily established within the realm of probate/estate planning.



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State definitions and constructions of UI:

Alabama:

- Statutory definition of Undue Influence - Protecting Alabama Elders Act AL Code § 38-9E-2 (2013):
 - **Undue influence. Domination, coercion, manipulation, or any other act exercised by another person to the extent that an elderly person is prevented from exercising free judgment and choice**
- Case law definition/factors used in UI cases (these factors are cited through multiple cases interpreting UI):
 - **“In order for the contestant to raise a presumption of undue influence the evidence must establish:**
 - (1) A confidential relationship between a favored beneficiary and testator;
 - (2) that the influence of or for the beneficiary was dominant and controlling in that relationship; and
 - (3) undue activity on the part of the dominant party in procuring the execution of the will.”
 - Interpretation for the factors:
 - (2) that the influence of or for the beneficiary was dominant and controlling in that relationship
 - Further interpretation in Hayes v. Apperson: “a beneficiary controls the personal, business, and household affairs of a testator is evidence of a dominant and controlling influence.” Hayes v. Apperson, 826 So. 2d 798, 804 (Ala. 2002)
 - (3) **undue activity on the part of the dominant party in procuring the execution of the will**
 - “Evidence proving that there was undue activity on the part of the named beneficiary in procuring the [change in beneficiary] is crucial to the determination of the existence of undue influence.” Wall v. Hodges, 465 So. 2d 359, 363 (Ala. 1984)
 - “focus is on the beneficiary’s level of activity and role in the preparation and execution of the change in beneficiary.” See McGee v. McGee, 91 So. 3d 659, 673 (Ala. 2012)
 - “[M]ere activity is not sufficient justification for finding undue influence. There must be evidence of active interference in procuring the [change in beneficiary].” Bolan v. Bolan, 611 So. 2d 1051, 1055 (Ala. 1993)

Additional resource that might be helpful:

http://www.eastalabamaaging.org/uploadedFiles/File/Health_and_Wellness/MAGAZINE_on_Elder_Abuse.pdf (Area Agency on Aging in East Alabama Magazine Issue on Elder Abuse) - goes through visible signs and behavioral warning signs for different forms of elder abuse. Similar “red flags” as used in the California screening tool

Alaska

- Statute AK Stat 47.24.900 (2012) - Protection of Vulnerable Adults
- Statutory Definition:
 - "undue influence" means the use by a person who stands in a position of trust or confidence of the person's role, relationship, or authority to wrongfully exploit the trust, dependency, or fear of a vulnerable adult to gain control over the decision making of the vulnerable adult, including decision making related to finances, property, residence, and health care
- Case law interpretation of UI
 - **In making wills:** The party challenging a will must prove that the "testator was virtually compelled to make a will [that the testator] would not have made [if] left to the free exercise of [the testator's] own judgment and wishes." We approach this issue by asking whether a person used "coercion and duress which would act as a dominating power over the mind and act of a testator." In other words, was the willpower of the testator "so destroyed as to substitute the will of another?" *Crittell v. Bingo*, 36 P.3d 634, 639 (Alaska 2001)
 - "a testamentary gift may be void if the grantor lacked the mental capacity to understand the nature and extent of the gift he or she is making." *Crittell v. Bingo*, 36 P.3d 634, 639 (Alaska 2001)
 - In making **inter vivos transfers**: consider "the effect of the influence which was, in fact, exerted upon the mind of the [donor], considering his physical and mental condition, the person by whom it was exerted, the time and place and all the surrounding circumstances. . . ."; applied the same test as used in *Crittell v. Bingo* (testamentary gifts) to inter vivos transfers. *Ware v. Ware*, 161 P.3d 1188, 1193-95 (Alaska 2007)
 - **"In order to prove that a trust was the product of undue influence, a party must demonstrate that:**
 - (1) the target of the alleged undue influence was susceptible to influence;
 - (2) another person had the opportunity to exert influence;
 - (3) improper influence was, in fact, exerted; and
 - (4) the trust shows signs of the improper influence."*Purcella v. Olive Kathryn Purcella Tr.*, 325 P.3d 987, 994 (Alaska 2014)

This test was adopted from 25 AM.JUR.2D *Duress and Undue Influence* §36 (2004)

Arizona

- Case law:
 - Definition for UI: “conduct by which a person unduly influences a testator in executing a will, when that person through his or her power over the mind of the testator makes the testator’s desires conform to his own, thereby overmastering the volition of the testator.” (*Parrisella v. Fotopulos* **111 Ariz. 4 (1974)**; In re McCauley's Estate, 415 P.2d 431, 433 (1966)
 - Presumption of undue influence arises when one occupies a confidential relationship with the testator and is active in preparing or procuring the execution of a will in which he or she is a principal beneficiary. See *In re O'Connor's Estate*, 74 Ariz. 248, 246 P.2d 1063 (1952)
 - Case law factors:
 - **“Significant indicia of the presence or absence of [undue] influence include the following factors:**
 - (1) Whether the alleged influencer has made fraudulent representations to the Testatrix;
 - (2) whether the execution of the will was the product of hasty action;
 - (3) whether the execution of the will was concealed from others;
 - (4) whether the person benefited by the will was active in securing its drafting and execution;
 - (5) whether the will as drawn was consistent or inconsistent with prior declarations and plannings of the testatrix;
 - (6) whether the will was reasonable rather than unnatural in view of the testatrix' circumstances, attitudes, and family;
 - (7) whether the testatrix was a person susceptible to undue influence; and
 - (8) whether the testatrix and the beneficiary have been in a confidential relationship.”

In re McCauley's Estate, 415 P.2d 431, 433-34 (1966)
- Presumption of undue influence is one that shifts the burden of production of evidence but not the burden of persuasion. *Estate of Harber* (recognizing that presumption shifts only burden of production and not burden of persuasion); *In re Estate of Pitt*, 88 Ariz. 312, 317, 356 P.2d 408, 411

Arkansas:

- Case law definitions/interpretations:

- “must be a malign influence resulting from fear, coercion, or any other cause which deprives the testator of his free agency in disposing of his property” *Gross v. Young*, 242 Ark. 604, 611, 414 S.W.2d 624, 628 (1967) (quoting *Boggianna v. Anderson*, 78 Ark. 420, 94 S.W. 51 (1906))
- “However, a beneficiary of a will **does not** exercise undue influence over the testator merely because the beneficiary influenced him in the ordinary affairs of life or because the beneficiary was in a confidential relationship with the testator when he executed his will.” *Reddoch v. Blair*, 285 Ark. 446, 688 S.W.2d 286 (1985); *Rosenbaum v. Cahn*, 234 Ark. 290, 351 S.W.2d 857 (1961). In addition, a testator's decision to favor a person with whom he had developed a close and affectionate relationship is not, of itself, proof that the favored beneficiary procured the will by undue influence. *Reddoch v. Blair*, supra.
- Claimant must provide preponderance of evidence standard that testator was victim of undue influence; “party challenging the validity of a will must typically prove by a preponderance of the evidence that the testator lacked the requisite mental capacity or that the testator was the victim of undue influence when the will was executed” *Pyle v. Sanders*, 39 S.W.3d 774 (2001), 344 Ark. 354
- “questions of testamentary capacity and undue influence are so interwoven in any case where these questions are raised that the court necessarily considers them together” *Pyle v. Sanders*, 39 S.W.3d 774 (2001), 344 Ark. 354
- “Cases involving undue influence will frequently depend on the credibility of witnesses” *Pyle v. Sanders*, 39 S.W.3d 774 (2001), 344 Ark. 354

California

- Statutory definition (Cal. Civ. Code § 1575):
 - **Undue influence** consists:
 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
 2. In taking an unfair advantage of another’s weakness of mind; or,
 3. In taking a grossly oppressive and unfair advantage of another’s necessities or distress.
- Statutory definition (Elder Abuse and Dependent Adult Civil Protection Act - California Welfare and Institutions Code § 15610.70; and California Probate Code Section 86)
 - “Undue influence” means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:
 - (1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired

cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

(2) The influencer's apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:

(A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

- Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

Colorado:

- Statutory Definition (Criminal Elder Abuse) - Colo. Rev. Stat. § 18-6.5-102
 - "Undue influence" means the use of influence to take advantage of an at-risk person's vulnerable state of mind, neediness, pain, or emotional distress.
 - "At-risk adult" means any person who is seventy years of age or older or any person who is eighteen years of age or older and is a person with a disability as said term is defined in subsection (11) of this section
 - (11) "Person with a disability" means any person who:
 - (a) Is impaired because of the loss of or permanent loss of use of a hand or foot or because of blindness or the permanent impairment of vision of both eyes to such a degree as to constitute virtual blindness;
 - (b) Is unable to walk, see, hear, or speak;
 - (c) Is unable to breathe without mechanical assistance;
 - (d) Is a person with an intellectual and developmental disability as defined in section 25.5-10-202, C.R.S.;
 - (e) Is a person with a mental illness as the term is defined in section 27-65-102 (14), C.R.S.;
 - (f) Is mentally impaired as the term is defined in section 24-34-501 (1.3) (b) (II), C.R.S.;

- (g) Is blind as that term is defined in section 26-2-103 (3), C.R.S.;
 - or
 - (h) Is receiving care and treatment for a developmental disability under article 10.5 of title 27, C.R.S.
- “At-risk elder” means any person who is seventy years of age or older.
- Case law definitions/standard:
 - Ofstadt v. Sarconi, 252 P.2d 94 (1952), 126 Colo. 565
 - “many circumstances from which such may be inferred, namely, confidential relationship; preparation of the will under the direction of one enjoying the confidence of the testatrix; where the proponent will enjoy benefits from the will proposed; when, at the time of execution of the will, the testatrix was fatally ill, mentally and physically; and then the fact that the execution of the will was by the proponent kept secret from other members of the family”
 - Ofstadt v. Sarconi factors broken down to:
 - A confidential relationship between the victim and the alleged influencer
 - Terms in the will that benefit the perpetrator
 - Mental or physical illness of the victim
 - A will kept secret from the victim’s relatives

Connecticut:

- Case law:
 - **“It is stated generally that there are four elements of undue influence:**
 - (1) a person who is subject to influence;
 - (2) an opportunity to exert undue influence;
 - (3) a disposition to exert undue influence; and
 - (4) a result indicating undue influence.”

Pickman v. Pickman, 6 Conn. App. 271, 275 (Conn. App. Ct. 1986)
 - “To sustain a verdict rejecting a will because of undue influence, the[re] must be proof not only of undue influence but that its operative effect was to cause the testator to make a will which did not express his actual testamentary desires.” Lancaster v. Bank of New York, 147 Conn. 566, (Conn. 1960)
 - “Relevant factors include age and physical and mental condition of the one alleged to have been influenced, whether he had independent or disinterested advice in the transaction [...] consideration or lack or inadequacy thereof for any contract made, necessities and distress of the person alleged to have been influenced, his predisposition to make the transfer in question, the extent of the transfer in relation to his whole worth [...] failure to provide for all of his children in case of a transfer to one of them, active solicitations and persuasions by the other party, and the relationship of the parties.”
Pickman v. Pickman, 6 Conn. App. 271, 275-76 (Conn. App. Ct. 1986)
 - “Because direct evidence of intent is difficult to obtain, undue influence may be proved circumstantially [...] Relevant circumstances include the grantor’s health and its effect upon his mental and physical functions, his dependence

upon the person alleged to have influenced him, and the opportunity to exert influence available to that person.” Reynolds v. Molitor, 184 Conn. 526, 528 (Conn. 1981)

- “If, however, a confidential relationship is proved, then the burden of proving fair dealing or the burden of showing the absence of undue influence shifts to the defendant or the fiduciary, and that burden must be sustained by clear and convincing evidence.” Cooper v. Cavallaro, 2 Conn. App. 622, 626 (Conn. App. Ct. 1984)

Delaware:

- Case law:
 - In re Last Will and Testament of Melson, 711 A.2d 783 (1998): “Most recently, we have defined the elements required to establish undue influence as:
 - (1) a susceptible testator
 - (2) the opportunity to exert influence
 - (3) a disposition to do so for an improper purpose
 - (4) the actual exertion of such influence
 - (5) a result demonstrating its effect.” In re Norton, 672 A.2d at 55 (citing In re West, 522 A.2d at 1264)”
 - Interpretation for factor 1, susceptibility:
 - “Evidence of a subject’s dependence on another, or a particular predisposition to accede to the demands of another person, may be sufficient to show susceptibility.” *IMO Dougherty, Francis J. Sr. Estate* C.A. No. 9496-JL (July 22, 2016)
 - In re Last Will and Testament of Melson, 711 A.2d 783 (1998): Challenger of Will must establish (to create presumption of undue influence):
 - (a) the will was executed by "a testatrix or testator who was of weakened intellect"
 - (b) the will was drafted by a person in a confidential relationship with the testatrix; and
 - (c) the drafter received a substantial benefit under the will. Estate of Reichel, 484 Pa. 610, 400 A.2d 1268 (1979)
 - In re West, 522 A.2d 1256 (1987)
 - “Undue influence is an excessive or inordinate influence considering the circumstances of the particular case. The degree of influence to be exerted over the mind of the testator, in order to be regarded as undue, must be such as to subjugate his mind to the will of another, to overcome his free agency and independent volition, and to compel him to make a will that speaks the mind of another and not his own. It is immaterial how this is done, whether by solicitation, importunity, flattery, putting in fear or some other manner. Whatever the means

employed, however, the undue influence must have been in operation upon the mind of the testator at the time of the execution of the will ...
Matter of Langmeier, 466 A.2d at 403

Florida:

- Case law:
 - *Heasley v. Evans*, 104 So.2d 854 (1958): “Undue influence, as it is required for invalidation of a will, must amount to over-persuasion, duress, force, coercion, or artful or fraudulent contrivances to such a degree that there is destruction of the free agency and will power of the one making the will. Mere affection, kindness, or attachment of one person for another may not of itself constitute undue influence.”
 - *In re Estate of Carpenter*, 253 So. 2d 697 (1971) - leading case on UI in Florida: “It is established in Florida that if a substantial beneficiary under a will occupies a confidential relationship with the testator and is active in procuring the contested will, the presumption of undue influence arises.”
 - Interpretation/more details on “active in procuring”
 - “Several criteria to be considered in determining active procurement emerge from a study of these cases: (a) presence of the beneficiary at the execution of the will; (b) presence of the beneficiary on those occasions when the testator expressed a desire to make a will; (c) recommendation by the beneficiary of an attorney to draw the will; (d) knowledge of the contents of the will by the beneficiary prior to execution; (e) giving of instructions on preparation of the will by the beneficiary to the attorney drawing the will; (f) securing of witnesses to the will by the beneficiary; and (g) safekeeping of the will by the beneficiary subsequent to execution.” *In re Estate of Carpenter*, 253 So. 2d 697 (1971)
 - Additional three factors that Florida courts have used to determine “active procurement”:
 - isolating the testator and disparaging family members. *Newman v. Smith*, 82 So. 2d 236 (Fla. 1919), *In re Auerbacher’s Estate*, 41 So. 2d 659 (Fla. 1949), *In re Ates’ Estate*, 60 So. 2d 275 (Fla. 1952), *In re Estate of Winslow*, 147 So. 2d 613 (Fla. 2d DCA 1962), *In re Estate of Lamberson*, 407 So. 2d 358 (Fla. 5th DCA 1981)
 - mental inequality between the decedent and the beneficiary; *Peacock v. Du Bois*, 105 So. 2d 321 (Fla. 1925), *In re Estate of Reid*, 138 So. 2d 342 (Fla. 3d DCA 1962), *In re Estate of Duke*, 219 So. 2d 124 (Fla. 2d DCA 1969), *Cripe v. Atlantic First National Bank of Daytona Beach*, 422 So. 2d 820 (Fla. 1988) (inter vivos transfers)

- and the reasonableness of the will or trust provisions. *Newman v. Smith*, 82 So. 2d 236 (Fla. 1919), *Peacock v. Du Bois*, 105 So. 2d 321 (Fla. 1925), *In re Donnelly's Estate*, 188 So. 108 (Fla. 1939), *In re Ates' Estate*, 60 So. 2d 275 (Fla. 1952), *n re Estate of Witt*, 139 So. 2d 904 (Fla. 2d DCA 1952), *In re Estate of Tobias*, 192 So. 2d 83 (Fla. 2d DCA 1966)
 - Very broad interpretation of “confidential relationship”
 - *In re Estate of Carpenter*, 253 So. 2d 697 (1971): “the leading case in Florida defining the term “confidential relationship” is *Quinn v. Phipps*, 93 Fla. 805, 113 So. 419 (1927). In that case we said;

"The term `fiduciary or confidential relation,' is a very broad one * * *

The origin of the confidence is immaterial. The rule embraces both technical fiduciary relations and those informal relations which exist wherever one man trusts in and relies upon another. * * * * *

"The relation and the duties involved in it need not be legal. It may be moral, social, domestic, or merely personal.'"

Georgia:

- Case law:
 - *Bailey v. Edmundson*, 630 S.E.2d 396 (2006), 280 Ga. 528
 - “A rebuttable presumption of undue influence arises when a beneficiary under a will occupies a confidential relationship with the testator, is not the natural object of his bounty, and takes an active part in the planning, preparation, or execution of the will. *McConnell v. Moore*, 267 Ga. 839, 840, 483 S.E.2d 578 (1997)”
 - *Prine v. Blanton*, 720 S.E.2d 600 (2012), 290 Ga. 307; *Slosberg v. Giller*, 341 Ga. App. 581, 801 S.E.2d 332 (2017):
 - “To invalidate a will, undue influence must amount to deception or coercion that destroys the testator's free agency. *Bohler v. Hicks*, 120 Ga. 800, 809(6), 48 S.E. 306 (1904). The improper influence must operate on the testator's mind at the time the will is executed. *Boland v. Aycock*, 191 Ga. 327, 329, 12 S.E.2d 319 (1940).”
 - Factors for UI:
 - 1) that the “influencer” had a confidential or fiduciary relationship with the testator. *Trotman v. Forrester*, 279 Ga. 844, 845, 621 S.E.2d 724 (2005).
 - 2) that the “influencer” was capable of exerting control over the testator or isolating them from family/friends. *Trotman v. Forrester*, 279 Ga. 844,

845, 621 S.E.2d 724 (2005); *Bailey v. Edmundson*, 630 S.E.2d 396 (2006), 280 Ga. 528

- 3) that the testator was susceptible to undue influence
 - vulnerability of the testator to outside influence such as failing mind, poor health and other mental or physical enfeeblements are evidence that may lead toward the finding of undue influence. *Brown v. Bryant*, 220 Ga. 80, 137 S.E.2d 36 (1964).
- 4) that the “influencer” took part in the preparation of the will, and
- 5) that the “influencer” unreasonably or unexpectedly benefits from the will.
- *Prainito v. Smith*, 728 S.E.2d 309 (2012), 315 Ga. App. 791
 - “Where evidence is presented of a confidential relationship, the grantor being of weaker mentality and the grantee occupying the dominant position, an issue of fact is raised as to undue influence.” *Fletcher v. Fletcher*, 242 Ga. 158, 160(2) (249 S.E.2d 530) (1978).
- OCGA § 23–2–58 - definition on “confidential relationship”: relationship “where one party is so situated as to exercise a controlling influence over the will, conduct, and interest of another.”
- *Dyer v. Souther*, 272 Ga. 263, 265(2), 528 S.E.2d 242 (2000):
 - “[A]n attack on a will as having been obtained by undue influence may be supported by ... testimony ... (of) a confidential relation between the parties, the reasonableness or unreasonableness of the disposition of the testator's estate, old age, or disease affecting the strength of the mind, tending to support any other direct testimony or any other proved fact or circumstance going to show the exercise of undue influence on the mind and will of the testator.... While the quantity of influence varies with the circumstances of each case, according to the relations existing between the parties and the strength or weakness of mind of the testator, the amount of influence necessary to dominate a mind impaired by age or disease may be decidedly less than that required to control a strong mind. (Cits.)”

Hawaii:

- Case law:
 - *In re Estate of Herbert*, 979 P.2d 39 (1999), 90 Hawai`i 443 (“Well established Hawai`i case law involving undue influence has impliedly recognized and adopted the “SODR” factors. See *In re Will of Charles Notley*, 15 Haw. 435, 440-41 (1904); *In re Estate of Afong*, 26 Haw. 147, 152-54 (1921)”):
 - “the elements of undue influence are

- susceptibility of [the] testator [or testatrix]
- opportunity for the exertion of undue influence
- disposition to exert undue influence, and
- the result, in the will, of such undue influence.”
- “Hawai`i law, however, expressly requires an additional consideration:
 - “that the undue influence must be proved to have operated as a present constraint at the very time of making the will[.]”
- In re Estate of Heeb, 26 Haw. 538, 540 (1922): “[t]o sustain a claim of undue influence[,] it must appear that the influence exercised amounted to fraud or coercion destroying free agency, or the substitution of another's will for that of the testator [or testatrix] so that the product is not that of the testator [or testatrix].”
- “Character Evidence Is Generally Admissible to Establish Undue Influence” In re Estate of Herbert, 979 P.2d 39 (1999), 90 Hawai`i 443
 - “In cases involving the contest of wills upon the ground of undue influence the courts generally permit an unusually wide range of inquiry. . . . In this case [the trial court] permitted the presentation to the jury [to reflect] as accurately as possible the characters involved in the family tragedy, their relations to each other and the ultimate result.” In re Estate of Afong, 26 Haw. 147 (1921).

Idaho:

- Case law:
 - “a will may be held invalid on the basis of undue influence where sufficient evidence is presented indicating that the testator’s free agency was overcome by another.” *In re Estate of Roll*, 115 Idaho 797, 799 770 P.2d 806, 808 (1989)
 - 4 part test used in most Idaho UI cases - “undue influence is demonstrated through proof of four elements:
 - (1) a person who is subject to undue influence;
 - (2) an opportunity to exert undue influence;
 - (3) a disposition to exert undue influence; and
 - (4) a result indicating undue influence occurred.” *Gmeiner v. Yacte*, 100 Idaho 1, 607, 592 P.2d 57, 62-63 (1979)
 - Regarding the Gmeiner 4 part test: Although there is no set order for evaluating these elements, all must be proven in order to support a claim of undue influence. *Quemada v. Arizmendez*, 153 Idaho 609, 615, 288 P.3d 826, 832 (2012).
 - In re Matter of Smith, 432 P.3d 6 (2018), 164 Idaho 457:

- Susceptibility: whether a testator was susceptible to undue influence requires a consideration of many circumstances, including his state of affections or dislike for particular persons, benefited or not benefited by the will; of his inclinations to obey or to resist these persons; and, in general, of his mental and emotional condition with reference to its being affected by any of the persons concerned. *King v. MacDonald*, 90 Idaho 272, 279, 410 P.2d 969, 972 (1965)
- Opportunity: In *Gmeiner*, the Court explained that this element is the "easiest to establish." 100 Idaho at 8, 592 P.2d at 64 (noting that very frequently the beneficiary is found to have lived with the testator). See also *Estate of Conway*, 152 Idaho at 940, 277 P.3d at 387 (stressing the importance of the testator receiving independent and disinterested advice in the creation of the will and the distance between the testator and alleged wrongdoer at the time of the instrument's execution)
- Disposition: "whether or not the alleged undue influencer took an active part in preparation and execution of the will or deed. The beneficiary of a grantor's largesse will be viewed more suspiciously if he has been active in encouraging the transfer, in contacting the attorney or in preparing and typing the documents." *Gmeiner*, 100 Idaho at 8, 592 P.2d at 64; "alleged influencer's attempts at undermining bequests to the natural heirs. The court will look closely at situations where the recipient of a deed or bequest has apparently been responsible for alienating the affections of the testator-grantor from the other members of his or her family. The situation is further exacerbated if the grantee has isolated the grantor from all contact with family or with disinterested third parties." *Gmeiner*, 100 Idaho at 8, 592 P.2d at 64.
- Result: "A result is suspicious if it appears `unnatural, unjust or irrational.'" *Gmeiner*, 100 Idaho at 7, 592 P.2d at 63.
- Other factors: "Among the factors taken into consideration in determining the existence of undue influence are the age and physical and mental condition of the one alleged to have been influenced, whether he had independent or disinterested advice in the transaction, the providence or improvidence of the gift or transaction, delay in making it known, consideration or lack or inadequacy thereof for any contract made, necessities and distress of the person alleged to have been influenced, his predisposition to make the transfer in question, the extent of the transfer in relation to his whole worth, failure to provide for his own family in the case of a transfer to a stranger, or failure to provide for all of his children in case of a transfer to one of them, active solicitations and persuasions by the other party, and the relationship of the parties." *Gmeiner*, 100 Idaho at 6-7, 592 P.2d at 62-63.
- Rebuttable presumption of undue influence is created where a beneficiary of the testator's will is also a fiduciary of the testator such as a Personal Representative. In this instance, the proponent of the will (the person who wants the will to be valid) bears the burden of rebutting the presumption. *In re*

Estate of Roll, 115 Idaho 797, 799 P.2d 806, 808 (1989); *In re Estate of Conway*, 152 Idaho 933, 277 P.3d 380, 386 (2012).

Illinois:

- Case law:
 - Influence is “undue” when it “prevents the testator from exercising his own will in the disposition of his estate” such that the testator's will is rendered more the will of another. *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill.2d 452, 448 N.E.2d 872, 877, 69 Ill.Dec. 960, 96e (1983).
 - Supreme Court of IL opinion for *Franciscan Sisters Health Care Corp. v. Dean*, 69 Ill. Dec. 960, 448 N.E.2d 872, 876 (1983):
 - “This court has defined undue influence to be ‘any improper urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely.’ (*Powell v. Bechtel* (1930), 340 Ill. 330, 338.)”
 - Undue influence must have been “directly connected with the execution of the will” and it must have operated at the time the will was made. *Schmidt v. Schwear*, 98 Ill.App.3d 336, 424 N.E.2d 401, 405, 53 Ill.Dec. 766, 770 (5th Dist.1981).
 - Influence need not be exerted in an untoward manner to be undue. Even kindness and affection can constitute undue influence if they destroy the testator's “free agency.” *Kelley v. First State Bank of Princeton*, 36 Ill.Dec. at 575.
 - **4-part test for presumption of UI - A rebuttable presumption** arises when the plaintiff proves. *Tidholm v. Tidholm*, 391 Ill. 19, 62 N.E.2d 473 (1945):
 - (1) the existence of an attorney-client relationship or other fiduciary relationship between the decedent and the beneficiary such that the beneficiary is the dominant party
 - (2) that the decedent reposed trust and confidence in the beneficiary
 - (3) that the beneficiary prepared or procured the preparation of the purported will, and
 - (4) that the beneficiary would receive a substantial benefit under the document.
 - “Fiduciary Relationship” - 1st element of 4 part test:
 - Not limited to fiduciary relationships that exist as a matter of law; A fiduciary relationship can also arise out of an informal relationship, which is “moral, social, domestic or even personal in its origin.” *Swenson v. Wintercorn*, 234 N.E.2d at 97.
 - *In re Estate of Hoover*, 615 N.E.2d 736 (1993), 155 Ill.2d 402, 185 Ill.Dec. 866

- What constitutes undue influence cannot be defined by fixed words and will depend upon the circumstances of each case. (*Smith v. Henline* (1898), 174 Ill. 184, 201, 51 N.E. 227.)
- Proof of undue influence may be wholly inferential and circumstantial. (*Cheney v. Goldy* (1907), 225 Ill. 394, 400, 80 N.E. 289.)

Indiana:

- Case law:
 - Undue influence has been defined as "the exercise of sufficient control over the person, the validity of whose act is brought into question, to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised." *In Re Estate of Wade*, 768 N.E.2d at 962 (Ind.Ct.App. 2002)
 - *Hamilton v. Hamilton*, 858 N.E.2d 1032, 1037 (Ind.App.2006):
 - Indiana recognizes certain legal and domestic relationships that raise a presumption of trust and confidence as to the subordinate on the one hand, and a corresponding influence as to the dominant party on the other. *Meyer v. Wright*, 854 N.E.2d 57, 60 (Ind.Ct.App. 2006).
 - If the plaintiffs evidence establishes (1) the existence of such a relationship, and (2) the questioned transaction between the parties resulted in an advantage to the dominant party in whom the subordinate party had placed his or her trust and confidence, the law imposes a presumption that the transaction was the result of undue influence.
 - *Meyer v. Wright*, 854 N.E.2d 57 (Ind. Ct. App. 2006):
 - "By virtue of being Wright's caretaker, Paul, the child, is in the position of dominance."
 - *In re Rhoades* , 993 N.E.2d 291, 300-01 (Ind. Ct. App. 2013):
 - The following circumstances tending to support an inference of undue influence may be properly considered by our Court:
 - (1) the character of the beneficiary;
 - (2) any interest or motive the beneficiary might have to unduly influence the testator; and
 - (3) the facts and surrounding circumstances that might have given the beneficiary an opportunity to exercise such influence.
 - *Moriarty v. Moriarty*, 150 N.E.3d 616 (Ind. App. 2020)
 - When considering whether a will is invalid because it is a product of undue influence, the mental state of the testator is a factor the courts consider. *Nichols v. Estate of Tyler* , 910 N.E.2d 221, 229 (Ind. Ct. App. 2009) (quoting *Gast* , 858 N.E.2d at 166). However, "[c]omplete unsoundness of mind is not necessary to support a finding of undue

influence; rather, weakness of mind when combined with other factors is sufficient."

- Where a person makes false statements and accusations to a testator concerning the objects of the testator's bounty, with the intention and effect of alienating the testator's affections and causing the testator to make certain testamentary dispositions of property, the will may be declared void for undue influence. *Friedersdorf v. Lacy*, 90 N.E. 766 (Ind. 1910)
- Susceptibility to influence:
 - "Based on all the evidence, and specifically based on, among other things, (a) the death of Doreen, (b) William's virtually untreated anxiety and depression, (c) William's severe CHF and other medical conditions, (d) William's isolation from his family and long-time friends, [and] (e) William's dependency on others, this Court finds that William was susceptible to undue influence." *Moriarty v. Moriarty*, 150 N.E.3d 616 (Ind. App. 2020)
- Highlighted 3 parts to conclude UI:
 - the Court concludes that:
 - William was susceptible to undue influence,
 - Eve exercised undue influence over William at the time he executed the Purported Will, and
 - the Purported Will was a product of Eve's exercise of undue influence over William.

Iowa:

- Statutory definition:
 - Iowa Code Ann. § 235F.1 (16)
 - "**Undue influence** means taking advantage of a person's role, relationship, or authority to improperly change or obtain control over the actions or decision making of a vulnerable elder against the vulnerable elder's best interests."
- Case law:
 - To prove UI - *Burkhalter v. Burkhalter*, 829 N.W.2d 191 (Iowa Ct. App. 2013) - citing Iowa State Bar Ass'n, Iowa Civil Jury Instructions 2700.4 (2011).
 - The law presumes a person is free from undue influence. To overcome this presumption, plaintiff must prove each of the four following propositions:
 - 1. At the time the will was made (testator) was susceptible to undue influence.
 - 2. [Defendant] had the opportunity to exercise such influence and carry out the wrongful purpose.

- 3. [Defendant] was inclined to influence (testator) unduly for the purpose of getting an improper favor.
 - 4. The result was clearly brought about by undue influence.
 - If the plaintiff has failed to prove one or more of these propositions, your verdict will be for the defendant. If plaintiff has proved all of these propositions, your verdict will be for plaintiff. (so ALL 4 elements must be proven in order for UI claim to succeed)
- *In re Estate of Bayer*, 574 N.W.2d 667, 671 (Iowa 1998)
 - In order to set aside a will or trust on grounds of undue influence, the contestant must prove: (1) the testator was susceptible to undue influence; (2) the defendant had an opportunity to exercise undue influence and effect the wrongful purpose; (3) the defendant had a disposition to influence unduly to procure an improper favor; and (4) the result, reflected in the will, was clearly the effect of undue influence.

Kansas:

- Case law:
 - *Heck v. Archer*, 23 Kan. App. 2 (Kan. Ct. App. 1996)
 - To establish undue influence sufficient to avoid a testamentary act, the party challenging the act must show "such coercion, compulsion and restraint as to destroy the testator's free agency, and by overcoming his power of resistance, obliges or causes him to adopt the will of another rather than exercise his own." *In re Estate of Brodbeck*, 22 Kan.App.2d 229, 242, 915 P.2d 145 (1996). *Heck v. Archer*, 927 P.2d 495, 499 (Kan. Ct. App. 1996)
 - For undue influence to vitiate a contract or inter vivos transfer, it must be proved that at or about the execution of the contract or transfer, there was an influence bearing upon the will of the contracting party or grantor so potent as to destroy his or her free agency and to substitute the will of another. *Hotchkiss, Administrator v. Werth*, 207 Kan. 132, 141, 483 P.2d 1053 (1971); *Cersovsky v. Cersovsky*, 201 Kan. 463, 467, 441 P.2d 829 (1968).
 - Undue influence, in order to overcome a testamentary act, "must directly affect the testamentary act itself." *In re Estate of Bennett*, 19 Kan.App.2d 154, 163, 865 P.2d 1062 (1993)
 - A determination of suspicious circumstances must be made on a case-by-case basis. *Bennett*, 19 Kan.App.2d 154, Syl. p 5, 865 P.2d 1062.
 - 2-prong test in *In re Estate of Bennett*, 19 Kan.App.2d 154, 865 P.2d 1062 (1993)
 - Whether there is confidential or fiduciary relationship
 - A confidential or fiduciary relationship refers to " 'any relationship of blood, business, friendship, or association in which one of the parties reposes special trust and confidence in the other who is in a position to have and exercise influence over the first party.' "
 - Suspicious circumstances

- “We have no Kansas decisions defining the term ‘suspicious circumstances.’ We think the absence of a specific definition of that term is wise and appropriate.”
- “The question of whether suspicious circumstances exist is a question of fact to be determined on a case-by-case basis in the light of the factual background presented.”

Kentucky:

- Case law:
 - *Belcher v. Somerville*, 413 S.W.2d 620 (1967)
 - Evidence of the following "badges" of undue influence:
 - (1) A physically weak, mentally impaired testatrix;
 - (2) a will unnatural in its provisions, in fact, grossly unreasonable;
 - (3) a lately developed and comparatively short period of close relationship between the testatrix and the principal beneficiary;
 - (4) participation by the beneficiary in the physical preparation of the will and possession of the will by the beneficiary after its being written;
 - (5) efforts by the beneficiary to restrict contacts by the testatrix with other persons.
 - *Bye v. Mattingly*, 975 SW 2d 452 (1998)
 - “Undue influence is a level of persuasion which destroys the testator's free will and replaces it with the desires of the influencer.” *Nunn v. Williams*, Ky., 254 S.W.2d 698, 700 (1953)
 - “First, the influence must be of a type which is inappropriate. [...] Second, the influence must be of a level that vitiates the testator's own free will so that the testator is disposing of her property in a manner that she would otherwise refuse to do.”
 - a contestant must also show influence prior to or during the execution of the will.
 - In those instances in which a will is grossly unreasonable and the principal beneficiary actively participated in its execution, a presumption of undue influence arises. *Hollon's Ex'r v. Graham*, Ky., 280 S.W.2d 544 (1955); *Gay v. Gay*, 308 Ky. 539, 215 S.W.2d 92 (1948)

Louisiana:

- Some statutory guidance on standard of proof for UI:
 - La. Civ. Code Ann. art. 1483
 - “A person who challenges a donation because of fraud, duress, or undue influence, must prove it by clear and convincing evidence. However, if, at the time the donation was made or the testament executed, a relationship of confidence existed between the donor and the wrongdoer and the wrongdoer was not then related to the donor by affinity, consanguinity or adoption, the person who challenges the donation need

only prove the fraud, duress, or undue influence by a preponderance of the evidence.”

- In re Succession of Gilbert, 850 So.2d 733 (2003)
 - “the challenger must show that the donee's influence was so substantial that the donee substituted his or her volition for that of the donor. *Succession of Anderson*, 656 So.2d 42 (1995); *Succession of Cole*, 618 So.2d 554 (La.App. 4th Cir.1993).”
 - “influence must be operative at the time the testament is executed. *Succession of Deshotels*, 98-1467 (La.App. 4th Cir.5/12/99), 735 So.2d 826.”
- Succession of Anderson, 656 So.2d 42 (1995)
 - Mere advice, or persuasion, or kindness and assistance, does not destroy the free agency of the donor and substitute someone else's volition. See LSA-C.C. Art. 1479, Comment (b); *Succession of Cole*, 618 So.2d 554 (La. App. 4th Cir.1993).
- Succession of Dean, 247 So.3d 746 (2018)
 - Such undue influence can result from physical coercion and duress, or more subtle influences such as creating resentment toward a natural object of a testator's bounty by false statements. See La. Civ. Code art. 1479, Revision Comment (b); *In re Succession of Fisher*, 06-2493 (La. App. 1 Cir. 9/19/07), 970 So.2d 1048, 1056.
 - “The influence may be exerted by the donee himself or by a third person, even under circumstances where the donee takes no part in the activities and may be unaware of them, as long as some person exercises control over the donor, presumably one who is interested in the fortunes of the donee. See La. Civ. Code art. 1479, Revision Comment (c)”

Maine:

- Statutory definition
 - Me. Rev. Stat. tit. 22, § 3472 (16)
 - “Undue influence means the misuse of real or apparent authority or the use of manipulation by a person in a trusting, confidential or fiduciary relationship with a person who is a dependent adult or an incapacitated adult.”
 - Regarding transfers of property:
 - Me. Rev. Stat. tit. 33, § 1022 (1)
 - In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the

elderly dependent person was represented in the transfer or execution by independent counsel.

- Case law
 - In re Will of Fenwick, 348 A.2d 12 (1975)
 - “Barnes v. Barnes, 66 Me. 286, 297 (1876), in which it was said, ‘The influence must amount either to deception or else to force or coercion, in either case destroying free agency.’”
 - "By undue influence in this class of cases is meant influence, in connection with the execution of the will and operating at the time the will is made, amounting to moral coercion, destroying free agency, or importunity which could not be resisted, so that the testator, unable to withstand the influence, or too weak to resist it, was constrained to do that which was not his actual will but against it." *Rogers, Appellant*, 123 A. 634 (Me. 1924).
 - Most prominent among the circumstances which have been taken as evidence of undue influence are,
 - (1) the existence of a confidential relationship between the testator and the one who is asserted to have influenced him;
 - (2) the fact that the testator has disposed of his property in an unexpected or unnatural manner.

Maryland:

- Statutory definition
 - Md. Code Ann., Crim. Law § 8-801(6)(i-ii)
 - “Undue influence means domination and influence amounting to force and coercion exercised by another person to such an extent that a vulnerable adult or an individual at least 68 years old was prevented from exercising free judgment and choice. Undue influence does not include the normal influence that one member of a family has over another member of the family.”
- Case law:
 - Upman v. Clarke, 359 Md. 32 (Md. 2000)
 - whether a confidential relationship existed between donor and donee
 - *Green v. Michael*, 183 Md. 76, 84, 36 A.2d 923, 926 (1944), we regarded dependence as the key factor, holding that “[t]o establish such a relationship there must appear at least a condition from which dependence of the grantor may be found”
 - "a confidential relationship may be presumed whenever two persons stand in such a relation to each other that one must necessarily repose trust and confidence in the good faith and integrity of the other." *Green v. Michael*, 183 Md. 76 (1944).

- *Treffinger v. Sterling*, 305 A.2d 829 (Md. 1973)
 - Among the factors to be examined in determining whether this relationship has come into being are the parent's advanced age, his physical debility, his mental feebleness, and his dependence on his child.
- Maryland Court of Appeals has recognized at least 7 elements that might show undue influence - *Moore v. Smith*, 582 A.2d 1237 (Md. 1990):
 - (1) a “confidential relationship”
 - (2) a substantial benefit to the alleged influencer
 - (3) the alleged influencer assisted in effectuating the will execution,
 - (4) the opportunity to exert influence,
 - (5) the will contains an “unnatural” disposition,
 - (6) the will is different than earlier wills, and
 - (7) the person making the will was highly susceptible to undue influence.

Massachusetts:

- Case law
 - *Tetrault v. Mahoney* 425 Mass. 456 (1997)
 - “a plaintiff must establish that the defendant overcame the will of the grantor. See *Corrigan v. O'Brien*, 353 Mass. 341, 350 (1967); *O'Brien v. Collins*, 315 Mass. 429, 437 (1944); *Neill v. Brackett*, 234 Mass. 367, 369 (1920)”
 - *O'Rourke v. Hunter*, 446 Mass. 814 (2006)
 - “Four considerations are usually present in a case of undue influence: “that an
 - (1) unnatural disposition has been made
 - (2) by a person susceptible to undue influence to the advantage of someone
 - (3) with an opportunity to exercise undue influence and
 - (4) who in fact has used that opportunity to procure the contested disposition through improper means” (citations omitted). *Tetrault v. Mahoney*, *Hawkes & Goldings*, [425 Mass. 456, 464-465 (1997)], *supra* at 464”
 - *Neill v. Brackett*, 234 Mass. 367, 370 (1920)
 - “Mere suspicion, surmise, or conjecture are not enough to warrant a finding of undue influence. There must be a solid foundation of established facts upon which to rest an inference of its existence”
 - Burden of proof
 - party challenging a will or other document on the ground that it was procured through fraud or undue influence bears the burden of proving the allegation by a preponderance of the evidence. *Cleary v. Cleary*, 427

Mass. 286, 290 (1998), citing *Taricone v. Cummings*, 340 Mass. 758, 762 (1960), *Mirick v. Phelps*, 297 Mass. 250, 252 (1937) and *Hogan v. Whittemore*, 297 Mass. 573, 578 (1932).

- burden shifts, however, when a fiduciary benefits from a transaction with his principal. *Cleary*, 427 Mass at 290.
- *Rempelakis v. Russell*, 65 Mass. App. Ct. 557 (2006)
 - “Our reading of *Cleary* is influenced not only by the language of that opinion, but by considerations of policy as well. Fiduciaries are often relatives or friends of the principal, and thus frequently are natural objects of the principal's bounty. Indeed, it is the principal's feelings for the fiduciary that many times result both in the choice of that individual to perform fiduciary functions and the desire to reward the fiduciary in some manner. We think it a peculiar proposition that this natural state of affairs should be presumed in all instances to be the product of sinister behavior on the part of the fiduciary unless he proves otherwise. It is one thing to require such proof where the fiduciary himself brings about the benefit, even where the fiduciary is a relative or close friend of the principal. See *Cleary*, 427 Mass. at 292-293. It is something else entirely to require it (and accordingly to require the fiduciary to prove a negative) where the fiduciary benefits from the principal's generosity without any role in the decision.”
 - Fiduciary relationship shouldn't create presumption of undue influence; must show that the fiduciary actually took a role in the principal's decision (aka “used the opportunity of exercising undue influence to procure the contested disposition”)

Michigan:

- Case law:
 - *Kar v. Hogen*, 399 Mich. 529 (1976)
 - “To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient. *Nelson v Wiggins*, 172 Mich. 191; 137 NW 623 (1912)”
 - **3-part test:** “presumption of undue influence is brought to life upon the introduction of evidence which would establish
 - (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary,
 - (2) the fiduciary or an interest which he represents benefits from a transaction, and
 - (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction.” *Kar v. Hogen*, 399 Mich. 529 (1976)
 - *In re Wood Estate*, 132 NW 2d 35 (1965)

- “a fiduciary relation exists *as a fact*, in which there is confidence reposed on one side, and the resulting superiority and influence on the other. The relation and the duties involved in it need not be legal; it may be moral, social, domestic, or merely personal. If a relation of trusts and confidence exists between the parties — that is to say, where confidence is reposed by one party and a trust accepted by the other, or where confidence has been acquired and abused — that is sufficient as a predicate for relief. The origin of the confidence is immaterial.”
 - In re Estate of Karmey, 658 N.W.2d 796 (2003)
 - Asserted that scope of “fiduciary relationship” in giving rise to *presumption* of UI does NOT include relationships of marriage
 - “In the context of this case and the analysis provided in *Kar*, it can be said that marriage is not a relationship that has traditionally been recognized as involving fiduciary duties. It is a unique relationship based on mutual trust and commitment. We do not believe the presumption of undue influence is applicable to such a relationship.”
 - In re Erickson Estate, 202 Mich. App. 329 (1993), 508 N.W.2d 181
 - The benefit must arise from the specific transaction claimed to have been the subject of undue influence.

Minnesota:

- Case law:
 - In re Estate of Wilson, 27 N.W.2d 429 (1947)
 - Undue influence, as the term itself implies, is influence of such a degree exerted upon the testator by another that it destroys or overcomes the testator's free agency and substitutes the will of the person exercising the influence for that of the testator. The existence of undue influence in a particular case is to be determined by ascertaining the effect of the influence, which in fact was exerted, upon the testator's mind, considering his physical and mental condition, the person by whom the influence was exerted, the time, place, and all the surrounding circumstances thereof. In re Estate of Marsden, 217 Minn. 1, 13 N.W.2d 765
 - Among the factors important as bearing upon the fact of undue influence are the
 - opportunity to exercise it,
 - active participation in the preparation of the will by the party exercising it,
 - a confidential relationship between the person making the will and the party exercising the influence,
 - disinheritance of those whom the decedent probably would have remembered in his will,
 - singularity of the provisions of the will, and
 - the exercise of influence or persuasion to induce him to make the will in question.

- Norlander v. Cronk, 300 Minn. 471 (Minn. 1974), 221 N.W.2d 108
 - Where a confidential relationship exists, a showing of an opportunity to exercise undue influence, an inclination to do so, and a resulting disposition of property which ignores the natural recipients is usually sufficient to establish undue influence. See, e. g., Agner v. Bourn, 161 N.W.2d 813 (Minn. 1968); O'Rourke v. O'Rourke, 283 Minn. 293, 167 N.W.2d 733 (1969); Hafner v. Schmitz, 215 Minn. 245, 9 N.W.2d 713 (1943)
 - While ratification may be an affirmative defense in a case of undue influence, the law is clear that there can be no ratification by one still under the effects of undue influence. "The continuance of undue influence makes ratification impossible." Agner v. Bourn, 281 Minn. 385, 394, 161 N.W.2d 813, 819.
- Agner v. Bourn, 281 Minn. 385, 392, 161 N.W.2d 813, 818:
 - "Of course, it is not sufficient merely to show that the person benefited had an opportunity to exercise undue influence. There must be evidence that undue influence was in fact exerted, but, as noted, this may be shown by circumstantial evidence as well as by direct evidence. While it is true that some of the parties testifying were interested in the outcome of the suit, nevertheless, the question of the credibility of the witnesses was at all times one for the advisory jury and the trial court.
 - "Furthermore, undue influence might be inferred from a disposition of property in favor of the ones who had an opportunity to influence, while others who would be the natural recipients of a share in the property were ignored.
 - "Some of the factors which the courts will consider in determining whether the grantor's free will has been overcome are his age, intelligence, experience, physical and mental health, and strength of character."

Mississippi:

- Case law:
 - Stover v. Davis, 277 So. 3d 11 (Miss. Ct. App. 2018)
 - "In order to raise a presumption of undue influence, a contestant must show that:
 - (1) a confidential relationship existed between the testator and a beneficiary, and
 - (2) suspicious circumstances existed—such as the testator's mental infirmity—or the beneficiary in the confidential relationship was actively involved in some way with preparing or executing the will. *In re Last Will and Testament of Bowling*, 155 So.3d 907, 910–11 (Miss. Ct. App. 2014) (citing *Croft v. Alder*, 237 Miss. 713, 723–24, 115 So.2d 683, 688 (1959))"
 - Matter of the Estate of Finley, 2008 CA 1289 (Miss. Ct. App. 2010)

- "The law in [Mississippi] on fiduciary or confidential relationships and undue influence is well settled." *Howell v. May*, 983 So. 2d 313, 317 (¶ 14) (Miss. Ct. App. 2007) (citation omitted). We also point out that "[i]ts application has been made to both inter vivos and testamentary transactions." *Id.*
- Difference for how "confidential relationship" gives rise to presumption of UI between testamentary gifts vs. inter vivos gifts
 - For a will contest, if a confidential relationship exists, a presumption of undue influence arises only when there has been an abuse of that confidential relationship. *Madden v. Rhodes*, 626 So. 2d 608, 618 (Miss. 1993)
 - However, with inter vivos gifts, if a confidential relationship exists, "there is an automatic presumption of undue influence even without abuse of the confidential relationship. Such gifts are presumptively invalid." *Id.*
- *In re Dabney v. Hataway*, 740 So. 2d 915, 919 (Miss. 1999)
 - several factors to consider in determining whether a confidential relationship exists:
 - (1) whether one person has to be taken care of by others,
 - (2) whether one person maintains a close relationship with another,
 - (3) whether one person is provided transportation and has their medical care provided for by another,
 - (4) whether one person maintains joint accounts with another,
 - (5) whether one is physically or mentally weak,
 - (6) whether one is of advanced age or poor health, and
 - (7) whether there exists a power of attorney between the one and another.
- In order to prove there was NOT UI: three-prong test set out in *Mullins v. Ratcliff*, 515 So.2d 1183, 1193 (Miss. 1987) -- proponent to prove:
 - 1. good faith on his part;
 - 2. the grantor's full knowledge and deliberation of his actions and their consequences; and
 - 3. that the grantor or testator exhibited independent consent and action.
- Factors considered in first prong of Mullins test ("good faith" on part of proponent) - *Estate of Holmes*, 961 So.2d 674, 680 (Miss. 2007):
 - 1. The identity of the person seeking preparation of the instrument.
 - 2. The place of execution of the instrument and in whose presence.
 - 3. What consideration and fee were paid, if any.
 - 4. By whom paid.
 - 5. The secrecy or openness given the execution of the instrument.
- Factors considered in second prong of Mullins test (grantor's full knowledge and deliberation of his actions/consequences) - *Estate of Holmes*, 961 So.2d 674 (Miss. 2007)
 - His awareness of his total assets and their general value.

- An understanding by him of those persons who would be the natural inheritors of his bounty under the laws of descent and distribution or under a prior will and how the proposed change would affect that prior will or natural distribution.
 - Whether non-relative beneficiaries would be excluded or included.
 - Knowledge of who controls his finances and business, and by what method, and if controlled by the other, how dependent is the grantor/testator on him and how susceptible to his influence.
- Consideration of third prong of Mullins test (grantor exhibited independent consent/action) - *Dean v. Kavanaugh*, 920 So.2d 608, 622 (Miss. App. 1993),
 - Best way to show independent consent and action is to establish that the testator/grantor had the benefit of advice of a competent person disconnected from the grantee and devoted solely to the testator/grantor's interests.

Missouri:

- Statutory definition:
 - *Criminal Financial Exploitation*, R.S.Mo. § 570.145 (2020); *Criminal Elder Abuse* Mo. Rev. Stat. § 570.145.
 - **“Undue influence**, which means the use of influence by someone who exercises authority over an elderly person or person with a disability in order to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony. Undue influence includes, but is not limited to, the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.”
- Case law:
 - *Cima v. Rhoades*, 416 S.W.3d 320 (2013)
 - “Undue influence undermines a finding of mental capacity because it is “influence which by force, coercion, or overpersuasion destroys the free agency of the benefactor.” *Tobias v. Korman*, 141 S.W.3d 468, 475 (Mo.App.E.D.2004)”
 - In Missouri, a presumption of undue influence arises when the following elements are present:
 - (1) the existence of a confidential or fiduciary relationship between the settlor and the beneficiary,
 - (2) the beneficiary is given a substantial benefit, and
 - (3) the beneficiary was active in procuring execution of the document conferring the benefit. *Vancil v. Carpenter*, 935 S.W.2d 42, 44 (Mo.App.W.D.1996)
 - *Davis v. Pitti*, 472 S.W.2d 382 (1971)
 - A confidential relationship exists when one relies upon and trusts another in regard to the handling of property and business affairs, thus creating some fiduciary obligation.
 -

Montana:

- Statutory definition:
 - Mont. Code Ann. § 28-2-407
 - **“Undue influence** consists of:
 - (1) the use by one in whom a confidence is reposed by another person or who holds a real or apparent authority over the other person of the confidence or authority for the purpose of obtaining an unfair advantage over the other person;
 - (2) taking an unfair advantage of another person's weakness of mind; or
 - (3) taking a grossly oppressive and unfair advantage of another person's necessities or distress.”
- Case law:
 - In Estate of Lightfield, 351 Mont. 426, 213 P.3d 468 (2009), criteria for UI:
 - 1. any confidential relationship between the donor and the person allegedly exercising influence;
 - 2. the physical condition of the donor as relevant to her ability to withstand influence;
 - 3. the mental condition of the donor as relevant to her ability to withstand influence;
 - 4. the unnaturalness of the disposition as it relates to showing an unbalanced mind or a mind easily susceptible to undue influence; and
 - 5. the demands and importunities as they affect the donor, considering the relevant circumstances.
 - The five criteria may, but need not, be present in an undue influence case; they are simply nonexclusive considerations available to guide the trial court in its application of the statutory requirements. The statutory requirements control. Lightfield
 - Stanton v. Wells Fargo Bank Montana, N.A., 335 Mont. 384, 152 P.3d 115 (2007)
 - the opportunity to exercise undue influence is to be considered and correlated with the alleged acts of influence to determine if the acts amount to undue influence.

Nebraska:

- Case law:
 - *In re Estate of Price*, 223 Neb. 12, 388 N.W.2d 72 (1986)
 - Undue influence sufficient to defeat a will is such manipulation as destroys the free agency of the testator and substitutes another's purpose for that of the testator.
 - *In re Estate of Hedke*, 775 N.W.2d 13 (2009)
 - “To show undue influence, a will contestant must prove the following elements by a preponderance of the evidence:
 - (1) The testator was subject to undue influence;
 - (2) there was an opportunity to exercise such influence;

- (3) there was a disposition to exercise such influence; and
 - (4) the result was clearly the effect of such influence.
- In addition to SODR test, Nebraska seems to also use the confidential relationship + suspicious circumstances test:
 - “we have recognized a presumption of undue influence if the contestant's evidence shows a confidential or fiduciary relationship, coupled with other suspicious circumstances.” In re Estate of Hedke, 775 N.W.2d 13 (2009)
- In re Estate of Novak, 235 Neb. 939, 458 N.W.2d 221 (1990): “Suspicious circumstances”
 - (1) a vigorous campaign by a principal beneficiary's family to maintain intimate relations with the testator,
 - (2) a lack of advice to the testator from an independent attorney,
 - (3) an elderly testator in weakened physical or mental condition,
 - (4) lack of consideration for the bequest,
 - (5) a disposition that is unnatural or unjust,
 - (6) the beneficiary's participation in procuring the will, and
 - (7) domination of the testator by the beneficiary.”

Nevada:

- Statutory definition:
 - Nev. Rev. Stat. Ann. § 200.5092
 - “Undue influence means the improper use of power or trust in a way that deprives a person of his or her free will and substitutes the objectives of another person. The term does not include the normal influence that one member of a family has over another.”
- Case law:
 - Caraveo v. Perez (In re Estate of Bethurem), 129 Nev. Adv. Op. 92 (Nev. 2013)
 - In order to establish undue influence under Nevada law, “it must appear, either directly or by justifiable inference from the facts proved, that the influence ... destroy[ed] the free agency of the testator.” *In re Estate of Hegarty*, 46 Nev. 321, 326, 212 P. 1040, 1042 (1923)
 - “the fact a beneficiary merely possesses or is motivated to exercise influence is insufficient to establish undue influence. *In re Estate of Hegarty*, 46 Nev. 321, 326, 212 P. 1040 (1923)
 - Preponderance of evidence - standard of proof
 - In re Tiffany Living Trust, 177 P.3d 1060 (Nev. 2008)
 - “A presumption of undue influence arises when a fiduciary relationship exists and the fiduciary benefits from the questioned transaction.”
 - Ross v. Giacomo, 635 P.2d 298 (1981) (regarding trial court jury instructions):

- “An alleged gift will be presumed secured by undue influence where the alleged donor is lacking in such mental vigor as to enable him to protect himself against imposition even though his mental weakness is not such as to justify his being regarded as totally incapacitated.’ This instruction is supported by case law. See *McDonald v. Hewlett*, 102 Cal. App.2d 680, 228 P.2d 83 (1951); *Gordon v. Bialystoker Center & Bikur Cholim*, 59 A.D.2d 522, 396 N.Y.S.2d 896 (1977)”

New Hampshire:

- Statutory definition:
 - *Criminal Elder Abuse* N.H. Rev. Stat. Ann. § 631:8(f)(i)
 - "**Undue influence**" means the **intentional** use, by a person in a **position of trust and confidence** with an **elderly, disabled, or impaired adult**, of that **position to obtain an unfair advantage** over the elderly, disabled, or impaired adult, through **actions or tactics**, including, but not limited to, emotional, psychological, and legal manipulation.
- Case law:
 - In re Estate of Patnaude, citing In Re Estate of Cass, 143 N.H. 57, 61 (1998)
 - “the determination of whether undue influence exists is a question of fact based upon an examination of all the circumstances. In Re Estate of Cass, 143 N.H. 57, 61 (1998). We consider factors including the relationships among the parties, the physical and mental condition of the testator, the reasonableness and nature of the disposition, and ‘the personalities of the parties.’” Id.
 - *Albee v. Osgood*, 105 A. 1 (N.H. 1918) , citing *Whitman v. Morey* 2 A. 899 (N.H. 1885):
 - "It is the use of such appliances and influences as take away the free will of the testator, and substitute another's will for his, so that in fact the instrument is not the expression of the wishes of the testator in the disposition of the property, but of the wishes of another. But where no fraud or deception is practiced, mere persuasion will not invalidate a will on the ground of undue influence. On the contrary, a testator may properly receive the advice, opinions, and arguments of others, and if, after all such advice, opinions, and arguments, the testator is not controlled by them to the extent of surrendering his free agency and yielding his own judgment or will, then there is no such undue influence as is required to be proved to avoid the will. To vitiate or render void a will by reason of undue influence, the influence must amount to force and coercion, destroying free agency, and not merely the influence of affection, or merely the desire of gratifying another; but it must appear that the will was obtained by this coercion, — by importunity that could not be resisted; that it was made merely for the sake of peace, so that the motive was equivalent to force and fear."

- Bartlett v McKay, 80 N.H. 574, 575 (N.H. 1923), alluding to the *opportunity and assertion of control in that opportunity*,
 - “Opportunity and ability to exercise control are not of themselves sufficient evidence to establish undue influence. The question remains, was there evidence tending to show the successful exercise of such control?”

New Jersey

- Case law
 - “‘Undue influence’ has been defined as ‘mental, moral or physical’ exertion which has destroyed the ‘free agency of a testator’ by preventing the testator ‘from following the dictates of his own mind and will and accepting instead the domination and influence of another.’” Haynes v. First Nat'l State Bk. of N.J., 87 N.J. 163, 176 (N.J. 1981)
 - “Ordinarily, the burden of proving undue influence falls on the will contestant. Nevertheless, we have long held that if the will benefits one who stood in a confidential relationship to the testator and if there are additional ‘suspicious’ circumstances, the burden shifts to the party who stood in that relationship to the testator.” In re Estate of Stockdale, 196 N.J. 275, 303 (N.J. 2008)
 - “A confidential relationship arises where trust is reposed by reason of the testator's weakness or dependence or where the parties occupied relations in which reliance is naturally inspired or in fact exists, as the relation between client and attorney.” In re Hopper, 9 N.J. 280, 282 (N.J. 1952)
 - “When the presumption of undue influence arises from an *inter vivos* gift, the donee has the burden of showing by clear and convincing evidence not only that no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood.” Pascale v. Pascale, 113 N.J. 20, 31 (N.J. 1988)
 - “An attorney-client relationship is inherently a confidential relationship, [...] and because suspicious circumstances need only be slight, the existence of that relationship alone often results in both the shifting of the burden of proof and in the imposition of the heavier burden of clear and convincing evidence to rebut the presumption.” In re Estate of Stockdale, 196 N.J. 275, 304 (N.J. 2008)
 - “Following the establishment of the confidential relationship of the daughter's attorney with the testatrix, there was a drastic change in the testamentary dispositions of the testatrix, which favored the daughter. These factors collectively triggered the presumption that there was undue influence in the execution of the will.” Haynes v. First Nat'l State Bk. of N.J., 87 N.J. 163, 177 (N.J. 1981)

New Mexico

- Definition in Uniform Jury Instructions 13-839 NMRA
 - “‘Undue influence’ is the abuse of a position of trust or a dominant position in a relationship by one party which persuades the other party to enter into the contract.”
- Statutory considerations from Annotations to NM Stat § 45-3-407 (2019)
 - “A will contestant is never required to offer direct evidence of undue influence. The mechanism of a presumption allows the will contestant to get the issue of undue influence before the finder of fact by offering only proof of a confidential relationship and suspicious circumstances, even in the face of contradictory evidence.” *Chapman v. Varela*, 2009-NMSC-041, 146 N.M. 680, 213 P.3d 1109, rev’g 2008-NMCA-108, 144 N.M. 709, 191 P.3d 567.”
- Case law
 - “We have hesitated to provide precise elements for undue influence because any attempt to define it may well suggest a clear path of evasion.” *Chapman v. Varela*, 146 N.M. 680, 685 (N.M. 2009)
 - “The presumption arises if a confidential or fiduciary relation with a donor is shown together with suspicious circumstances. Such circumstances include:
 - (1) old age and weakened physical or mental condition of testator;
 - (2) lack of consideration for the bequest;
 - (3) unnatural or unjust disposition of the property;
 - (4) participation of beneficiary in procuring the gift;
 - (5) domination or control over the donor by a beneficiary; and
 - (6) secrecy, concealment, or failure to disclose the gift by a beneficiary.”*Chapman v. Varela*, 146 N.M. 680, 685-86 (N.M. 2009)
 - “A confidential or fiduciary relation exists whenever trust and confidence is reposed by one person in the integrity and fidelity of another.” *Montoya v. Torres*, 113 N.M. 105, 110 (N.M. 1991)

New York

- Case law definition and elements of UI
 - “The concept of undue influence does not readily lend itself to precise definition or description. But this court, long ago, had established the criteria by which undue influence is to be determined: It must be shown that the influence exercised amounted to a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his free will and desire, but

which he was unable to refuse or too weak to resist.” Matter of Walther, 6 N.Y.2d 49, 53 (N.Y. 1959)

- “A mere showing of opportunity and even of a motive to exercise undue influence does not justify a submission of that issue to the jury, unless there is in addition evidence that such influence was actually utilized.” Matter of Walther, 6 N.Y.2d 49, 55 (N.Y. 1959)
- Consideration of factors supporting UI
 - “The undue influence is not often the subject of direct proof. It can be shown by all the facts and circumstances surrounding the testator, the nature of the will, his family relations, the condition of his health and mind, his dependency upon and subjection to the control of the person supposed to have wielded the influences, the opportunity and disposition of the person to wield it, and the acts and declarations of such person.” Rollwagen v. Rollwagen, 63 N.Y. 504, 519 (N.Y. 1876)
 - “Normally, the burden of proving such influence rests with the party asserting its existence [...] However, if a confidential relationship exists, the burden is shifted to the beneficiary of the transaction to prove the transaction fair and free from undue influence” Feiden v. Feiden, 151 A.D.2d 889, 891 (N.Y. App. Div. 1989)
 - “Although no marital or other family relationship is present in this case, such is not essential for the existence of a confidential relation [...] The record in this case clearly indicates that a relationship of trust and confidence did exist between the parties and, hence, the defendant must be charged with an obligation not to abuse the trust and confidence placed in her by the plaintiff.” Sharp v. Kosmalski, 40 N.Y.2d 119, 121-22 (N.Y. 1976)

North Carolina

- Case law
 - “It is the substitution of the mind of the person exercising the influence for the mind of the testator, causing him to make a will which he otherwise would not have made.” In re Will of Turnage, 208 N.C. 130, 131 (N.C. 1935)
 - **“Several of the factors that are relevant on the issue of undue influence include:**
 1. Old age and physical and mental weakness.
 2. That the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision.
 3. That others have little or no opportunity to see him.
 4. That the will is different from and revokes a prior will.
 5. That it is made in favor of one with whom there are no ties of blood.

6. That it disinherits the natural objects of his bounty.

7. That the beneficiary has procured its execution."

In re *Andrews*, 299 N.C. 52, 55 (N.C. 1980)

- "A caveator need not demonstrate every factor named in *Andrews* to prove undue influence, as undue influence is generally proved by a number of facts, each one of which standing alone may be of little weight, but taken collectively may satisfy a rational mind of its existence." In re *Jones*, 669 S.E.2d 572, 578 (N.C. 2008)
- "[A]ny evidence showing an opportunity and disposition to exert undue influence, the degree of susceptibility of [the] testator to undue influence, and a result which indicates that undue influence has been exerted is generally relevant and important." In re *Jones*, 669 S.E.2d 572, 578 (N.C. 2008)

North Dakota

- Statutory definition in N.D. Cent. Code § 9-03-11 (2021)
 - **"Undue influence consists:**
 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.
 2. In taking an unfair advantage of another's weakness of mind; or,
 3. In taking a grossly oppressive and unfair advantage of another's necessities or distress."
- Statutory presumption of undue influence in transactions benefiting a trustee in N.D. Cent. Code § 59-18-01.1
 - "A transaction between a trustee and the trust's beneficiary during the existence of the trust or while the influence acquired by the trustee remains by which the trustee obtains any advantage from the trust's beneficiary is presumed to be entered by the trust's beneficiary without sufficient consideration and under undue influence. This presumption is a rebuttable presumption."
- Case law extends this presumption to all confidential relationships
 - "We have said that this presumption applies not only to transactions involving trustees, agents, and attorneys-in-fact, but also to all transactions involving confidential relationships." *Riskey v. Riskey*, 917 N.W.2d 488, 494 (N.D. 2018)
 - "[A] confidential relationship exists whenever trust and confidence is reposed by one person in the integrity and fidelity of another, and that such relationship is a fact to be established in the same manner and by the same kind of evidence as any other fact is proven" *Estate of Rugani*, 108 Cal.App.2d 624, 630 (Cal. Ct. App. 1952)

- Case law definitions/elements of UI (3- or 4-factor test has been applied depending on context)
 - “We have defined undue influence in the context of a will contest as the substitution of the purpose and intent of one exercising influence for the purpose and intent of the testator.” In the Matter of Howser v. Anderson, 639 N.W.2d 485, 488 (N.D. 2002)
 - “To prove undue influence in [contesting a will], the will contestant must establish:
 - 1) a testator subject to undue influence;
 - 2) the existence of the opportunity to exercise undue influence;
 - 3) a disposition to exercise undue influence; and
 - 4) a result that appears to be the effect of undue influence.”
 Riskey v. Riskey, 917 N.W.2d 488, 493 (N.D. 2018)
 - “In nontestamentary cases, this Court has held a finding of undue influence [...] requires that three factors be established: (1) A person who can be influenced; (2) The fact of improper influence exerted; and (3) Submission to the overmastering effect of such unlawful conduct.” Erickson v. Olsen, 844 N.W.2d 585, 595 (N.D. 2014)

Ohio

- Case law
 - “[U]ndue influence to avoid a will must so overpower and subjugate the mind of the testator as to destroy his free agency and make him express the will of another rather than his own, and the mere presence of influence is not sufficient. Undue influence must be present or operative at the time of the execution of the will resulting in dispositions which the testator would not otherwise have made.” West v. Henry, 173 Ohio St. 498, 501 (Ohio 1962)
 - **“Proof of undue influence requires:**
 - (1) a susceptible testator;
 - (2) another's opportunity to exert influence on the testator;
 - (3) the fact of improper influence exerted or attempted; and
 - (4) a result showing the effect of such influence.”
 Young v. Bellamy, 91 N.E.3d 172, 177 (Ohio Ct. App. 2017)
 - “Where a fiduciary or confidential relationship exists between the donor and the donee, the transfer is regarded with suspicion that the donee may have brought undue influence to bear upon the donor. Therefore, a presumption arises and the donee bears the burden of going forward with proof of the validity of the gift while the party attacking the gift retains the ultimate burden of proving undue

influence by clear and convincing evidence.” *Smith v. Shafer*, 89 Ohio App. 3d 181, 183 (Ohio Ct. App. 1993)

Oklahoma

- Statutory definition in 15 OK Stat § 15-61 (2014)
 - **“Undue influence consists:**
 1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.
 2. In taking an unfair advantage of another's weakness of mind; or,
 3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.”
 - “[T]he burden of demonstrating undue influence rests with the party alleging it. However, that burden can be shifted, and a rebuttable presumption of undue influence arises if the contesting party can establish that (a) a confidential relationship existed between the grantor and another, stronger party; and (b) the stronger party actively assisted in the preparation of the deed.” *Blair v. Richardson*, 381 P.3d 717, 724 (Okla. 2016)
 - “A confidential relationship is a fiduciary relationship and exists whenever trust and confidence are placed by one person in the integrity and fidelity of another.” *In the Matter of Holcomb v Drennan*, 63 P.3d 9, 17 (Okla. 2002)

Oregon

- Case law
 - “[W]hen there is a confidential relationship between the parties, only slight evidence is necessary to establish undue influence. Finally, when there is a confidential relationship coupled with suspicious circumstances, an inference of undue influence arises. That inference may be sufficient to establish undue influence.” *Smith v. Ellison*, 171 Or. App. 289, 294 (Or. Ct. App. 2000)
 - “A showing of such a confidential relationship does not, by itself, give rise to a presumption of undue influence. There must also be the presence of suspicious circumstances, including such things as:
 - (1) the participation of the beneficiary in the preparation or destruction of the will;
 - (2) the lack of independent and disinterested advice regarding the will;
 - (3) secrecy and haste in making the will;
 - (4) an unexplained change in the donor's attitude toward those for whom he or she had previously expressed affection;

- (5) a change in the testamentary plan that ignores the natural objects of the testator's bounty or disregards the continuity of purpose running through former testamentary dispositions;
- (6) an unnatural or unjust gift, and
- (7) the donor's susceptibility to influence.

All factors need not be present before undue influence may be inferred. The most important circumstance is the beneficiary's participation in preparing and executing the will."

Van Marter v. Van Marter, 130 Or. App. 500, 504 (Or. Ct. App. 1994), citing *In re Reddaway's Estate*, 214 Or. 410, 329 P.2d 886 (Or. 1958)

- "A confidential relationship ... means a fiduciary relationship, either legal or technical, wherein there is a confidence reposed on one side with a resulting superiority and influence on the other. It may be a moral, social, domestic or merely a personal relationship." *In re Estate of Manillus Day*, 198 Or. 518, 530 (Or. 1953)

Pennsylvania

- Case law

- "[W]here one contesting a will establishes
 - 1) that a person in a confidential relationship with the testator
 - 2) receives a substantial benefit under the will and
 - 3) that the testator was of weakened intellect,
 a presumption of undue influence arises. The effect of this presumption is to shift the burden of producing evidence and the risk of non-persuasion on the issue of undue influence to the proponent." *Estate of Clark*, 461 Pa. 52, 67 (Pa. 1975)
- "In order to constitute undue influence sufficient to void a will, there must be imprisonment of the body or mind, fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery, or physical or moral coercion, to such a degree as to prejudice the mind of the testator, to destroy his free agency and to operate as a present restraint upon him in the making of the will." *Williams v. McCarroll*, 374 Pa. 281, (Pa. 1953)
- "Confidential relationship has been defined by our Court as the relationship which exists whenever the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed [for] in both [situations] an unfair advantage is possible." *In re Estate of Button*, 459 Pa. 234, 239 n.4 (Pa. 1974)

Rhode Island

- Case law
 - “Undue influence may be simply defined as the substitution of the will of a third party for the free will and choice of the testator in making a testamentary disposition.” *Caranci v. Howard*, 708 A.2d 1321 (R.I. 1998)
 - “In determining what constitutes undue influence in a particular case, then, a trial justice ordinarily examines the totality of circumstances, including the relationship between the parties, the physical and mental condition of the grantor, the opportunity and disposition of a person wielding influence, and his or her acts and declarations.” *Tinney v. Tinney*, 770 A.2d 420, 438 (R.I. 2001)
 - “[E]vidence that the person accused of unduly influencing the testator enjoys a relationship of trust and confidence with the testator and was instrumental in the testator’s execution of the contested will may at least give rise to the drawing of a permissible inference that undue influence was exerted upon the testator. Nevertheless, the party seeking to avoid a will that he or she believes is due to undue influence must show more than mere evidence of an opportunity to exert such influence unaccompanied by evidence that the impermissible pressure was actually asserted.” *Caranci v. Howard*, 708 A.2d 1321 (R.I. 1998)

South Carolina

- Case law
 - “In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker’s exercise of judgment and free choice.” *In Re Estate of Cumbee*, 511 S.E.2d 390 (S.C. Ct. App. 1999)
 - “Und[ue] influence in the procurement of a deed may be shown in two ways. The party challenging the deed may show the existence of a confidential relationship between the grantor and the grantee. Once a confidential relationship is shown, the deed is presumed invalid. The burden then shifts to the grantee to affirmatively show the absence of undue influence [...] When no confidential relationship is alleged, the party challenging the deed must present evidence which ‘unmistakably and convincingly’ shows the grantor’s will was overborne by the grantee or someone acting on his behalf.” *Bullard v. Crawley*, 363 S.E.2d 897 (S.C. 1987)
 - “Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship. ” *Russell v. Wachovia Bank*, 353 S.C. 208, 217 (S.C. 2003)

- “However, even if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion.” *Hembree v. Estate of Hembree*, 428 S.E.2d 3 (S.C. Ct. App. 1993)

South Dakota

- Statutory definition in SD Codified L § 53-4-7 (2013)
 - **“Undue influence consists:**
 - (1) In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; or
 - (2) In taking an unfair advantage of another's weakness of mind; or
 - (3) In taking a grossly oppressive and unfair advantage of another's necessities or distress.”
- Case law
 - “The contestant of a testamentary document has the burden of proving each of the four elements of undue influence by the greater weight of the evidence. These four elements are:
 - (1) decedent’s susceptibility to undue influence;
 - (2) opportunity to exert such influence and effect the wrongful purpose;
 - (3) a disposition to do so for an improper purpose; and
 - (4) a result showing the effects of such influence.”
 In re Estate of Gaaskjolen, 941 N.W.2d 808, 816 (S.D. 2020)
 - “A presumption of undue influence arises when there is a confidential relationship between the testator and a beneficiary who actively participates in preparation and execution of the will and unduly profits therefrom. A confidential relationship exists whenever a decedent has placed trust and confidence in the integrity and fidelity of another.” *Stockwell v. Stockwell*, 790 N.W.2d 52, 63 (S.D. 2010)

Tennessee

- Case law
 - “[T]he existence of a confidential relationship, followed by a transaction wherein the dominant party receives a benefit from the other party, a presumption of undue influence arises, that may be rebutted only by clear and convincing evidence of the fairness of the transaction.” *Matlock v. Simpson*, 902 S.W.2d 384, 385 (Tenn. 1995)

- “A confidential relationship is any relationship which gives one person dominion and control over another.” *Childress v. Currie*, 74 S.W.3d 324, 328 (Tenn. 2002)
- **The suspicious circumstances most frequently relied upon to establish undue influence are:**
 - (1) the existence of a confidential relationship between the testator and the beneficiary;
 - (2) the testator's physical or mental deterioration;
 - (3) the beneficiary's active involvement in procuring the will.
- Other recognized suspicious circumstances include:**
 - (1) secrecy concerning the will's existence;
 - (2) the testator's advanced age;
 - (3) the lack of independent advice in preparing the will;
 - (4) the testator's illiteracy or blindness;
 - (5) the unjust or unnatural nature of the will's terms;
 - (6) the testator being in an emotionally distraught state;
 - (7) discrepancies between the will and the testator's expressed intentions; and
 - (8) fraud or duress directed toward the testator.”

Mitchell v. Smith, 779 S.W.2d 384, 388 (Tenn. Ct. App. 1989)

Texas

- Case law
 - **“Thus, before a testament may be set aside on the grounds of undue influence the contestant must prove:**
 - (1) the existence and exertion of an influence;
 - (2) the effective operation of such influence so as to subvert or overpower the mind of the testator at the time of the execution of the testament; and
 - (3) the execution of a testament which the maker thereof would not have executed but for such influence.”

Rothermel v. Duncan, 369 S.W.2d 917 (1963)
 - **“Factors to be considered when determining whether undue influence exists in a particular case are:**
 - (1) the nature and type of relationship existing between the testator, the contestants and the party accused of exerting such influence;
 - (2) the opportunities existing for the exertion of the type of influence or deception possessed or employed;
 - (3) the circumstances surrounding the drafting and execution of the testament;

- (4) the existence of a fraudulent motive;
- (5) whether there has been an habitual subjection of the testator to the control of another;
- (6) the state of the testator's mind at the time of the execution of the testament;
- (7) the testator's mental or physical incapacity to resist or the susceptibility of the testator's mind to the type and extent of the influence exerted;
- (8) words and acts of the testator;
- (9) weakness of mind and body of the testator, whether produced by infirmities of age or by disease or otherwise;
- (10) whether the testament executed is unnatural in its terms of disposition of property."

In re Estate of Graham, 69 S.W.3d 598, 609-10 (Tex. App. 2002)

Utah

- Statutory definition of UI in Utah Code Ann. § 76-5-111 and Utah Code Ann. § 62A-3-301 (Criminal Code and Human Services Code respectively; both effective 5/14/2019)
 - **“Undue influence’ occurs when a person:**
 - (i) uses influence to take advantage of a vulnerable adult's mental or physical impairment; or
 - (ii) uses the person's role, relationship, or power:
 - (A) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult; or
 - (B) to gain control deceptively over the decision making of the vulnerable adult.”

Vermont

- “The doctrine of undue influence is applicable when a testator's free will is destroyed and as a result he does something contrary to his true desires.” In re Estate of Rotax, 139 Vt. 390, (Vt. 1981)
- In a will contest the burden of proving the existence of undue influence is ordinarily upon the contestant; but when the circumstances connected with the execution of the will are such as the law regards with suspicion, the burden is shifted to the proponent who must show affirmatively that the will was not procured by this means.” Re Collins Will, 114 Vt. 523, (Vt. 1946)
- “Suspicious circumstances typically arise when a testator's or donor's fiduciary benefits from the document at issue.” Landmark Trust (Usa), Inc. v. Goodhue, 172 Vt. 515, 525 (Vt. 2001)

- “[U]ndue influence may be presumed when relations between testator and beneficiary are suspect, such as those of guardian and ward, attorney and client, spiritual advisers and persons looking to them for advice — in fact, all relations of trust and confidence in which the temptation and opportunity for abuse would be too great if the beneficiary were not required to make affirmative proof that he did not betray the confidence placed in him” Estate of Raedel, 152 Vt. 478, 483 (Vt. 1989)

Virginia

- Case law definition of UI
 - “The presumption of undue influence arises and the burden of going forward with the evidence shifts when weakness of mind *and* grossly inadequate consideration or suspicious circumstances are shown *or* when a confidential relationship is established.” Friendly Ice Cream Corp. v. Beckner, 268 Va. 23 (Va. 2004)
 - “In the context of testamentary documents, a presumption of undue influence arises upon proof of the following elements:
 - (1) the testator was enfeebled in mind when the testamentary document was executed;
 - (2) the testator named a beneficiary who stood in a relationship of confidence or dependence; and
 - (3) the testator previously had expressed an intention to make a contrary disposition of the testator's property.”
 Kim v. Kim, 807 S.E.2d 216, 218 (Va. 2017)
- Case law interpretation of elements
 - “A confidential relationship is not confined to any specific association of the parties; it is one wherein a party is bound to act for the benefit of another, and can take no advantage to himself. It appears when the circumstances make it certain the parties do not deal on equal terms, but, on the one side, there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed; in both an unfair advantage is possible.” Friendly Ice Cream Corp. v. Beckner, 268 Va. 23, 25 (Va. 2004)
 - “The existence of a confidential relationship is insufficient, alone, to establish the second element; it must be accompanied by activity on the part of the dominant person in procuring or preparing the will in his favor before a presumption of undue influence will arise.” Kim v. Kim, 807 S.E.2d 216, 218 (Va. 2017)
 - “The factors discussed in Martin regarding persons of advanced age are equally applicable to other testators who have weakness of mind, whether from injury as in this case or from any other cause.” Parish v. Parish 704 S.E.2d 99 (Va. 2011)

Washington

- Case law definition of UI
 - “To vitiate a will there must be something more than mere influence. There must have been an undue influence at the time of the testamentary act, which interfered with the free will of the testator and prevented the exercise of judgment and choice.” *Dean v. Jordan*, 79 P.2d 331 (Wash. 1938)
 - “The most important of such facts are (1) that the beneficiary occupied a fiduciary or confidential relation to the testator; (2) that the beneficiary actively participated in the preparation or procurement of the will; and (3) that the beneficiary received an unusually or unnaturally large part of the estate. Added to these may be other considerations, such as the age or condition of health and mental vigor of the testator, the nature or degree of relationship between the testator and the beneficiary, the opportunity for exerting an undue influence, and the naturalness or unnaturalness of the will.” *Dean v. Jordan*, 79 P.2d 331 (Wash. 1938)
- Case law interpretations of “Dean factors”
 - “The crux of these relationships is a level of trust that leads the testator to believe that the beneficiary is acting in his or her best interests, creating an opportunity for the beneficiary to exert undue influence.” *Mueller v. Wells* (In re Estate of Barnes), 367 P.3d 580 (Wash. 2016)
 - “The second Dean factor requires that the beneficiary's actions bring about or affect the testamentary instrument.” *Mueller v. Wells* (In re Estate of Barnes), 367 P.3d 580 (Wash. 2016)
 - “A will is unnatural when it is contrary to what the testator, from his known views, feelings, and intentions would have been expected to make.” *In re Miller's Estate*, 116 P.2d 526 (Wash. 1941)

West Virginia

- Definition and elements of undue influence in WV Court Rules of Practice and Procedure for Financial Exploitation Civil Proceedings - Rule 2. Terminology (i) (effective June 7 2019):
 - **“Undue influence’ means excessive persuasion that causes another person to act or refrain from acting by overcoming that person’s free will and results in inequity. In determining whether alleged financial exploitation was produced by undue influence, all of the following may be considered:**
 - The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, diminished capacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation,

or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

- The influencer's apparent authority. Evidence of apparent authority may include but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, intimate partner, or other qualification.
 - The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep; use of affection, intimidation, or coercion; or initiation of changes at inappropriate times and places, and claims of expertise in effecting changes.
 - The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences of the victim any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship. Evidence of an inequitable result, without more, is not sufficient to prove undue influence."
- Interpretations
 - "[U]ndue influence, to avoid a will, must be such as overcomes the free agency of the testator at the time of actual execution of the will." *James v. Knotts*, 705 S.E.2d 572, 578 (W. Va. 2010)
 - "A trust is void to the extent its creation was induced by fraud, duress or undue influence. As used in this section, 'fraud', 'duress' and 'undue influence' have the same meanings for trust validity purposes as they have for purposes of determining the validity of a will." West Virginia Code §44D-4-406

Wisconsin

- Statutory definition of Undue Influence - Wis. Stat. § 853.01
 - **"The 4-element test to prove undue influence requires showing:**
 - 1) susceptibility to undue influence;
 - 2) opportunity to influence;
 - 3) disposition to influence; and
 - 4) coveted result.

Alternatively undue influence may be proved under a two prong test by showing:

- 1) the existence of a confidential relationship between the testator and favored beneficiary; and
- 2) suspicious circumstances surrounding making the will.

In re Estate of Kamesar, 81 Wis. 2d 151, 259 N.W.2d 733 (1977). See also In re Estate of Taylor, 81 Wis. 2d 687, 260 N.W.2d 803 (1977)."

- Case law interpretation of factors (Classical test)
 - (1) susceptibility to undue influence
 - "With respect to the issue of a testator's susceptibility to undue influence, the court has stated that the factors to be considered are the person's age, personality, physical and mental health and ability to handle business affairs [...] If consideration of these factors demonstrates that the testator was unusually receptive to the suggestions of others and consistently deferred to them on matters of utmost personal importance, then the first element is established" *In Matter of Estate of Dejmal*, 95 Wis. 2d 141, 289 N.W.2d 813 (1980).
 - (2) opportunity to influence
 - "Repeated close contact with the testator has been found by this court to justify a finding of the opportunity to influence." *In Matter of Estate of Becker*, 251 N.W.2d 431 (Wisc. 1977)
 - "'opportunity' here does not mean mere physical propinquity or possibility of personal contact, but the fact that interviews or personal transactions between the parties were had, followed by the accomplishment of the desired end." *Ward v. Ward*, 215 N.W.2d 3 (Wisc. 1974)
 - (3) disposition to influence
 - "'Disposition' means something more than a mere desire to obtain a share in another's estate. It implies a willingness to do something wrong or unfair, and grasping or overreaching characteristics." *Estate of Brehmer*, 164 N.W.2d 318 (Wis. 1969)
 - (4) coveted result
 - "A will must not only on its face make an unnatural disposition, but the disposition must also be in fact unnatural to satisfy the test. The concept of coveted result includes obtaining for oneself or another a benefit such person would normally not receive and its reception is unjust to someone else. Evidence may make what appears to be an unnatural or unjust will a natural and plausible one." *Will of Cooper*, 137 N.W.2d 93 (Wisc. 1965)
- Case law interpretation of factors (Alternative test)

- (1) the existence of a confidential relationship between the testator and favored beneficiary
 - “The basis for the undue influence presumption lies in the ease in which a confidant can dictate the contents and control or influence the drafting of such a will either as the draftsman or in procuring the drafting [...] If one is not the actual draftsman or the procurer of the drafting, the relationship must be such that the testator depends upon the advice of the confidant in relation to the subject matter of the will.” *Estate of Velk*, 192 N.W.2d 844 (Wis. 1972)
- (2) suspicious circumstances surrounding making the will
 - “there exist suspicious circumstances, such as the fact that the beneficiary took part in the preparation or procuring of the will, or actually drafted it or assisted in its execution, or that the testator was weak-minded or in frail health and particularly susceptible to influence, or that the provisions of the will are unnatural and unjust.” *Will of Faulks*, 17 N.W.2d 423 (Wis. 1945)
 - “Viewed with the scrutiny which this court has previously recommended, we think the haste with which the document was drafted, the obviously weakened condition of the testatrix and the failure to contact the testatrix's only son and sole heir of her hospitalization constitute suspicious circumstances.” *Estate of Komarr*, 175 N.W.2d 473 (Wis. 1970)

Wyoming

- Case law definition (wills and trusts) - *Retz v. Siebrandt*, 181 P.3d 84, 91 (Wyo. 2008)
 - **“In order to establish that a will (or in this case, a testamentary trust) was executed under undue influence, a party must establish:**
 - (1) the relations between the one charged with exercising the undue influence and the decedent affording the former an opportunity to control the testamentary act;
 - (2) that the decedent's condition was such as to permit subversion of h[is] freedom of will;
 - (3) that there was activity on the part of the person charged with exercising undue influence; and
 - (4) that such person unduly profited as beneficiary under the will.”
- Case law definition (inter vivos transactions) - *Johnson v. Reiger*, 93 P.3d 992 (Wyo. 2004)
 - **“In order to prove undue influence in an *inter vivos* transaction, the plaintiff must show:**
 - 1) opportunity to control;

- 2) a condition permitting subversion; and
- 3) activity on the part of the person charged.”



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