

Undue Influence in Contract and Probate Law

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Abstract

This article outlines the history of undue influence and the law, the definitions of undue influence, judicial considerations in deciding undue influence cases, and the types of cases in which document examiners may be called upon to testify. Undue influence cases most commonly appear in contract or probate law. Undue influence cases may occur in relationships based upon trust and confidence, family members or friends, or within the context of totalistic groups.

Undue influence is considered in two areas of the law having to do with written documents, that is, first, contracts, and second, wills and/or trusts. In each of these areas, the courts, in deciding actual cases, and the legislature, in enacting specific statutes, have been concerned with the state of mind of the individual assenting to a contract or executing a will. "Freedom of will," at the time the contract or will is executed, is essential to the validity of both -- so that each can truly be the instrument of the maker's will.

If a contract is obtained by undue influence, the document is invalid; as contract law theory sees it, no contract has been formed. Within the conceptual framework of contract law, no contract can be formed unless there has been a "meeting of the minds" of independent, bargaining individuals. If a contract is obtained through the use of undue influence, there has never been an actual meeting of the minds of two bargaining parties.

If a will is obtained by undue influence, the courts require a showing that the will of the testator, the maker of the will, is subjugated to the will of another. Such subjugation is shown through acts or conduct that overcome the free agency of the testator. It must be proven that the testator disposed of his or her property in a manner contrary to and different from the disposition that would have occurred had there been no such undue influence.

I. Undue Influence and Contract Law

The concept of undue influence developed in the English courts as a means of policing unfair agreements induced by improper means of persuasion.¹ By contrast, the common law doctrines of duress were conceived as corollaries of the law of crime and tort.² The English equity courts sought to protect individuals, affected with a "weakness" that fell short of total incapacity, against improper persuasion by others in positions of authority, control, trust, familial relation, or the like, who had the means and opportunity to exercise improper persuasion.³ The equity courts did not have to resort to legal doctrines that were based on violations of the law of tort or crime; rather, the unfair gain of economic advantage over someone mentally or physically disadvantaged was condemned by the prevailing standards of ethics as defined and applied by the equity courts.⁴

Dawson, in tracing the history of the legal concept of undue influence, notes a significant advance in the doctrine as occurring in the 19th century.⁵ Undue influence cases were seen within a larger context, where the wrong perpetrated was the interference with another's will, which ideally should be free. The test for undue influence became the presence or absence of free agency, that is, whether the individual will had been overpowered. The net result was that the inequality that the courts should guard against was pressure that compelled the person to act against his or her own desires.

The courts came then to regulate the pressures that can be exerted on the physically, mentally, or emotionally disadvantaged, as Dawson indicates in summation of the development of this doctrine, with the use of donative gifts as a specific example.

A closer reading of undue influence cases reveals the operation of some objective tests, side by side with the analysis of individual motives that is chiefly accented in judicial opinions. Transactions must be judged not only in terms of motive but in terms of their effects. The aim is by no means to eliminate but to safeguard the powers of donation of the aged, the timid, the physically or mentally weak. Therefore, the question, difficult as it is to answer, must be whether existing opportunities for the exercise of pressure have been used to divert the gift from its normal and natural course, in view of the donor's total situation--economic, psychological, and emotional [emphasis added].⁶

A striking example of a case that involves both a contract and a will comes from the early English cases. In a case decided in 1617, by Chancellor Francis Bacon, a woman of the quaint name of Mrs. Death was found to have used undue influence to obtain a deed to land and a will leaving her personal property of considerable value, from a Mr. Lydiatt. As Chancellor Bacon writes:

[Lydiatt was] an old man about the age of eighty years and being weak of body and understanding and having a great estate of goods and lands . . . was drawn by the practices and indirect means of . . . [Mrs. Death] to give his house here in London and to come to sojourn with her at her house in the country . . . [although she was married to Mr. Death], and that she having him there did so work upon his simplicity and weakness and by her dalliance and pretence of love unto him and of intention after the death of her then husband to marry him, and by sundry adulterous courses with him and by sorcery and by drawing of his affections from . . . his kindred, telling him sometimes that they would poison him and sometimes that they would rob him.⁷

After she had obtained control of his estate and property, Mrs. Death neglected such attendance of him as she had used before and used him in a most cruel manner reviling him and causing him to be whipped and suffered him to lie loathsomely and uncleanly in bed until three o'clock in the afternoon without anybody to help him so as all the skin of his loins went off, he being not able to help himself by reason he was troubled with a dead palsy and other diseases, and when at any time she did come to help him up she would pinch him and revile him and by such cruel and terrible courses kept him so in awe as that he durst not revoke what before he had done, neither would she suffer his nieces to come unto him lest he should make his moan unto them, for she said if they came there she would scald them out of her house.⁸

Here, we see many of the elements of undue influence: weakness, opportunity, means of persuasion, and unnatural disposition of property and estate. Mrs. Death so worked "upon [the] simplicity and weakness" of the 80-year-old Lydiatt, "by her dalliance and pretence of love . . . and by sundry adulterous courses with him and by sorcery," that he executed a will and a deed in Mrs. Death's favor.

A. Legal Reasoning

To adequately understand what the concept of undue influence has come to mean in a contemporary legal setting, one must first look to the statutory definition of the term. Second, one looks to actual cases where undue influence is central to the decision to determine in what context the issue has arisen and how judges interpreted the term in light of the facts of a specific case. Third, one reasons by analogy from the facts and judicial interpretation of a precedent-setting case to the facts of any case-at-hand. The history of legal decisions on the issue of undue influence becomes a series of legal precedents that are applied by analogy to any new or novel set of facts.

B. Statutory Definition of Undue Influence

California defines undue influence by statute in California Civil Code Section 1575:

In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

In taking an unfair advantage of another's weakness of mind; or

In taking a grossly oppressive and unfair advantage of another's necessities or distress.⁹

C. Undue Influence in Relationships Based on Trust and Confidence

Corresponding to the first subsection of Civil Code 1575, the courts traditionally require two elements to be proven in a case of undue influence involving a contract: (1) a special relationship between the parties based on confidence and trust; and (2) improper influence or persuasion of the weaker party by the stronger.

1. The concept of special relationship in 1575(1) of the Civil Code.

The term "special relationship" is a complex concept in the law. The basic idea is a relationship between parties based on trust and confidence where the weaker party is justified in assuming that the stronger will not act in a manner inconsistent with his welfare.¹⁰ Where this relationship of trust and confidence has been formally recognized, either by statute or case law, the stronger party is often referred to as a fiduciary.

Examples of such statutorily recognized fiduciaries are trustees, guardians, executors, administrators, and attorneys.

Because professionals, such as trustees or attorneys, are recognized as having fiduciary responsibilities, the courts will scrutinize their actions intensely. In general, the fiduciary has the obligation or burden of proving that he or she has adequately discharged the duties attendant on this position.

Other common, nonstatutory examples of special relationships include parent and child, husband and wife, member of the clergy and confessing communicant, and physician and patient.

2. Undue influence in a relationship based on trust and confidence.

Once the special relationship based on trust and confidence is established, the second step in proving undue influence is to prove that the assent of the weaker party was obtained by means of unfair persuasion or undue influence. Cases differ as to the nature or degree of the unfair persuasion necessary to be called undue influence. Fundamentally, the courts will seek to determine whether the result was an exercise of the individual's free will or produced by means that substituted the will of a stronger party for the will and judgment of a weaker.

One factor the courts will consider is an obvious imbalance of power or inequitable unfairness in the results of the bargain to the weaker party. Other factors considered in various cases are (1) lack of independent advice, (2) special susceptibility of the weaker party to the importuning of the stronger, and (3) lack of time to reflect and consider the consequences of all actions.

A common example of a fiduciary relationship is that between attorney and client. If an individual enters into a contract with his attorney (except for the original contract to

retain the attorney's services), where the attorney profits from or gains an advantage over his client, that contract is taken by the courts to be presumptively invalid. In order for the attorney to gain the benefit of the contract and for the courts to find the contract valid, the attorney must prove that the client was fully informed of all necessary facts and that the individual had been advised and given the opportunity to consult with another independent attorney. Moreover, the attorney must prove that the contract was fair in all regards and that the client received an adequate return in exchange for what the client gave over to the attorney.

The example of a contract between a client and an attorney may be seen as a model of the issues of undue influence where a fiduciary is involved. If a contract is made between an individual and his or her fiduciary, such as an executor or trustee, the contract may be rescinded unless (a) the contract is fair in all aspects; (b) the beneficiary was of full capacity at the time the contract was entered into; (c) prior to entering into a contract, the beneficiary had full knowledge of all the facts of the contract and of his or her rights under the contract; (d) he or she had time to reflect on the contract; and (e) he or she had the opportunity, or was advised, to consult an outside fiduciary or expert.

D. Undue Influence in Cases Involving Family Members or Friends

Often cases arise that involve family and friends who become parties to a contract. In general, family relationships, such as between husband and wife or parent and child, are confidential relationships. These relationships, like fiduciary relationships, have at their crux a history of "informal" trust and confidential dealings. In cases that arise where a family member gains a profit or distinct advantage through dealing with a weaker party, the courts have looked to see if the weaker party is very old, mentally incapacitated, suffering from debilitating sickness, or otherwise physically or psychologically impaired. Such physical or psychological impairment combined with a lack of independent advice and a contract giving an obvious advantage to a family member would force the stronger party to prove the contract's fairness.

E. Undue Influence in Relationships Not Based on Trust and Confidence

The second and third sections of Civil Code 1575 contemplate situations where undue influence occurs outside the ambit of a fiduciary or confidential relationship. These cases arise much less frequently in the law than cases involving fiduciaries or family members.

One reason for the lack of frequency is that the courts have been worried that individuals who simply made a "bad" bargain might later claim they were induced into the bad contract through the artful deception and undue influence of the other party. Courts have long recognized that good salesmanship and "puffery" extolling the virtues of an otherwise mediocre object are the basis of many a contract. If these virtues prove to be actual misrepresentations that induced the unwary party to enter into the contract, he or she can seek to rescind the contract under the doctrine of fraud or misrepresentation.

On the other hand, good salesmanship is limited by the legal concepts of duress and undue influence. Duress is coercive behavior, either physical compulsion/confinement or a threat of the same, which induces the victim's agreement to enter into a contract. Under

the theory of contract law, where there has been duress, there has been no actual assent to the contract, since the victim has been forced to become a "mere mechanical instrument" of the stronger party.¹¹

Where the relationship is less formalized, that is, without a confidential or fiduciary relationship, the courts will look to a combination of factors to determine whether an individual has taken advantage of the weakness of another through the use of his or her own disproportionate strength. The courts have found that "disproportionate strength" may be based upon knowledge, experience, training, or relationship. Therefore, undue influence also includes situations in which the weaker individual comes under the domination of the stronger, when such "strength" is based on knowledge, training, or relationship, and "weakness" is a product of weakness of mind or necessities of life and/or distress.

In the most important of such cases, *Odorizzi v. Bloomfield School District*,¹² the plaintiff was an elementary school teacher who had been arrested on criminal charges of homosexuality. In his complaint, he alleged that one day after his arrest, booking, interrogation by the police, and release on bail, and after he had gone 40 hours without sleep, the superintendent of the school district and the principal of his school came to his apartment to ask for his resignation. The school officials said that they were acting in Odorizzi's best interests in seeking his resignation, after which they would not publicize the arrest and thereby interfere with his chances to secure future employment. They also said that if he did not resign immediately, they would dismiss him and publicize the incident. The plaintiff signed a written resignation at that time. Later criminal charges were dismissed. He was later denied reinstatement and reemployment. Odorizzi brought his case against the school district to rescind his resignation.

The appellate court reversed a trial court decision and said that the situation rightfully fell under the doctrine of undue influence: taking unfair advantage of another's weakness of mind or distress. The court held that improper persuasion may occur when the person being influenced suffers from great weakness or when the person exercising the influence has excessive strength.

Further, the court listed a series of criteria that indicate whether this type of undue influence has taken place:

(1) discussion of the transaction at an unusual or inappropriate time, (2) consummation of the transaction in an unusual place, (3) insistent demand that the business be finished at once, (4) extreme emphasis on untoward consequence of delay, (5) the use of multiple persuaders by the dominant side against a single servient party, (6) absence of third-party advisers to the servient party, (7) statements that there is no time to consult financial advisers or attorneys.¹³

Subsequent cases hold that undue influence occurs when a number of these elements, not necessarily all, are simultaneously present. The simultaneous operation of such factors

ultimately indicated that the contract was achieved by means that impaired the free will and independent judgment of the schoolteacher.

The representatives of the school board undertook to achieve their objective by overpersuasion and imposition to secure plaintiff's signature but not his consent to his resignation through a high pressure carrot and stick technique--under which they assured plaintiff they were trying to assist him, he should rely on their advice, there wasn't time to consult an attorney, if he didn't resign at once the school district would suspend and dismiss him from his position and publicize the proceedings, but if he did resign the incident wouldn't jeopardize his chances of securing a teaching post elsewhere.¹⁴

F. Undue Influence as Programmatic Strategy of Totalistic Groups Intended to Induce the Formation of a Contract

Recent litigation has seen the rise of causes of action based on the premise that totalistic groups, both of a religious and nonreligious character, have developed and employed programmatically applied techniques to control and manipulate behavior in a weaker or subservient party in order to induce the weaker party to enter into a contract or execute a will in favor of the group or the charismatic leader of the group. Briefly, such groups used "coordinated programs of coercion and behavior control" for example, the organization and application of intense guilt, shame, and/or anxiety manipulation, combined with the production of strong emotional arousal in settings designed to produce behavior that furthered the ends of the group or the leader.¹⁵ Conformity with group expectations was the goal of the social and psychological pressures applied by the groups. Such pressures could only be reduced by the weaker party's acceptance of the group's belief system and participation in behavior orchestrated by the group.

Research indicates that such groups operate by deliberately exploiting psychological vulnerabilities of the weaker party.¹⁶ The strategy developed by these groups employs use of a designed program of psychological and social techniques that attack and destabilize the weaker party's "central elements of the experience of self." Central elements of the self have been defined as including "self-evaluation of the adequacy or correctness of a person's intimate life and confidence in perception of reality (e.g., relations with family, personal aspirations, sexual experience, traumatic life events, religious beliefs, estimates of the motivations of others, etc.)."¹⁷ Ofshe and Singer propose that reality awareness, emotional control, and basic consciousness are at the core of the sense of self.¹⁸

Destabilization of the sense of self is coerced through techniques that force a reinterpretation of individuals' life history, a radical alteration of their worldview, an acceptance of a new version of reality and causality, and/or dependency on the organization. Singer and Ofshe suggest that **□ attacking the stability and quality of evaluations of self-concepts is the principal effective technique used in** the conduct of a coercive thought reform and behavior control program.¹⁹ Among the techniques used to accomplish such ends are group pressure, modeling, accusations, confessions on a social level, emotional flooding, sleep deprivation, stripping away of various psychological defense mechanisms, induction of cognitive confusion, and hypnosis to intensify

recalled or imagined experience. The programmatic nature of these techniques in such groups has been termed a "behavior change technology," which can render a person a highly deployable agent of the organization.²⁰

In *Molko v. Holy Spirit Association*,²¹ the California Supreme Court held that a former member of a religious group could seek restitution of a monetary gift to that group based on a theory of undue influence. Briefly stated, Molko alleged that defendant Holy Spirit Association [hereinafter "Church"] deceived him into unknowingly submitting to coercive persuasion, thereby obtaining undue influence over him which the Church later used to extract the monetary gift. The Court held that Molko could bring a claim against the Church as to whether the Church established and used its dominant psychological position and its confidential relationship with Molko "for the purpose of obtaining unfair advantage of him with regard to the gift."²²

It is of importance that the Court cited three sources for its view of undue influence as applicable to these groups. The first is California Civil Code 1575 (discussed above). The implication would be that such groups could be held to the standard of undue influence as stated in that code section. The second is an appellate court decision²³ that undue influence is "that kind of influence or supremacy of one mind over another by which that other is prevented from acting according to his own wish or judgment" [emphasis added by California Supreme Court]. The third source cited was a legal reference text²⁴ that stated that undue influence occurs when "one party uses [its] dominant psychological position in an unfair manner to induce the subservient party to consent to an agreement to which he would not otherwise have consented."

The research into such groups would tend to indicate that contracts induced by such means could meet the seven criteria established for finding undue influence in nonfiduciary relationships by the court in *Odorizzi*.²⁵

The *Odorizzi* criteria must be analyzed within the entire context of relations between the individual and the organization. The discussions regarding the contribution of assets occur after an organization has promoted dependence of the individual through incremental structural and material life changes. After an initial "recruitment phase" designed to establish affective bonds between the recruiting agents and the subservient individual, influence tactics are employed to promote dependence on the organization. Direct social pressure is used to induce an incremental, **step-by-step sequence of** decisions leading to the formation of dependent power relations. Acceptance of the authority and the rules of the organization leads to structural and material changes in the individual's life which increasingly promote dependence. In part, structural and material changes over an individual are introduced into a person's life by the individual's intimates who are also subject to the authority of the organization. Such intimates are in fact agents of the organization who ease the person along the road to dependence. Increasingly, the organization controls the person's income, employment, capital, and social life. For example, persons may be induced to move into a communally organized residence, accept employment in an organization's business, leave school, or contribute whatever assets they control to the organization.

Therefore, the Odorizzi criteria would be important in characterizing the methods used by totalistic groups to secure donations and bequests by means of undue influence. It is within the context of the authority wielded by the group--that is, structural and material control--that pressure and insistence on contributing assets to the organization occur. The alternative to making contributions is often the threat of expulsion. In such circumstances, a person threatened with expulsion is simultaneously being cut off from major social supports upon which the stability of identity and emotional well-being depend. At the same time, expulsion may also mean the loss of income, employment, capital, and social life.

II. Undue Influence and Probate Law

A. Undue Influence Defined in Probate Law

The concept of undue influence also plays an important role in probate law. Although the use of the concept is similar to that found in contract law, the proof of undue influence in contesting the viability of a will is more exacting and detailed. Courts are on the whole reluctant to disturb the disposition of a will after the testator has died. At least three reasons have been advanced supporting the sanctity of wills. First, the courts recognize that an individual may dispose of his or her property as he or she sees fit, either unjustly and unfairly or with justice or with fairness. Second, the central factual witness and oftentimes only witness to the testator's intent is not available for trial -- he or she is dead. Third, juries, if given the opportunity, would remake many wills according to their own sense of a just distribution, which may not reflect the testator's actual wishes.

Specifically, the courts are concerned primarily with the mental state of the testator at the precise moment the will was being signed. Undue influence must have been exerted at that moment. The effect of the undue influence must have been to overpower the mind and the will of the testator at the time the will was made. The undue influence must have been such that it in fact produced the disposition of the will, thereby exclusively expressing the intent of the one exerting the influence. It must also be established that the testator would not have made such a distribution of assets but for the undue influence.

B. Circumstantial Evidence of Undue Influence: A Combination of Factors Is Necessary to Sustain a Finding of Undue Influence

The act of undue influence is rarely witnessed; therefore, the common situation is one where undue influence is proven by circumstantial evidence. Courts require substantial evidence to upset a testator's written will. Various lists of factors have been drawn in numerous cases. A consensus of cases would list the following factors: (1) unnatural disposition, (2) opportunity to exert the undue influence, (3) susceptibility, and (4) activity of beneficiaries in procuring the will.²⁶

First, unnatural disposition is taken to mean that "strangers," that is, unrelated parties, receive the benefits of the will to the exclusion of blood relations, or that one child receives the bulk of the bequest while others of equally close relation receive little or nothing.

Second, opportunity means that relations existed between the chief beneficiaries and the decedent that afforded the beneficiaries an opportunity to control the testamentary act.

Third, susceptibility means that the decedent's mental and/or physical condition was such that it left him or her susceptible to the undue influence and domination of others.

Fourth, activity means that the chief beneficiaries were active in procuring the will, isolating the testator from his or her family, or preventing the testator from obtaining independent legal advice.

The combination of these four factors present at the same time has been found sufficient.²⁷ None of these factors alone is sufficient to support a finding of undue influence. For example, mere opportunity to influence even when there is a motive is not sufficient for an inference that such influence was in fact exerted. Proving the testator was particularly susceptible is almost always necessary. In cases where undue influence has been found, the testator invariably has suffered from a weakened physical condition or psychological vulnerability. This weakness or vulnerability appears to be the foundation of further proof that there was improper persuasion or activity that subverted the will of the testator.

A common pattern in cases when undue influence is found is (a) a physically weak or psychologically vulnerable testator together with (b) active participation in the procuring of a will by the beneficiary and (c) unnatural profits by the beneficiary.

C. Relationships of Trust and Confidence That Involve Undue Influence

The courts will rigorously scrutinize a bequest to a beneficiary who also has a simultaneous fiduciary relationship with the testator based on a trust and confidence. This situation is somewhat analogous to that in the discussion of contract law above. The fiduciary relationships contemplated by probate law entail the same statutorily defined fiduciaries, attorneys, trustees, and so forth, and nonstatutory relationships based on trust and confidence, family members and friends. Among those professions found to be confidential are a business adviser,²⁸ a secretary/companion,²⁹ and religious counselors.³⁰ Where the beneficiary is in a confidential relationship with the testator, and is both actively involved in procuring the will and unduly profits from the will, that is, there is an unnatural disposition of assets, a presumption of undue influence arises. This presumption then forces the beneficiary to prove that the will was the product of the testator's desires and intentions.

III. Document Examiners and Undue Influence

The document examiner, who is interested in whether a document under consideration is a product of undue influence, may be consulted as to whether there exist any indicia of undue influence in the signature or writings contained in the document. Based on the cases reviewed for this paper, judicial rulings have not permitted document experts to testify directly that the contract or will was a product of undue influence. In general, the courts have taken the view that factual questions about the physical condition or mental

state of an individual are within the domain of medical, psychiatric, or psychological experts and not document examiners.

Where testimony by a document examiner is permitted to go beyond the narrow domain of the authenticity of a document, such testimony has been on the issue of whether the maker was competent to make a contract or will.

In general, even in the few cases³¹ discovered where such testimony has been permitted, the testimony is given limited evidentiary value. No case was found where the testimony of a document expert standing alone (that in his or her opinion the maker of the document suffered from a condition that rendered the maker incompetent) was sufficient proof of incompetence. At most, such testimony is a single fact among others on which a trier of fact may base a judgment as to competency. Hypothetically, if the testimony of a document expert is permitted on the incompetency of a signing individual, as for example that the individual suffered from a degenerative neurological condition as evidenced by degenerative changes in his or her signature over time, that testimony might be used to indicate that such an individual would be particularly susceptible to undue influence. No cases permitting such testimony have been found.

Competency to make a will, or testamentary capacity, is focused on the testator's condition at the time of making the will. The question is whether the individual had sufficient mental capacity to be able (1) to understand the nature of the act he or she is doing, (2) to understand and recollect the nature and extent of his or her property, and (3) to remember and understand his or her relations to living descendants, spouse, and parents whose interests will be affected by the will.

In contract law a person is generally assumed to be competent to enter into a contract and bind himself to the terms of the contract. Today, only two defects are generally accepted as impairing the power to contract: (1) immaturity, by chronological age; and (2) psychological status. As to psychological status, no universal standard of mental capacity to enter into contract has been set. Older cases were concerned with "lunacy" and "insanity." Mental infirmity, as it was often called, was recognized as being the end result of various processes, including retardation, mental illness, brain damage, dementia, and the use of alcohol and drugs.

The traditional tests for capacity to enter into a contract were cognitive: the capacity to understand the nature and consequences of the transaction, that is, the ability to know what one was doing and appreciate the effects of such an act.³² In addition to a cognitive test of capacity, some authorities and some states have adopted a volitional test: where the individual understands the nature and consequences of his or her actions, but lacks effective volitional control over such actions, as with an individual suffering from manic-depressive illness.³³

In *Estate of Garvey*³⁴ and *Estate of Darilek*,³⁵ the courts were presented with situations where the contestants to the respective wills introduced testimony by physicians, who were also qualified as handwriting experts, that the testator was incompetent based on

reviews of portions of the medical records written by the patient and a comparison of signatures. In Garvey, the physician performed an autopsy and compared documents; in Darilek, a psychiatrist reviewed hospital records and compared exemplars with records made by the decedent in the hospital. In each case the trial court and the court of appeals rejected that testimony as insufficient to establish incompetency.

References

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4. Dawson, 45 Michigan Law Review 253, at 262.
5. Id., at 263.
6. Id., at 264.
7. Joy v. Bannister (Chan. 1617), in Bacon's Reports 33, 34 (Ritchie ed. 1932).
8. Id., at 34-35.
9. Civil Code 1575 (Deering).
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23. *Bolander v. Thompson* (1943) 57 Cal.App.2d 444, 448, 134 P.2d 924.
24. Calamari & Petrillo, *The Law of Contracts* (2d ed. 1977) at 274-275.
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30. *Estate of Bourquin* (1858) 161 Cal.App.2d 289, 326 P.2d 604.
31. *Estate of Little* (1920) 46 Cal.App. 226; *Estate of Garvey* (1940) 38 Cal.App.2d 456; *Estate of Darilek* (1957) 151 Cal.App.2d 322; *McLeod v. Bullard* (1881) 84 N.C. 515; *Entwistle v. Meikle* (1899) 180 Ill. 9, 54 N.E. 217; *Raymond v. Flint* (1917) 225 Mass. 521, 114 N.E. 811; *Adams v. Adams* (1923) 253 S.W. 605; *Gibbons v. Redmond* (1935) 142 Kan. 417, 49 P.2d 1035.
32. Farnsworth, *supra*, 4.6.
33. See *Ortelere v. Teachers Retirement Board* (1969) N.Y.2d 196, 250 N.E.2d 460.

34. Estate of Garvey (1940) 38 Cal.App.2d 456, at 458.

35. Estate of Darilek (1957) 151 Cal.App.2d 322, at 326.

Acknowledgment

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Other contributions by author(s)

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