

Legal Definitions of Undue Influence

American Bar Association and American Psychological Association

Undue influence is influence that amounts to deception, force or coercion that destroys a person's free agency (American Bar Association and American Psychological Association, 2008).

California's Welfare and Institutions Code

California's definition of undue influence includes categories of information the court must consider in determining if undue influence was used in Probate matters such as conservatorships (often called guardianships in other states, trusts and will contests). The statute, Welfare and Institutions Code § 15657.70, defines undue influence as "excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity" and requires the court to consider:

- Vulnerability of the victim;
- Influencer's apparent authority;
- Actions or tactics used by the exploiter; and
- Equity of the result though the fact of an inequitable result alone is not enough to establish undue influence was used. (See M.J. Quinn article in the Bibliography for a further discussion)

Undue influence is excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity (California Welfare & Institutions Code § 15610.70 (a)).

Court Case

The essence of undue influence is the use of excessive pressure by a dominant person over a servient person resulting in the will of the servient person being overborne (Odorizzi v. Bloomfield School District, 1966).

Excerpt from *Undue Influence and Financial Capacity: A Clinical Perspective*

Undue influence is a legal construct defined differently by the courts dependent on jurisdiction. The term "refers to a dynamic between two individuals in which the weaker individual is exploited, often financially (Wood & Liu, 2012)."



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Excerpts from *Undue influence and written documents: Psychological aspects and Undue Influence: The Criminal Justice Response*

Undue influence is the use of a person's role and power to exploit the trust, and emotional and physical dependency of an older person. Exploiters use their power to deceptively gain control over the decision making of the victim. The influencer's tactics are typically subtle and involve psychological pressure exploiting a victim's vulnerabilities or susceptibilities. The goal is the substitution of the exploiter's wishes for the desires and free will choices of the victim. Direct threats and coercion are not required and often absent (Singer, 1996; Brandl, Heisler, & Stiegel, 2006).

National Center on State Courts, Prosecution Guide

Undue influence focuses on the relationship between the influencer and the older victim coupled with that person's opportunity and power to manipulate the vulnerable person's thoughts and actions (National Center on State Courts, Prosecution Guide, 2014).

Missouri Statute

Undue influence is usually the method by which the influencer obtains financial assets or control over the victim. Missouri includes undue influence in its crime of financial exploitation. It defines "undue influence" in the financial abuse criminal law as "use of influence by someone who exercises authority over an elderly person or disabled person 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 (Missouri Statute, Section 570.145)."



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