

The mother of a son and a daughter was dying. The daughter visited her mother in a hospice facility and said, "You know that I have always been the good child, and my brother has always been the bad child. Even so, you have left your property in the will to us 50-50. But it would be really nice if you would sell me the family home for \$100,000."

"I don't know," said the mother. "It is worth a lot more than that—at least \$250,000."

"That is true," said the daughter. "But I have always been good and visited you, and my brother has never visited you, so that ought to be worth something. And besides, if you won't sell me the house for that price, maybe I won't visit you anymore, either."

"Oh, I wouldn't want that," said the mother, and she signed a contract selling the house to her daughter for \$100,000.

Shortly thereafter, the mother died. When her son found out that the house had been sold and was not part of his mother's estate, he sued to have the contract avoided on behalf of the mother.

On what ground would the contract most likely be avoided?

- A. Duress.
- B. Inadequate consideration.
- C. Mistake.
- D. Undue influence.

Explanation:

A contract induced by **undue influence** is **voidable** by the assenting party. Undue influence arises when a party assents to a contract due to **unfair or excessive persuasion** by **someone who dominates** or holds a **special relationship** of trust and confidence **with the assenting party**. Persuasion is unfair or excessive if it seriously impairs the assenting party's ability to exercise free and competent judgment. The following factors are often considered in making this determination:

- unfairness of the resulting bargain (eg, sale of home worth \$250,000 for \$100,000)
- unavailability of independent advice (eg, attorney unavailable to discuss sale)
- susceptibility of the assenting party (eg, mental illness, under hospice care)

Here, the daughter held a special relationship of trust with the mother because the daughter was the only child who visited the mother. The daughter's claimed status as the "good child" and her threat to stop visiting likely impaired the mother's judgment and persuaded her to sell her home to the daughter. This is further evidenced by the unfair resulting bargain and the mother's susceptibility. As a result, this contract would most likely be avoided on the ground of undue influence.*

*Had undue influence come from a third party, the assenting party could avoid the contract unless the other contracting party (1) did not know of the undue influence and (2) had given value or relied on the contract in good faith.

(Choice A) Duress arises when a party's assent is induced by physical coercion or an **improper threat** that leaves no reasonable alternative but to assent or face *irreparable* harm (not seen here). Therefore, the contract cannot be avoided on this ground.

(Choice B) Adequate consideration exists when, as here, there is a bargained-for exchange of promises or performances. This is true even if that exchange is unequal—eg, \$100,000 in exchange for a \$250,000 home.

(Choice C) A mistake is a belief not in accord with the facts (eg, had the mother not owned the home) that makes a contract voidable if it concerns a basic assumption on which the contract was made (not seen here).

Educational objective:

A contract is voidable for undue influence when (1) assent stems from unfair or excessive persuasion (2) by someone who dominates or holds a special relationship of trust and confidence with the assenting party.

References

- Restatement (Second) of Contracts § 177 (Am. Law Inst. 1981) (undue influence).

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Undue Influence

Domination



Power over
victim



Victim's singular
dependence

Special relationship of trust and confidence



Family



Caregiver



Fiduciary