

The Disunity of Presumed Undue Influence

Identifying Norms in the Parent-Child Relationship: A Relational Theory Analysis of Presumed Undue Influence

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1. Introduction

- Claimant-sided theories (impaired consent) and defendant-sided theories (wrongdoing) both fail.
- **Relational theory** (Chen-Wishart): law upholds implicit norms of influence relationships to protect the relationship’s integrity and the claimant’s relational autonomy.
- **Different relationships have different norms, this essay identifies those in the parent–child relationship.**

2. The Law (*Etridge*)

Three steps:

- 1) Relationship of influence
 - doesn’t mean financial management/dependence in this essay;)
 - Borader definition adopted: any situation where one party reposes trust & confidence, reliance, dependence or vulnerability, or the other acquires ascendancy, domination or control
- 2) Transaction calling for an explanation (not readily explicable by ordinary motives of the relationship)
- 3) Defendant can rebut by showing free & informed consent (usually independent advice)

3. Why Relational Theory?

- **Both traditional theories can be refuted by *Allcard v Skinner*:** no defendant wrongdoing and no impaired consent, yet the gift was still set aside.
- **Relational theory rejects the atomistic “Super-Detached Man” and contends that Persons are constitutively embedded in relationships of trust and dependency. Autonomy therefore includes the capacity to pursue valuable relationships.**
- **Implicit norms** (mainly constraints against self-interested exploitation) **govern these relationships.** A transaction that “calls for an explanation” signals breach of those norms.
- **Law intervenes to uphold the norms, protecting both the relationship’s integrity and the claimant’s relational autonomy.**

4. Parents influencing Just-Adult Children

- **Most cases are pre-Etridge and have largely disappeared.** Two reasons: changes in inheritance law (strict settlements replaced by flexible wills) and modern cultural shift toward children’s individual autonomy.
- 18th-century norms accepted a child acting against personal interest out of honour or familial duty. Example: *Blackborn v Hewer Edgley* — son signed a bond to pay his father an annuity because he felt bound in honour; the court upheld it.
- Norms also allowed family arrangements that conferred collective benefit even at personal detriment. Example: *Baker v Bradley* — son charged his remainder interest to relieve parents’ debts and preserve the family establishment; treated as a legitimate “family arrangement”.

5. Adult Children Influencing Elderly Parents

- **Future autonomy**
Norms do not ordinarily permit gifts that leave the parent without resources for maintenance, care or medical needs (*Hackett, Paull* — both set aside). Milder support (e.g. helping a child start a business) is accepted (*Portman*). However, blood ties give more latitude than other relationships of influence: even substantial transfers may be upheld if consistent with ordinary familial expectations (*De Wind c.f. Allcard*).
- **Family arrangements**
Personal detriment is acceptable where the transaction genuinely benefits the family as a whole (*Malik* — share transfer to preserve the family restaurant). Claimed benefits must be real and sustainable; tax, care-home or inheritance arguments that fail on the facts will not save the transaction (*Paull*).
- **Ordinary human emotions**
Love and affection, gratitude and guilt are recognised as legitimate explanations.
 - Love & affection: *Portman* (father remortgaged to help son’s business).
 - Gratitude: *Casimir* (house transferred to daughter who had long cared for both parents).
 - Guilt: *De Wind* (proceeds given to son who had been “short-changed”).

7. Implications for Courts

- **Assessing emotions**
Emotions are complex, yet courts need only a low, qualitative standard (e.g., “reasonable degree of jealousy”). No laboratory precision is required; the court asks only whether the transaction falls within the range of conduct a person might reasonably adopt in the circumstances.
- **Temporal and cultural variability**
Norms change over time (18th-century filial duty cases would be decided differently today) and differ across cultures. Courts must not apply earlier authorities or cultural assumptions mechanically, but must recognise that what counts as “ordinary” is context-dependent.

References

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