

## Undue influence, Coercion and Wills

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In a recent article we outlined legal issues regarding capacity to make a Will.

A different but related question that is arising more frequently is whether a deceased person who has legal capacity has been coerced into changing his or her Will late in life.

Some older people, whilst still having legal capacity, find it harder to make decisions and become more easily influenced by those around them. Instances of greater pressure being applied to older people by potential beneficiaries seem to be increasing.

In a case of *Dickman v Holley*, a will containing bequest in favour of the Salvation Army where a person from that organisation was involved in the will making process was rejected for a number of reasons including undue influence. Undue influence is more easily inferred if a bequest is in favour of a party in a special relationship, such as the Salvation Army may have been in this case, or person's trusted adviser such as their doctor or lawyer.

More commonly it is often family members are those influencing a will maker's decisions, but when does this become undue influence or coercion?

The current law is that the will maker must be overborne to the extent that they did not intend or desire to make their will in a particular fashion and will maker was coerced into making the will.

Cases suggest coercion must be pressure that "overpowers the volition of the will maker" as distinguished from "mere persuasion" or "appeals to ties of affection" or "pity for future destitution", all of which appear to be legitimate. Social pressure by itself may not amount to undue influence. It seems to be a high bar to prove undue influence.

Yet pressure which causes the deceased to "succumb for the sake of a quiet life" if carried on to the extent that "it overbears the will maker's free judgment" may in some circumstances be regarded as coercion.

It can also be argued that the circumstances of the deceased may be relevant –what may not constitute undue influence in the case of a person with a strong will and ordinary fortitude, may constitute undue influence in the case of a more susceptible individual.

The cases where wills are overturned for undue influence or coercion are few and far between. This is in part due to the cost for Court proceedings to dispute a Will's validity and the onus of proof resting upon the persons making the allegation of undue influence.

However the given the additional wealth that is often involved in estates and the pressure that is being applied to some older people, disputes about undue influence are likely to be the subject of more litigation in the future.



Here are two practice pointers.

It is best to make one's Will before any uncertainty or confusion might cloud the mind.

It best to obtain profession advice to make sure your wishes are clear and independently expressed.