

# In borderline cases, what can you do to rescue the position over undue influence, financial abuse or coercion of a testator?

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# Undue Influence

- ***Royal Bank of Scotland v Etridge (No. 2)*** [2002] AC 773

“Undue influence is one of the grounds of relief developed by the courts of equity as a court of conscience. The objective is to ensure that the influence of one person over another is not abused.”

- Can apply to wills, *inter vivos* gifts and contracts – but note differences between probate doctrine and equitable doctrine.

# Undue Influence – Probate Doctrine

*Edwards v Edwards [2007] W.T.L.R. 1387, @47:*

- No presumptions apply
- Burden on accuser. “What must be shown is that the facts are inconsistent with any other hypothesis.”
- Coercion or Fraud. “Coercion is pressure that overpowers the volition without convincing the testator’s judgment.”
- ***Scott v Hubbard***: Proof of coercion, not just persuasion? [2011] EWHC 2750

# Undue Influence – Equitable Doctrine

- ‘**Actual Undue Influence**’
- Blackmail, threats, coercion, misrepresentation
- ***Etridge*** – all the circumstances:

“the nature of the alleged undue influence, the personality of the parties, their relationship, [and] the extent to which the transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship”

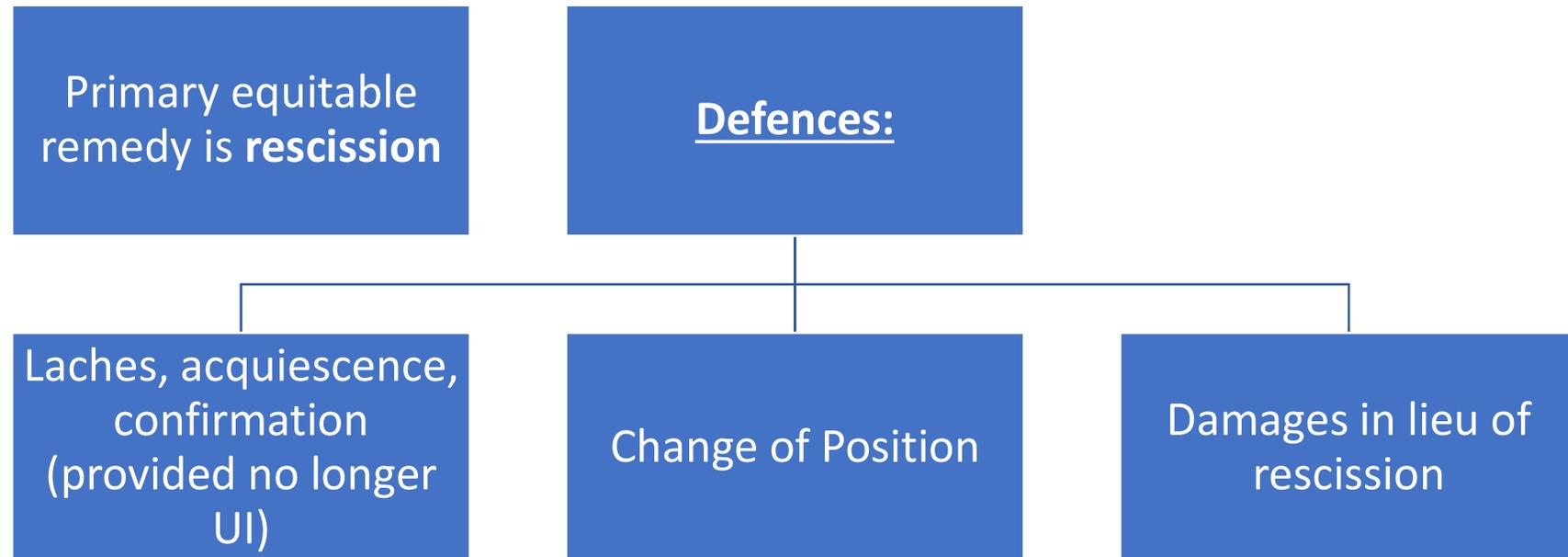
## Undue Influence – Equitable Doctrine(2)

### ‘Presumed Undue Influence’

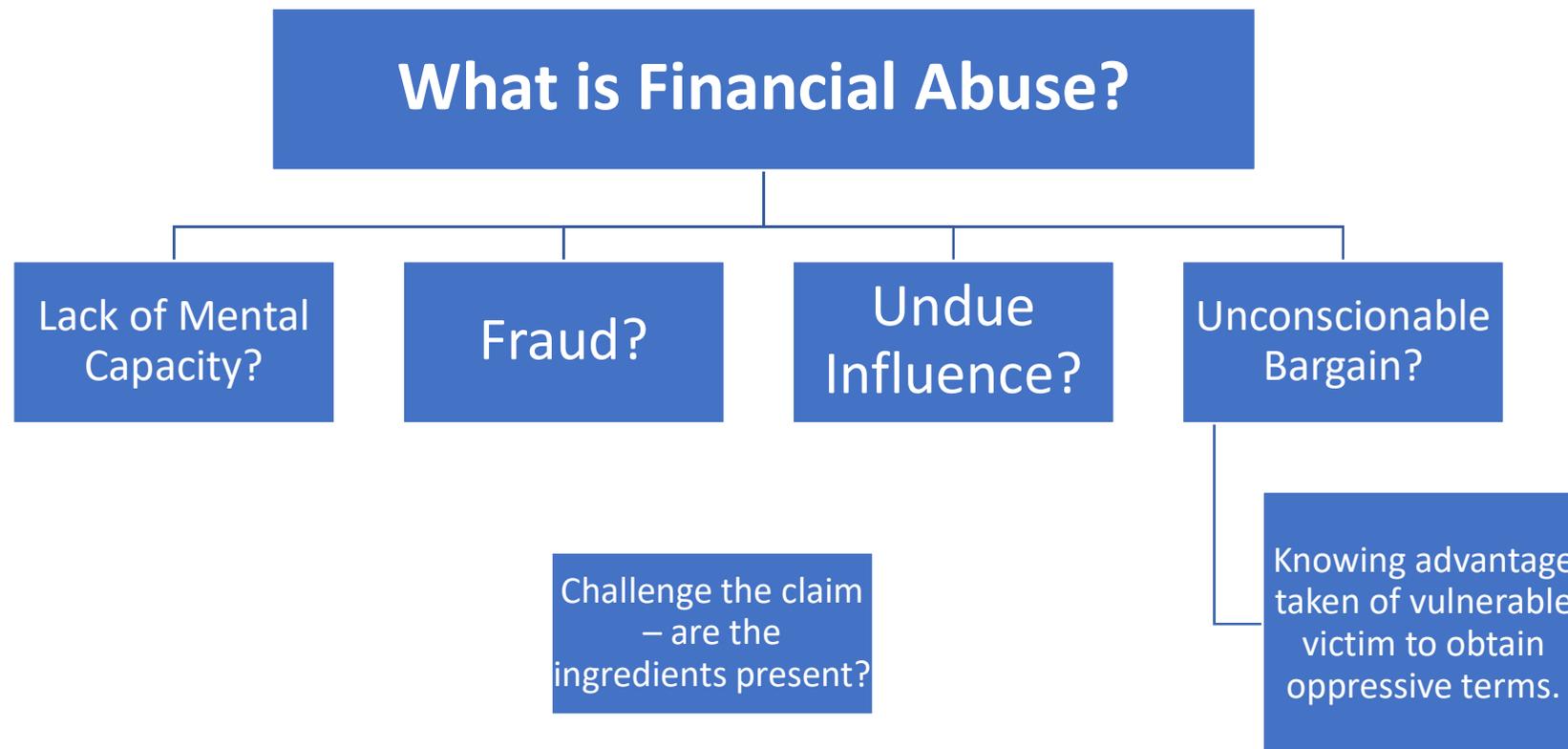
#### Two requirements to shift the burden of proof:

- (1) Relationships of influence
  - Special Cases: parents; trustees; spiritual, medical or legal advisors
  - Any other relationship of influence on the facts: banker; spouse
- (2) Transactions calling for explanation
  - Substantial gift, transaction at undervalue, favourable loan

# Undue Influence – Defences



# Financial Abuse



## Mr. X – The Son of the Testator

- Facing a claim of undue influence alleged by siblings
- Father had Alzheimer's in final years

### Dispositions:

#### Mr. X

LIFETIME – Investment Properties  
(£600k)  
WILL – Family Home (£1m)  
-Residuary Estate (£200k)

#### Siblings

WILL – Specific Legacies  
(£250k each)

# Rescuing the Position – Evidence

## Supporting the Defendant's Case

- Consider the bigger picture, especially in full time care cases – does a more detailed day to day account show the client in a more realistic light?
- What witnesses might you be able to find? Carers, cleaners, colleagues, family? What about professionals?
- Is there a good reason for the transaction in question?
- Are there helpful previous wills?

## Rescuing the Position – Evidence (2)

### Evaluate the Claimant's Evidence

- For undue influence cases, is there really more than mere 'persuasion'? ***Scott; Re Devillebichot*** [2013] EWHC 2867
- Is their evidence good enough to plead UI / fraud, bearing in mind professional duties?

## Rescuing the Position – Mental Capacity

- High threshold for capacity cases – ***Banks v Goodfellow***:

*“a testator shall understand the nature of the act and its effects [...] the extent of the property [...] comprehend and appreciate the claims to which he ought to give effect [...] no disorder of the mind shall poison his affections, pervert his sense of right [...] no insane delusion shall influence his will in disposing his property and bring about a disposal of it which, if the mind had been sound, would not have been made.”*

- The ‘**Golden Rule**’ – were there solicitors involved, what did they do? What other evidence on capacity is available?

## Mrs. Y – Widow of 35 Year Marriage

- Mr. Y left his entire estate to his niece – his only living relative
- Their understanding was that Mrs. Y would take the marital home and other jointly owned assets.
- Niece brought a claim for financial abuse
- The home turned out to be owned by the couple as tenants in common

### Mrs. Y

Half the Marital Home (£400k)  
Money from accounts and investments  
(£800k)

### Niece

Half the Marital Home (£400k)  
Residuary Estate (£100k)

# Rescuing the Position - Finances

## Joint Accounts!

- *Re Bishop* [1965] Ch. 450;  
*Wharton v Mercer* [2011]  
9 WLUK 482
- Trace back any contentious transactions – did they originally come from a joint account?

Review accounts generally –  
what are the past patterns?  
who brought what into the  
relationship?

## Rescuing the Position – Counter Attack!

### Reverse the Arguments

- What has the complainant has the benefit of?
- What care and support did they provide?
- Fully investigate all their dealings with the testator!

### Inheritance Act 1975

- Consider setting up an Inheritance Act claim in opposition.
  - Especially if in an undue influence case with no wrongdoing.

# Thank you! Any questions?

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