Undue Influence: Relational Autonomy and Surety Wives

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Introduction

Undue influence has been broadly defined as 'the exploitation of a relationship of influence to obtain an undue advantage'. As part of the court's equitable jurisdiction, the doctrine seeks to protect parties from the abuse of relational influence. It arises where contracts are entered into under pressure, falling short of the threshold for duress, which fails to account for subtler exploitations of pressure.

Surety wife cases describe a husband who takes a second charge out for the matrimonial home to secure his debts, procuring his wife's signature by undue influence. The cases arise when the banks seek to repossess the homes and the wives seek to set aside the charge.

Given that law changes society and society changes the law, doctrines are applied to accommodate social values. Core values such as autonomy can only be fully understood with recourse to their socio-cultural context, which changes over time.

Applying a relational view of autonomy as opposed to the traditional individualistic conception allows a narrower focus on how power relations operate within the law and how the law, in turn, encourages certain relationships over others. Ensuring surety wives make autonomous decisions and protecting their consent does not threaten the existence of surety transactions as a social good but protects their continued validity and longevity.

Traditional vs Relational Autonomy

Autonomy is typically seen as the epitome of self-reliance and independence. We presuppose that individuals contract for their own gain and can choose which obligations they impose upon themselves. Defining autonomy in this way ignores how individuals are shaped by the relationships they engage in. Independence is typically understood as both the antithesis and rival of community. A false dichotomy between individuals and their constitutive communities is reinforced by not adequately recognising how fundamental care and dependence are to our relationships. The issue with reinforcing such a dichotomy is that it applies this narrow conception of autonomy to the actors of undue influence cases. It is overly commercialistic in ways that fail to capture the different motivations and pressures within intimate personal relationships.

Independent Legal Advice

Independent legal advice received prior to a signing the contract could help avoid the effect of undue influence on a transaction.

Assistance in a vacuum has little value and affirms rather than relieves the wife's isolation. Allowing creditors to escape private meeting requirements by insisting on independent advice isolates surety wives from negotiations surrounding loan transactions. The message is that contracting parties should look after themselves. Still, the law does little to assist surety wives in doing so while both acknowledging and condemning a surety wife's probable lack of commercial experience and knowledge.

It is necessary to ask whether advice aims only to inform or emancipate from vitiating factors. In some cases, a surety wife should be advised against signing where the nature of the relationship that has resulted in the transaction should be noted. Current focus is on the mere presence of advice rather than its adequacy. As such, the requirement is easy to satisfy by creditors. It would be a step in the right direction if the advice considered the woman's context, whether that is commercial ignorance or a coercive husband with control over finances.

Conclusion

Appreciating the different pressures at play for surety wives and translating this into an understanding of how independent legal advice is delivered could help alleviate the impact of undue influence. As society moves forwards in its understanding of coercive and controlling relationships, progress in this area becomes inevitable.