

PROVING UNDUE INFLUENCE

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Introduction

1. Undue influence is an area of law “bedeviled by presumptions, misconceptions and subjective value judgments”, based not only on equitable principles but also that “famously unruly horse”, public policy¹.
2. It encompasses a doctrine of lifetime, or “equitable” undue influence which has sufficiently vexed judges and practitioners to have been the subject of two comprehensive examinations by the House of Lords² within a decade, and a doctrine of testamentary or “probate” undue influence which has been described as so distinct from the equitable doctrine that it ought to be renamed³.
3. With all this to take into account it is perhaps not surprising that so many cases on undue influence end up on appeal, or that Mummery LJ complained in *Pesticcio v Huet*⁴ that “fundamental misconceptions persist, even though the doctrine is over 200 years old”. Indeed, a day spent reading the cases and, worse, the textbooks on the topic can lead to nothing but the conclusion that, in describing some aspects of the terminology as “a little confusing”, Lord Nicholls was rather understating his case⁵.
4. The basic principles of undue influence (of any species) are succinctly set out in the opening paragraphs of Lord Nicholls’ speech in *Royal Bank of Scotland v Etridge (No. 2)*⁶, and the speech is an excellent starting point for a consideration of the law⁷. Undue influence, his lordship explains, is “one of the grounds of relief developed by the courts of equity as a court of

¹ Sir David Neuberger, 2005 Step Lecture – *Aspects of Undue Influence*

² in *Barclays Bank v O’Brien* [1994] 1 AC 180 and *Royal Bank of Scotland v Etridge (No. 2)* [2002] 2 AC 733.

³ *Winder, Undue Influence and Coercion* 1939 2 MLR 97.

⁴ [2004] EWCA Civ 372.

⁵ *Etridge* at [17].

⁶ [2002] 2 AC 733.

⁷ Indeed, many of the attempts to ‘explain’ or ‘clarify’ Lord Nicholls’ speech have had the opposite effect: the speech itself is remarkably clear and accessible.

conscience. The objective is to ensure that the influence of one person over another is not abused”⁸.

5. The exact wording of this objective – the prevention of abuse rather than the prevention of mere influence – is important. Lord Nicholls expressly recognises that “*in everyday life people constantly seek to influence the decisions of others. They seek to persuade those with whom they are dealing to enter into transactions, whether great or small*”⁹.
6. In many cases that influence and persuasion will be entirely innocent, and, indeed, benevolent. A solicitor who advises a client about the merits and value of his claim, and convinces him to accept a good settlement offer is certainly in a position of influence over his client, and is using his influence to persuade the client to enter into what may be a very important transaction. But that does not mean that the solicitor’s actions would attract the censure of the court. The solicitor is using his influence over his client in order to do his job, but he is not abusing it. It is only in the latter case that the court will intervene.

“Fraud Unravels All”

7. One of the useful elements of undue influence (again, whether equitable or probate) is that, where the court finds that a transaction has been procured by abuse, it will treat it as a species of equitable, or constructive, fraud¹⁰.
8. The law has traditionally drawn a very clear distinction between fraud and other forms of conduct. As Lord Millet put it in a different field of law: “in all our jurisprudence there is no sharper dividing line than that which separates cases of fraud and dishonesty from cases of negligence and incompetence”¹¹.

⁸ *Etridge* at [6].

⁹ *Etridge* at [6].

¹⁰ See *Earl of Chesterfield v Jannsen* (1751) 2 Ves. Sen. 125. The other traditional species of equitable fraud are abuse of confidence, unconscionable bargains and fraud on a power.

¹¹ *Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400 at 418f.

9. The law takes the view that, where consent to a transaction has been induced by fraud, that fraud vitiates the victim's consent so that he is entitled have the transaction set aside. In the traditional formulation, "fraud unravels all". The effect of fraud is the same both at common law and in equity: a good common law example is fraudulent misrepresentation which entitles the victim to rescind the contract¹². The equitable equivalent is that the transaction procured by undue influence will be set aside.
10. Unless the transaction was brought about by actual duress, however, a victim of undue influence is held to have given his consent to the transaction in some, albeit a limited form. The transaction is not void (as it would be if there were no consent at all) but it is voidable.

Proving Undue Influence

11. In each and every case where a claimant seeks relief on the grounds of undue influence (whether in relation to a lifetime or testamentary disposition) the allegation of undue influence must be proved. As Lord Nicholls explained in *Etridge* (at 13):

"Whether a transaction was brought about by the exercise of undue influence is a question of fact. Here, as elsewhere, the general principle is that who asserts that a wrong has been committed must prove it. The burden of proving an allegation of undue influence rests upon the person who claims to have been wronged. This is the general rule".

12. The fact that Lord Nicholls felt it necessary to explain such a very basic principle in the course of his speech to the House of Lords is an indication of the "bedevilment" of the law caused by the various presumptions which about in undue influence cases. It is difficult to think of another decision of the House of Lords where it was felt necessary to explain that as a general rule he who asserts a fact must prove it.

¹² Rescission for negligent misrepresentation is only available under statute (the Misrepresentation Act 1967), rather than at common law.

13. Perhaps part of the confusion in this area can be explained by the fact that any allegation of undue influence (again, whether in the equitable or probate jurisdiction) actually involves two separate allegations:
- (1) an allegation that person A had influence over, or the ability to influence person B (an allegation of influence); and
 - (2) an allegation that A used (or rather, abused) that influence unduly (an allegation of abuse).
14. As Lord Neuberger (then Sir David Neuberger) explained in the STEP Annual Lecture for 2005: “One often comes across the suggestion that there are two types of undue influence, namely actual undue influence and presumed undue influence. This, I suggest is wrong in two respects. First, there is no presumption of undue influence”.
15. As Lord Neuberger went on to say, there are presumptions which may be drawn in relation to the first allegation (of influence) and presumptions which may be drawn in relation to the second allegation (of abuse). Each presumption is available in different circumstances and has different effects. On some facts it might be possible to raise a presumption of influence, but not of abuse, and on other facts there may be no presumption of influence available, but a presumption of abuse may be raised. Depending on the facts both presumptions are potentially available in relation to a lifetime transaction, but neither can be relied upon in relation to testamentary dispositions. However in no possible situation is there any single presumption of “undue influence”.

“A little confusing”: Proving Lifetime Undue Influence

16. In cases of lifetime, or equitable, undue influence the burden of proving that a transaction was procured by undue influence can be discharged by the claimant in a number of ways. Per Lord Nicholls¹³, “the evidence required to discharge the burden of proof depends on the nature of the alleged undue influence, the personality of the parties, their relationship, the extent to which the transaction cannot be readily accounted for by the ordinary motives of ordinary persons in that relationship and all the circumstances of the case”.

The First Allegation: Proving the Influence

17. The first hurdle which the claimant must overcome is that set out at paragraph 13(1) above: he must demonstrate that there existed between A and B a relationship of “trust and confidence”. In many cases this can be directly proved by evidence of the relationship between A and B and their respective characters. Suppose, for example, B is a widowed elderly lady with little understanding of financial matters, and A is her son, and also the family member who lives nearest to B. A visits B on a regular, if not daily basis and B, who finds it difficult to leave the house, relies on him heavily for management of her financial affairs. A keeps an eye on B’s investments and bank statements, and reminds her when her cleaner and gardener need to be paid. A does all of B’s general shopping and B reimburses him in cash. After some months of this B really has little idea of what is going on with her financial affairs and is entirely reliant on A.

18. On different facts, A might be B’s bank manager, with a far better understanding than B of how the stock market works. A gives B a couple of pieces of advice which turn out to be good, and before long B has such faith in A’s abilities that he will make any investment that A suggests.

19. In both of the above cases a claimant seeking to have a transaction by B set aside should be able to demonstrate on the evidence that B was under the

¹³ *Etridge* at [13]

influence of A. The salient fact is not that A was B's son or bank manager, but that the relationship between them was such that A, on the facts, had a measure of influence over B.

20. Contrary to what might be thought, a claimant does not necessarily need to prove a pre-existing relationship of influence between A and B, but that the influence can be proven from the facts of the transaction itself: see for example the decisions of the Court of Appeal in *Turkey v Awadh*¹⁴ and *Maklin v Dowsett*¹⁵.

The "Influence Presumption"

21. In all either above examples a relationship of influence between A and B could be proved by the claimant on the facts. However there are certain types, or 'categories' of relationship where the law adopts "a sternly protective attitude" towards B merely because of B's relationship to A. The categories of such relationship are arguably not closed¹⁶, but traditionally are:

- (1) parent and child (or guardian and ward);
- (2) trustee and beneficiary;
- (3) solicitor and client;
- (4) medical adviser and patient;
- (5) spiritual adviser and follower;
- (6) fiancé and fiancée.

22. Where a relationship falls into each of those categories the law will presume, irrebuttably¹⁷, that the first person listed has influence over the second without requiring the claimant to adduce any further evidence. Accordingly, if A is B's father, solicitor, or priest, the claimant does not need to prove A's influence over B but only the mere fact of their relationship.

¹⁴ [2005] EWCA Civ 382

¹⁵ [2004] EWCA Civ 904

¹⁶ See Norse LJ in *Goldsworth v Brickell* [1987] Ch 378 at 401.

¹⁷ See Lord Nicholls in *Etridge* at [18] and [85]. In the 2005 STEP Annual Lecture Sir David Neuberger said, rather reluctantly, that "*I think we must therefore take that to be the law*".

23. The fact that the inference is irrebuttable has attracted some criticism¹⁸, not least because the situations to which it applies are somewhat arbitrary. The presumption only operates in one direction in each category, so that it will apply if A is B's parent, but not if A is B's child. In today's world, where examples of unscrupulous fathers persuading their children to charge their reversionary interests in their parents' marriage settlements¹⁹ are perhaps less common than examples of elderly parents reliant on their children to pay their nursing-home fees, this is somewhat unrealistic. Indeed, the basis of many of the categories is somewhat outdated: the category of fiancé and fiancée was explained by Maugham J in *Re Lloyd's Bank Ltd*²⁰ on the basis that a young woman engaged to be married "reposes the greatest trust and confidence in her future husband; otherwise she would not marry him. In many, if not most, cases she would sign almost anything [her fiancé] puts in front of her. Hopefully this is no longer the case.
24. The courts have been slightly more practical in one respect when developing the presumed influence categories, in that notable by its absence from the list is the relationship of husband and wife. Lord Nicholls²¹ refers to an earlier judgment of Dixon J²² in explanation of this as follows: "the Court of Chancery was not blind to the opportunities of obtaining and unfairly using influence over a wife which a husband often possesses. But there is nothing unusual or strange in a wife, from motives of affection or for other reasons, conferring substantial financial benefits on her husband. Although there is no presumption, the court will nevertheless note, as a matter of fact, the opportunities which flow from a wife's confidence in her husband. The court will take this into account with all the other evidence in the case".
25. It seems that the Court of Chancery (and today's Chancery Division) was of the pragmatic view that if each and every situation where a wife conferred a

¹⁸ See Norse LJ in *Goldsworthy v Bricknell* [1987] Ch 378 at 401.

¹⁹ As in *Bainbrigge v Browne* (1881) 18 Ch D 188.

²⁰ [1939] 1 Ch 289

²¹ at [19]

²² in *Yerkey v Jones* (1939) 63 CLR 649

substantial benefit on her husband were to come before the courts as an undue influence case, the result would be unmanageable. In the case of husband and wife, something further is needed, although the facts of each of the cases before the House of Lords in *Etridge* show that this something further will rarely be difficult to find.

26. A further criticism of the presumption of influence which arises in relationship cases lies in the fact that, highly unusually, the presumption is irrebuttable: in other words no evidence can be adduced by the defendant to disprove it. In, for example, a fiancé-fiancée transaction, it seems that even if the fiancé were to adduce convincing evidence that his future wife managed all their financial affairs herself and never listened to anything he told her, the presumption would still apply.
27. Perhaps because they can lead to such a severe result, irrebuttable presumptions are extremely rare. Other presumptions which frequently arise in Chancery cases, such as the presumption of advancement, or the presumption of due execution of a will, may all be rebutted by evidence to the contrary. There are very few other examples of irrebuttable presumptions across the entire spectrum of criminal and civil law. Those that do exist include the presumption that no child under the age of 10 can be guilty of a criminal offence and the presumption that a ship in wartime voluntarily flying an enemy flag is an enemy ship²³. The presumption of influence in relationship cases does not sit particularly comfortably alongside them.

The Second Allegation: Proving the Abuse

28. As the example of the solicitor, his client, and the settlement offer demonstrates, the mere fact that A has influence over B and has used that influence to cause B to enter into a transaction should not be enough to enable the claimant to succeed in a claim of undue influence. In order to do that the claimant must make the further allegation in paragraph 13 above:

²³ Halsbury's Laws 5th Edn, 2009, Vol. 11 at 1098.

that the influence was abused, or exercised unduly (see paragraph 32 of Lord Nicholls' speech in *Etridge*²⁴).

29. In other words, once a claimant has established that A had influence over B (whether by establishing it on the basis of particular facts or by relying on one of the 'relationship presumptions') he must establish that A used (abused) his influence unduly in order to procure the transaction complained of.

The "Abuse Presumption"

30. Again, following the basic principles emphasised by Lord Nicholls, the burden of proving abuse rests with the claimant. In some cases (often referred to as cases of 'actual' undue influence, as well as in the probate cases) he will be able to do so. In the majority of claims, however, his task will be made far easier by a second presumption that, if a relationship of influence has been established and the transaction in question calls out for an explanation, the court will infer that it was procured by the undue influence of A. This presumption might be called "the abuse presumption per Lord Nicholls in *Etridge*²⁵:

"Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof ... In other words, the proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship".

31. As can be seen from the caveats "failing satisfactory evidence to the contrary", and "prima facie", the abuse presumption is a common-or-garden rebuttable rule of evidence: unlike the 'relationship' presumption discussed

²⁴ Interestingly, it was argued in some of the pre-*Etridge* cases that this second requirement should be done away with. Lord Nicholls strongly disagreed with this for the obvious reason that "*it would be absurd for the law to presume that every gift by a child to a parent ... was brought about by undue influence unless the contrary is affirmatively proved*" (at [24]).

²⁵ at [14]

above, it only operates to shift the burden of proof onto the defendant. Although this may be a difficult burden for the defendant to discharge, he has the opportunity, at least, to adduce evidence to counter the inference. Lord Nicholls describes the presumption (at [16]) as “*the counterpart of the common law cases where the principle of res iqua loquitur is invoked*”.

32. The question therefore arises as to what type of transaction will “call out for an explanation” so as to allow the claimant to raise the presumption of undue influence. How bad for B does the transaction have to be?
33. In the classic case of ***Allcard v Skinner*** 36 Ch D 145 Lindley LJ referred (at 185) to a gift which “*is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act*”. In ***Bank of Montreal v Stuart*** [1911] AC 120 (at 137) Lord Macnaughten described the gift which would meet the test as “*immoderate and irrational*”.
34. In another decision of the House of Lords, ***National Westminster Bank plc v Morgan***²⁶ Lord Scarman considered that the transaction must be “*explicable only on the basis that undue influence had been exercised to procure it*”, describing the test as one of “manifest disadvantage”. Both Lindley LJ’s and Lord Scarman’s formulations were approved of by Lord Nicholls in ***Etridge***, who added only that a consideration of the full test was preferable to adopting a label like “manifest disadvantage” which might give rise to ambiguity.
35. This is good advice: cases of undue influence are always highly fact-dependent and so an unthinking adherence to labels and previous authority will not be helpful. See for example the comments at the end of the judgment in ***Glanville v Glanville***²⁷. It was noted in ***Allcard v Skinner***²⁸ that “no court has ever attempted to define undue influence”. This has remained the case, with judges preferring to take an “I know it when I see it”

²⁶ [1985] AC 686 at 703-7

²⁷ [2001] EWHC 1271 (Ch)

²⁸ (1887) 36 Ch D. 145

approach. However, by way of a frame of reference, the appendix to this talk contains a number of recent cases which might be a useful guide.

36. Lastly, it should be remembered that, although in almost all cases where a claimant seeks to have a transaction set aside it will be because that transaction was disadvantageous to B (it would be odd for B or someone claiming through him to seek to set aside a transaction which was to his benefit), disadvantage is not actually a prerequisite for relief. The cases are clear that the court may find undue influence on the basis of established facts even where the transaction was not to the disadvantage of B at all. This is a logical extension of the principle that the court does not grant relief from undue influence to get B out of a foolish decision; it is concerned with the question of whether the transaction was freely entered into by the claimant.

A Cautionary Note on Terminology

37. In his speech in *Etridge* Lord Clyde questioned (in a rather stern passage at [92] which is well worth reading in full) “the wisdom of the practice which has grown up ... of attempting to make classifications of undue influence ... the attempt to build up classes or categories may lead to confusion. The confusion is aggravated if the names used to identify the classes do not bear their actual meaning. Thus on the face of it a division into cases of “actual” and “presumed” undue influence appears illogical. It appears to confuse definition and proof ... At the end of the day, after trial, there will either be proof of undue influence or that proof will fail and it will be found that there was no undue influence”.
38. Unfortunately not all cases and commentary since *Etridge* have heeded Lord Clyde’s undoubtedly sensible words, and certainly an understanding of the old-fashioned categories of undue influence is useful when considering the pre-*Etridge* decisions. The following is a short glossary:

- (1) the term “presumed” undue influence has been used to refer to cases where either or both of the “relationship presumption” or the “abuse presumption” arises;
- (2) cases where neither presumption applies, so that the claimant has proved specific acts by which A overpowered B’s will, are commonly termed cases of “actual” undue influence;
- (3) in the pre-*Etridge* cases examples of “actual” undue influence were commonly termed “Class 1” cases, and presumed undue influence cases were broken down into “Class 2(A)” cases where the relationship presumption applies, and “Class 2(B)” cases where the transaction in question called out for explanation, after the classification set out in *Bank of Credit and Commerce International SA v Aboody*²⁹ and approved by the House of Lords in *Barclays Bank v O’Brien*³⁰. The classification is now discredited.

**“That Species of Duress Which is Commonly Called Undue Influence³¹”:
Proving Probate Undue Influence**

39. Much has been made over the years of the differences between the doctrines of undue influence in relation to testamentary dispositions as compared to lifetime transactions. The difference is most easily explained by the historical split between jurisdiction over probate matters, traditionally dealt with by the probate courts, and equitable matters which fell into the Chancery courts. When the work of the probate courts was transferred to the Chancery Division by the Administration of Justice Act 1970 one commentator thought that “*it will be interesting to see what the Chancery judges make of wills whose execution is alleged to be procured by undue influence*”³². The answer is that Chancery judges have been perfectly happy to continue applying different sets of rules to each transaction.

²⁹ [1990] 1 QB 923

³⁰ [1994] 1 AC 180

³¹ *Brown v Budd* (1848) Moo PC 430

³² P V Baker (1970) 86 LQR 447

40. As a result there are two things to bear in mind when bringing an undue influence claim in relation to a testamentary disposition:

- (1) there is no presumption of testamentary undue influence. Neither the presumption of influence or the presumption of abuse described above in relation to the equitable doctrine can be relied on by the claimant; and
- (2) the level of pressure which can be put upon a victim before the court will grant relief is much higher. Influence and persuasion which would cause the court to set aside a lifetime gift for undue influence has been held in probate cases to be perfectly acceptable so long as it does not cross the line into coercion. As explained by Lord Penzance in the old case of *Parfitt v Lawless*:

“There is nothing illegal in the parent or husband pressing his claims on a child or wife, and obtaining a recognition of those claims in a legacy, provided that that persuasion stop sort of coercion and that the volition of the testator, though biased and impressed by the relation in which he stands to the legatee, is not overborne and subjected to the domination of another”³³.

41. It is in my own view no coincidence that both a higher level of pressure is required in probate undue influence claims and that the claimant cannot rely on a presumption. If the exploitation of what would in the equitable sphere be called “a relationship of trust and confidence” is not enough to establish probate undue influence, then there is no point in drawing any inference from the relationship between the parties, and no benefit in any presumption.

Inferences, Not Presumptions

42. This is not to say, however, that to succeed in probate undue influence the claimant must actually be able to prove the specific instance on which person A coerced person B into sitting down and signing a will. Indeed if it could be

³³ (1872) LR 2 P&D 462. See also *Wingrove v Wingrove* (1886) LR 11 P.D.

proved that A had actually, for example, locked B into her bedroom and refused to let her out without a signature the claimant would have a good claim in duress, rather than undue influence, and the will itself would be void, not voidable.

43. In any area of law the court always been prepared to consider the evidence available to it and, if it considers it appropriate, to draw inferences from that evidence. If the available evidence is strong enough then the court will conclude in an appropriate case that a testator was the victim of undue influence. The crucial difference in the probate sphere is not that no inference of fact may be drawn by the court but that the burden of proof remains always on the claimant. The test is explained in a helpful recent passage in a decision of Lewison J in *Re Edwards (deceased)*³⁴:

“the burden of proving [probate undue influence] lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law, that is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influence as vitiating a testamentary disposition”.

44. In that case Lewison J held that “there is no other reasonable explanation” for the testatrix having changed her will than undue influence, although there was little evidence before the court other than the relationships between and the personalities of the parties and some highly uncharacteristic behaviour on the part of the testatrix before her death. Lewison J concluded that the only explanation for that uncharacteristic behaviour was lies told to the testatrix by one potential beneficiary against another potential beneficiary and that “in changing her will she was simply doing what she was told”.

What Constitutes Coercion?

³⁴ [2007] All ER (D) 46 (May) at 47

45. In the probate context undue influence means influence either exercised by coercion, in the sense that the testator's will must be overborne, or by fraud. Coercion is a question of overpowering the will of testator without convincing his judgment³⁵.
46. Although it should be distinguished from persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate, pressure which carries a testator to succumb for the sake of a quiet life, if carried out to the extent that it overbears the testator's free judgment or wishes, is enough to amount to coercion in this sense³⁶.
47. The level of pressure which is required to overpower a testator's will also, quite naturally, depends upon the amount of willpower that the testator actually has. It may take very little in the way of pressure to overpower a sick or feeble person, but if his will is overpowered then that minimal pressure will be coercion.
48. A helpful authority for proving a claim in relation to a very frail person is *Wingrove v Wingrove*³⁷ where Sir James Hannon held that "where the a person is very weak and feeble "the mere talking to him at that stage of illness and pressing something upon him may so fatigue the brain, that the sick person may be induced, for quietness sake, to do anything".
49. The recent decision in *Gill v Woodall*³⁸ [2009] EWHC 2990 (Ch) is another useful example of the low level of pressure which may be required to overpower the will of an testator who is not actually ill, but frail in some other way. In that case the testatrix was "very, and unusually, dependent upon [her husband] and she was concerned not to lose his support". The judge found that "Mrs Gill's fear of the risk of Mr Gill losing his temper and of him withdrawing his crucial support for Mrs Gill, combined with her timid

³⁵ *Hall v Hall* (1868) LR 1 P&D 83 and *Re Edwards (deceased)* at 47

³⁶ *Re Edwards (deceased)* at 47.

³⁷ (1885) LR 11 P&D

³⁸ [2009] EWHC 2990 – although *Gill* is currently on appeal and should be treated with caution.

and shy personality, her traditional deferment to him and the severe anxiety consequent on the agoraphobia from which she suffered, unduly influenced her to make the will that she did”.

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Schedule: Some Useful Recent Cases on Undue Influence

(a) Cases where undue influence has been proved by the Claimant (“actual” and “probate” undue influence cases).

<p>Re Edwards deceased [2007] EWHC 1119 (Ch)</p>	<p>Probate case. An elderly testatrix’s mind was “poisoned” by her alcoholic and violent son against another of her children. The judge based his decision at least part on the lies told by the son about his brother: probate undue influence may be fraud, as well as coercion.</p>
<p>Gill v Woodall [2009] EWHC 2990 (Ch)</p>	<p>Currently on appeal. Highly publicised probate case involving the RSPCA. Testatrix was a vulnerable agoraphobic woman highly dependent upon her husband. He died before her and the judge found that her influence persisted after his death. Paras 337 to 384 set out the judge’s findings of fact and paras 483 to 499 his conclusions on undue influence.</p>
<p>Annulment Funding Co Ltd v Cowey [2010] EWCA Civ 711</p>	<p>A mortgage case: defence on the grounds of a husband’s undue influence over his wife succeeded (and was upheld on appeal) on the basis that H put W under pressure but also that he misunderstood the terms of the mortgage and so misrepresented it to her. Cf Edwards deceased below for another “misrepresentation” case.</p>
<p>Re Craig [1971] Ch 95</p>	<p>Fairly recent as undue influence cases go and a helpful case - lifetime gifts by an elderly man to his “secretary-companion” of around 75% of his estate over three years. Some evidence of her pressuring and bullying him. Held that there was sufficient evidence of undue even in the absence of any presumption shifting the burden of proof to the defendant.</p>

(b) Cases where the relationship of trust and confidence was at issue (“influence” cases)

<p>Gorjat v Gorjat [2010] EWHC 1537 (Ch)</p>	<p>Dispute between children and their father’s second wife in relation to a lifetime transfer of assets from him to her. Held that on the facts there was no relationship of trust and confidence where the deceased, although ill, was confident and knew his own mind.</p>
<p>Re Barker-Benfield [1996] WTLR 1141</p>	<p>Lifetime dispositions of property made by an alcoholic man to his second wife shortly before his death, disinheriting his children. Held that the relationship was not one of trust and confidence.</p>
<p>Jennings v Cairns [2003] EWHC 1115</p>	<p>Claim against a granddaughter who had held an EPA for her grandmother. Abuse of that EPA was a strong factor against the granddaughter in the undue influence claim.</p>
<p>Thomson v Foy [2009] EWHC 1076 (Ch)</p>	<p>Claim brought against a daughter by her mother in relation to a property transaction. Held that on the facts there was no relationship of trust and confidence between them (and that an agreement between the two was in any event explicable).</p>
<p>Daniel v Drew [2005] EWCA Civ 507</p>	<p>A nephew who was the beneficiary under a family trust threatened his elderly aunt to remove her as trustee unless she resigned. The threat of legal proceedings and the nephew’s “forceful character” amounted to undue influence.</p>
<p>Hewett v First Plus Financial Group [2010] EWCA Civ 312</p>	<p>A somewhat surprising decision in a mortgage case: the Court of Appeal held that a wife’s trust and confidence in her husband together with his failure to tell her that he was having an affair amounted to undue influence against her.</p>
<p>Macklin v Dowsett [2004] EWCA Civ 904</p>	<p>The parties, who had no family or similar connection, entered into a transaction concerning the claimant’s home which was disadvantageous to him. The Court of Appeal took into account the disparity of the parties’ bargaining positions, and emphasised that a relationship of trust and confidence can be inferred from the transaction itself.</p>

(c) Cases where the explicability of the transaction was at issue (“abuse” cases)

<p>Glanville v Glanville [2002] EWHC 1271 (Ch)</p>	<p>Another lifetime transfer (of the marital home) by a dying man to his wife which effectively disinherited his children. The transaction was explicable even though, had he thought about it more carefully, the deceased might have provided for his widow so as to preserve his estate for his family. Contrast Simpson v Simpson below and Re Barker-Benfield in section (b) above.</p>
<p>Simpson v Simpson [1992] 1 FLR 601</p>	<p>Strikingly similar facts to Glanville but the opposite conclusion was reached. The decision placed weight on the fact that the ill husband had not consulted a solicitor who was an old friend.</p>
<p>Karsten v Markham [2009] EWHC 3658 (Ch)</p>	<p>An allegation of undue influence by the defendant against his former solicitor and sexual partner was unsuccessful on the grounds that the transactions in question were readily explicable.</p>
<p>Smith v Cooper [2010] EWHC 1537 (Ch)</p>	<p>The transfer by one party to a relationship into joint names of herself and her partner was not explicable other than on the basis of undue influence, even taking into account that he was to be contractually liable on the mortgage.</p>
<p>Watson v Huber [2005] All ER (D) 156 (Mar)</p>	<p>A transfer by one sister-in-law to another of 48% of her estate was sufficient to shift the burden of proof to the defendant.</p>
<p>Turkey v Awadh [2005] EWCA Civ 382</p>	<p>A father took a long lease of property owned by his son and daughter-in-law in exchange for paying them a sum of money to clear the mortgage and other debts. Held that the transaction was explicable on the basis that otherwise the claimants wouldn't have been able to pay off the mortgage. See also Thomson v Foy in section (b) above.</p>