TESTAMENTARY UNDUE INFLUENCE IN IOWA

The doctrine of undue influence developed from the fundamental policies underlying the Anglo-American testamentary scheme protecting a testator and the natural objects of his bounty from the effect of certain acts which infringed upon the privilege of testamentary freedom.[1] Such acts were those which society felt to be an improper inducement upon the freedom accorded a testator. Public policy now attempts to protect the individual, family and society from improper and irrational devolution of property by judicial inquiry into the validity of a will through the doctrine of undue influence.

The usual situation which gives rise to judicial inquiry is where contestants whose economic expectations were disappointed seek to challenge and upset the will by making the two related allegations of undue influence and lack of testamentary capacity, sometimes referred to as the "Gold Dust Twins."[2] However, these frequently associated grounds are separate and independent grounds for attacking the validity of a will, although in undue influence cases it is always pertinent to inquire into the mental condition of testator. Therefore, the contestants may artificially base their case on lack of testamentary capacity and undue influence even though in reality economic dissatisfactions underlie almost every will contest. In the event contestants are successful in showing lack of testamentary capacity or undue influence, then either the whole will is denied probate with decedent's estate passing by intestacy,[3] or only part of the will is denied probate with some property passing by intestacy and the rest under the valid provisions of the will.[4] In this way the dissatisfied contestants hope to receive a greater share of the estate than they would take under the uncontested will.

In determining what degree of influence exercised by a beneficiary is proper or improper there is, unfortunately, no standard factual pattern with which to make a prediction. Undue influence is primarily a factual determina-

1 The privilege to dispose of property by will is contained in IOWA CODE § 633.264 (1966): "Subject to the rights of the surviving spouse to elect to take against the will . . . any person of full age and sound mind may dispose by will of all his property, except sufficient to pay the debts and charges against his estate."

2 Green, *Proof of Mental Incompetence & the Unexpressed Major Premise*, 53 YALE L.J. 271, 297 (1944).

3 Since decedent has no will, the statutes of descent and distribution are applicable. *See* IOWA CODE § 633.210 *passim* (1966).

4 The Iowa Supreme Court has approved the doctrine of partial invalidity.

> The rule seems to be (1) that one clause of a will may be set aside if the separate items are distinct and complete in themselves (2) that the separate severable items of the instrument by no reasonable construction could be affected by the taint of undue influence charged against an offending beneficiary (3) that such separate severable items make a bequest or devise to persons having a natural claim to a testator's bounty and (4) that the instrument is so drafted as to make a complete disposition of testator's estate, or, if the items of the purported will resulting from alleged undue influence relate to the residuary clause, that the remainder of the estate will be distributed under the laws of descent.

In re Estate of Ankeny, 238 Iowa 754, 765, 28 N.W.2d 414, 419-20 (1947). For further discussion of this case and the use of the doctrine of partial invalidity *see* Note, *Partial Invalidity of Wills*, 41 IOWA L. REV. 640 (1956).

tion. Due to the circumstantial nature of the evidence and the variety of possible inferences raised, many factors are considered, resulting in confused and complicated guidelines. The principles of law are certain and definite, but the application of facts to these principles is difficult. The result is that on appeal the reviewing court usually does no more than restate the findings of the lower court and hold that there were facts sufficient to generate a jury question.

The purpose of this Note is to determine what factors and relationships are relevant to a decision in Iowa as to when influence reaches the point of being undue, so that the will can be set aside in whole or in part. The court is guided by well-established principles and definitions applicable to the doctrine of testamentary undue influence. Consequently, the scope of discussion will center around the application of the various factual patterns which the court deems relevant to the established principles and definitions pertaining to the doctrine of testamentary undue influence.

I. Definition and Distinctions

> The general and well-accepted rule in this state is that influence, to be undue, must be such as to substitute the will of the person or persons exercising the influence for that of the testator, thereby making the writing express, not the purpose and intent of the testator, but that of the person or persons exercising the undue influence.[5]

This broad statement gives rise to a principle viewed as equating such influence to moral coercion which destroys testator's free agency by dominating and controlling his mind.[6] The result of such influence is a will expressing the intention of the influencer as a substitute for the supposed intention of the testator.

This destruction of testator's free agency can be achieved not only through moral coercion but also through fraud and deceit.[7] Consequently, fraud is also relied upon by contestants in conjunction with undue influence and lack of testamentary capacity as additional grounds for invalidating the will. A distinction exists, however, between fraud and undue influence. Fraud deceives the mind of the testator as a result of willfully false statements of fact by a beneficiary which are made in bad faith or with intention to deceive and which do deceive testator, inducing him to make a will he would not have otherwise made.[8] On the other hand, undue influence is not deception

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[5] Olsen v. Corporation of New Melleray, 245 Iowa 407, 412, 60 N.W.2d 832, 836 (1953). *See also In re* Estate of Latch, 162 N.W.2d 465 (Iowa 1968); *In re* Estate of Roberts, 258 Iowa 880, 140 N.W.2d 725 (1966); Drosos v. Drosos, 251 Iowa 777, 103 N.W.2d 167 (1960); *In re* Estate of Dashiell, 250 Iowa 401, 94 N.W.2d 111 (1959).

[6] *In re* Estate of Soderland, 239 Iowa 569, 584, 30 N.W.2d 128, 136 (1947).

[7] *Id.*

[8] *In re* Estate of Hollis, 234 Iowa 761, 770, 12 N.W.2d 576, 581 (1944).

but unfair pressure or persuasion which overpowers the mind of the testator.[9] Iowa recognizes fraud as a separate ground for contesting a will, although such recognition has been slow.[10]

As a procedural tactic, contestants normally allege both lack of testamentary capacity and undue influence. The contestants then have two theories upon which they may carry their burden of proof, plus the fact that if they do not establish lack of testamentary capacity such evidence may be sufficient to show that testator was unquestionably susceptible to undue influence.[11] Consequently, the statement arises in many cases that undue influence cannot be separated from that of testamentary capacity, though the two issues are, if established, independent grounds for defeating a will.[12] Therefore, an explanation of the distinctions and similarities between the two doctrines is essential.

In order for a testator to have sufficient testamentary capacity to execute a will, the following elements must appear:[13] (1) capacity to understand the nature of the instrument to be executed; (2) capacity to know and understand the nature and extent of his property; (3) capacity to remember the natural objects of his bounty; (4) capacity to know the distribution he desires.[14] If testator's mental capacity is absent in any one of these elements, the will is invalid. The contestants have the burden of showing lack of capacity and must show that testator lacked one of these elements at the time the will was executed.[15] Evidence may be received on testator's condition of mind at other times if there is a reasonable basis for the conclusion that it throws light upon his mental competence when the will was made, but the rule that mental incapacity must refer to the very time the will was made is important in a case where no long-standing mental impairment is claimed.[16] No mere impairment of testator's mental or physical powers invalidates the will as long as testator retains the mind and comprehension sufficient to meet the four elements of testamentary capacity.[17] If contestants do not show lack of testamentary capacity but only mere impairment, they may still be able to meet their burden in establishing that the testator was unquestionably susceptible

9 *Id. See also* Green, *Fraud, Undue Influence & Mental Incompetency*, 43 COLUM. L. REV. 176, 180 (1943).

10 *In re* Estate of Hollis, 234 Iowa 761, 770, 12 N.W.2d 576, 581 (1944).

11 *See* pt. II, § *A*, *infra*.

12 " 'The question of undue influence . . . cannot be separated from the question of testamentary capacity; and conduct which might be held insufficient to influence unduly a person of normal mental strength might be sufficient to operate upon a failing mind . . . .' " Olsen v. Corporation of New Melleray, 245 Iowa 407, 416, 60 N.W.2d 832, 838 (1953), quoting from Brogan v. Lynch, 204 Iowa 260, 264, 214 N.W. 514, 516 (1927). *See also In re* Estate of Klein, 241 Iowa 1103, 42 N.W.2d 593 (1950).

13 For the elements of undue influence, *see* text accompanying note 23 *infra*.

14 *In re* Estate of Roberts, 258 Iowa 880, 889, 140 N.W.2d 725, 730 (1966); Drosos v. Drosos, 251 Iowa 777, 785, 103 N.W.2d 167, 172 (1960).

15 Drosos v. Drosos, 251 Iowa 777, 785, 103 N.W.2d 167, 172 (1960).

16 *Id. See also In re* Estate of Ruedy, 245 Iowa 1307, 66 N.W.2d 387 (1954); *In re* Estate of Rogers, 242 Iowa 627, 47 N.W.2d 818 (1951); *In re* Estate of Kenney, 233 Iowa 600, 10 N.W.2d 73 (1943).

17 Perkins v. Perkins, 116 Iowa 253, 259, 90 N.W. 55, 57 (1902) (It is not necessary that testator be competent to carry on business or be able to make deeds or other contracts.).

to undue influence, using the evidence offered on the issue of testamentary capacity.[18]

Undue influence must operate at the very time the will is made and thereby control and dominate its making.[19] It is therefore necessary that circumstances as to undue influence occur prior to and culminate at the time of the execution of the will.[20] However, the person charged with exercising undue influence need not have been personally present at the making of the will.[21] Importunity, request, suggestion, advice, solicitation and persuasion, no matter how earnest and insistent, do not constitute undue influence so as to take the issue to the jury unless it is further shown that the freedom of testator's mind was overcome and controlled.[22] Consequently, the court has developed well-defined requisites which must be present in order to find testamentary undue influence.

II. The Required Elements

In order to justify submission of a case to a jury on the issue of undue influence, the following elements must be present: (1) a testator unquestionably subject to undue influence; (2) an opportunity by the influencer to exercise such influence and effect a wrongful purpose; (3) a disposition by the influencer to influence unduly for the purpose of procuring an improper favor; (4) a result clearly appearing to be the effect of such influence.[23] There is no jury question or recovery unless all four elements are shown, and when all elements are established sufficient doubt is generated to establish a prima facie case that undue influence existed at the time of execution of the will.[24] The contestant carries the burden of proving all four of these elements, but he is not required to establish them by direct proof, since undue influence is ordinarily exercised away from public view, making direct proof seldom available.[25] Therefore, undue influence may be and usually is proved by circumstantial evidence. The proof must, however, disclose more than a mere

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18 *See* pt. II, § *A*, *infra*.

19 *In re* Estate of Latch, 162 N.W.2d 465, 469 (Iowa 1968); *In re* Estate of Roberts, 258 Iowa 880, 888, 140 N.W.2d 725, 730 (1966).

20 *In re* Estate of Willesen, 251 Iowa 1363, 105 N.W.2d 640 (1960).

21 Walters v. Heaton, 223 Iowa 405, 271 N.W. 310 (1937).

22 *In re* Estate of Klein, 241 Iowa 1103, 42 N.W.2d 593 (1950); *In re* Estate of Lochmiller, 238 Iowa 1232, 30 N.W.2d 136 (1947); *In re* Estate of Brooks, 229 Iowa 485, 294 N.W. 735 (1940); *In re* Estate of Townsend, 128 Iowa 621, 105 N.W. 110 (1905).

23 *In re* Estate of Latch, 162 N.W.2d 465, 469 (Iowa 1968); *In re* Estate of Roberts, 258 Iowa 880, 888, 889, 140 N.W.2d 725, 730 (1966); *In re* Estate of Dashiell, 250 Iowa 401, 406, 94 N.W.2d 111, 114 (1959); Olsen v. Corporation of New Melleray, 245 Iowa 407, 422-23, 60 N.W.2d 832, 841 (1953).

24 The Iowa Supreme Court approves of the statement as to all four elements being considered together and if any one element has not been shown then there is no question of fact on the issue of undue influence which can be taken to the jury. *See* 30 Iowa L. Rev. 321, 323 (1945).

25 *In re* Estate of Roberts, 258 Iowa 880, 889, 140 N.W.2d 725, 730 (1966); *In re* Estate of Ramsey, 252 Iowa 48, 51, 105 N.W.2d 657, 659 (1960); Olsen v. Corporation of New Melleray, 245 Iowa 407, 413, 60 N.W.2d 832, 836 (1953).

scintilla of evidence to justify submission of the case to a jury.[26] Consequently, the contestant carries a heavy burden in establishing undue influence, and if he fails to establish any one of the four elements or the proponent rebuts any of the four elements, such that a jury would not be warranted in finding a verdict in favor of contestant, the contestant will lose his case.[27] It is therefore essential to analyze each element separately to understand when and how the element is deemed to exist.

A. *Unquestionably Subject to Undue Influence*

The inquiry of whether a testator was unquestionably subject to undue influence contemplates the general state of mind of testator and whether he was readily subject to improper influence exercised by others. Evidence of mental weakness, though insufficient to take the issue of lack of testamentary capacity to the jury,[28] may be considered as bearing upon testator's susceptibility to undue influence and his powers to resist such influence, since one who is infirm and mentally weak is more susceptible.[29] Being weak-willed or easily influenced is not the same as being of unsound mind and is only akin to it, but evidence tending to show that a testator is of unsound mind may or may not show him to be weak-willed.[30] All must, of necessity, depend on the extent to which the mind of testator is weakened or impaired, a subjective inquiry which makes this element of undue influence the most difficult element to establish. The determination of testator's susceptibility is based on his mental state and, therefore, each case of undue influence must be based on its own facts.

Despite the lack of factual standards, certain facts have been repeated by the court, given differing evidentiary weight and pronounced of significant or insignificant importance; but such facts must add up to a result showing a testator unquestionably subject to undue influence. These facts include condition of health, both physical and mental, age, past history, manner of living, how testator's business was transacted and how his property was managed, state of feelings toward relatives, dependence on others, prior acts showing susceptibilty and strength of will.

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[26] *In re* Estate of Roberts, 258 Iowa 880, 889, 140 N.W.2d 725, 730 (1966); *In re* Estate of Burrell, 251 Iowa 185, 197, 100 N.W.2d 177, 185 (1959).

[27] The Iowa Supreme Court frequently quotes the following from Bales v. Bales, 164 Iowa 257, 275-76, 145 N.W. 673, 680 (1914): "[I]t is not the duty of the court to submit the case to the jury because there is some evidence introduced by the party having the burden of proof, unless that evidence is of such a character that it would warrant the jury in finding a verdict in favor of the party introducing such evidence." *See also* Drosos v. Drosos, 251 Iowa 777, 787, 103 N.W.2d 167, 173 (1960).

[28] *See* text accompanying notes 11-18 *supra*.

[29] *In re* Estate of Hurlbut, 242 Iowa 353, 46 N.W.2d 66 (1951); *In re* Estate of Soderland, 239 Iowa 569, 30 N.W.2d 128 (1947); *In re* Estate of Lochmiller, 238 Iowa 1232, 30 N.W.2d 136 (1947).

[30] Olsen v. Corporation of New Melleray, 245 Iowa 407, 426, 60 N.W.2d 832, 843 (1953); Smith v. Hickenbottom, 57 Iowa 733, 740, 11 N.W. 664, 667 (1882) ("Weakness is not necessarily unsoundness.").

In *In re Estate of Roberts*,[31] there was testimony that testator, who was an officer for an insurance company, dictated his will to his secretary and at the time the will was executed his demeanor, appearance and composure were normal. Testator also kept meticulous records of his investments. Contestants failed to show undue influence, these factors helping to defeat their cause. However, in *In re Estate of Soderland*,[32] a doctor testified that in his opinion a person, such as testator, who had arteriosclerosis and senile dementia progressive, would not be competent to transact any business at the time the will was drawn. There was additional testimony showing that testator depended upon someone else to transact his business affairs since he could not read, talk over the phone or drive. Testator did not initiate the preparation of his will but depended upon the actions of the beneficiary. The jury returned a verdict in favor of contestants which was affirmed on appeal, the element of susceptibility having been adequately shown.

In *In re Estate of Willesen*,[33] several witnesses testified that testatrix was mentally retarded, had difficulty reading words of more than four letters and lived in filthy surroundings on her farm. But it was further shown that testatrix rented and supervised 240 acres of her farm, raised and sold chickens, did all the purchasing, paid taxes, made repairs, wrote and signed all checks, subscribed to two newspapers and submitted to the tax authorities her valuations and returns. The will was sustained, contestants failing to show susceptibility. From this case it can be said that contestants did not show enough, especially when the proponents offered evidence sufficient to rebut the effect of contestant's evidence of susceptibility.

Though an expert may testify for the contestants that the testator had heart trouble and arteriosclerosis, failure to have such expert opinion on the testator's mental capacity or the extent of his mental impairment may be fatal, especially when the only additional evidence offered is the testimony of contestants themselves as to the infirmities of age.[34] It should be noted that testator's mind must be impaired to the point where he is susceptible to wrongful influence, and even if his physical functions are so impaired that he is totally dependent upon another's care, this factor alone will not show susceptibility when testator still maintains the ability to think for himself, corrects factual errors in the will, takes the initiative in having his will drawn or retains the attributes of stubbornness, independence and firm mindedness.[35]

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31 258 Iowa 880, 140 N.W.2d 725 (1966).

32 239 Iowa 569, 30 N.W.2d 128 (1947).

33 251 Iowa 1363, 105 N.W.2d 640 (1960).

34 In *In re* Estate of Klein, 241 Iowa 1103, 42 N.W.2d 593 (1950), contestants showed some impairment of testatrix' faculties due to age, that testatrix did not recognize people until they would go close to her and speak. However, there was no evidence she was confused about her property or her relatives or was unable to transact business for herself.

35 *In re* Estate of Latch, 162 N.W.2d 465, 466 (Iowa 1968) (Testator suffered from paralysis agitans, was shakey and feeble but did some household tasks, collected rent and cared for his house. He was frugal, neat and clean. He was a strong-minded person and was mentally sharp up to his last illness.); *In re* Estate of Ramsey, 252 Iowa 48, 105 N.W.2d 657 (1960) (Contestants prevailed by showing testatrix was a person who found it difficult to make up her mind and disliked making decisions and accepting responsibility.); Drosos v.

An additional circumstance, considered by the court as showing a testator unquestionably receptive to wrongful influence, is prior declarations of the testator. Declarations, made both before and after the execution of a will, may be admissible as bearing upon testator's state of mind, his susceptibility to undue influence and his capacity to resist, but they cannot be admitted as direct or substantive proof of undue influence.[36] However, evidence of such statements years prior to the execution of the will have little importance when testator's intended devisees at the time the declarations were made have subsequently died or come into disagreement with testator.[37] Such declarations amount to very little in the face of a showing of mental capacity.[38]

The element of susceptibility is probably the most difficult and yet the most essential requisite to contestant's case. Many factors go into determining when this element exists and contestant must show the fact finder that testator was, beyond question, susceptible to wrongful influence. Certainty in this area is lacking since the element is based upon the state of mind of a decedent: subjectivity—not objectivity.

B. *Opportunity to Exercise and Effect a Wrongful Purpose*

Opportunity is probably the least difficult of all elements to show. The usual situation is where the beneficiary, such as the wife, child, near relative or housekeeper, lives with the testator. A unique situation arises where a confidential relationship is established, such as between attorney and client.[39]

Opportunity need not be based on any extended length of time but can be shown by a mere casual relationship. However, a problem faces the court in a situation where a beneficiary has lived with the testator for a great period of time. There is certainly an opportunity to exercise undue influence, but it would not appear to be an opportunity effecting a wrongful purpose since

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Drosos, 251 Iowa 777, 103 N.W.2d 167 (1960) (Testator told attorney how he wanted his property devised and after the will was drawn and read to him, he corrected factual errors. Contestants lost even though they showed testator to be critically ill with heart trouble.); *In re* Estate of Burrell, 251 Iowa 185, 100 N.W.2d 177 (1959) (Testator was a prosperous cattle buyer until he had the stroke, leaving him paralyzed and dependent upon others for mobility. However, the stroke did not interfere with his mental condition and when it came time to draw his will he was the initiator in seeking an attorney. Testator was the dominant person since he was strong-minded and always took over the situation at hand. Contestants did not prevail.); Olsen v. Corporation of New Melleray, 245 Iowa 407, 60 N.W.2d 832 (1953) (Testator was not strong-minded but weak-willed.); Blider v. Melinski, 238 Iowa 140, 25 N.W.2d 879 (1946) (Testator was a man of very definite ideas, managed his own affairs and was not influenced in his ideas by anyone. There was no evidence that his illness affected his mind, the court stating that mere proof of physical illness does not support the issue of undue influence.); *In re* Estate of Townsend, 128 Iowa 621, 105 N.W. 110 (1905) (Evidence must be clear and convincing where it appears testator was of sound mind when the will was made and up to time of death was a successful businessman.).

[36] *In re* Estate of Rogers, 242 Iowa 627, 47 N.W.2d 818 (1951); *In re* Estate of Soderland, 239 Iowa 569, 30 N.W.2d 128 (1947).

[37] *In re* Estate of Klein, 241 Iowa 1103, 42 N.W.2d 593 (1950).

[38] *In re* Estate of Townsend, 122 Iowa 246, 97 N.W. 1108 (1904).

[39] This situation is further discussed at pt. III *infra*. *See* Olsen v. Corporation of New Melleray, 245 Iowa 407, 60 N.W.2d 832 (1953); *In re* Estate of Ankeny, 238 Iowa 754, 28 N.W.2d 414 (1947); Graham v. Courtright, 180 Iowa 394, 161 N.W. 774 (1917).

the bequest or devise may be entirely natural. In this instance the court turns its consideration to the third element which is a disposition by the alleged influencer to unduly influence the testator.

C. *Disposition to Influence Unduly*

A disposition to influence unduly for the purpose of procuring an improper favor is an element concerning the activities and conduct of the alleged influencer. As stated previously, advice, solicitation, importunity, request and persuasion, no matter how earnest and insistent, do not constitute undue influence unless it is further shown that the freedom of testator's mind was overcome.[40] However, these requests and persuasions may aid in satisfying the element of disposition to influence unduly, which has been defined as "something more than a mere willingness by one to share to a greater extent than another in the distribution of the testatrix' estate. It implies a willingness on the part of a person to do something wrong or unfair, to bring about a result favorable to himself and unjust to another . . . ."[41] The unfairness of this activity takes on the characteristic of overreaching or going beyond that which is mere suggestion or advice. It is doing something which is wrongful and unjust and which society does not condone. The court must decide whether the acts of the alleged influencer were of a wrongful nature or the result of natural kindness expected of a beneficiary. Kindness and attention do not constitute such a wrongful disposition in a case such as where the principal beneficiary was testatrix' son who was kind and considerate toward testatrix during her declining years.[42]

In *Primmer v. Primmer*,[43] the circumstances tended to show that the only reason for the proponent marrying testator was to get his property. Testator was childless and in his last illness and during the marriage proponent was indifferent to him. The will was executed a few days before testator's death, proponent being the sole beneficiary. The couple had been married only a few months and during this time it was alleged that proponent conspired with her parents to procure the will by preventing others from conversing with testator alone at the time the will was made. In addition, testator had conveyed a tract of land to proponent's father who in turn conveyed to proponent, thus indicating an attempt to acquire all of testator's property for proponent. The will was not sustained at trial. This case clearly shows the type of disposition which is wrongful, unfair and brings about a devise of property favorable to the influencer and unjust to the natural objects of testator's bounty.

The same result does not follow where the alleged influencer was testator's most favored beneficiary.[44] It is proper to show the relations between the

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40 *See* cases cited note 22 *supra*.
41 *In re* Will of Leisch, 221 Wis. 641, 267 N.W. 268, 271 (1936).
42 *In re* Will of Behrend, 233 Iowa 812, 10 N.W.2d 651 (1943).
43 75 Iowa 415, 39 N.W. 676 (1888).
44 Cookman v. Batemen, 210 Iowa 503, 231 N.W. 301 (1930).

testator and the devisee, especially where the devise is in favor of a stranger to the bloodline.[45] However, this stranger may be the most favored beneficiary. In *Glider v. Melinski*,[46] testator devised to defendant, his housekeeper and mistress, all of the estate except for a bequest of one dollar to each of his children. The couple had intimate relations for approximately forty years and had lived together for the five years immediately preceding testator's death. Testator was bedridden with an incurable sickness which had not affected his mentality when the will was drawn. The court stated that the mere fact defendant might have gone into the room where the will was being drawn was not sufficient since there was no showing that she even knew the contents of the will. The court continued by stating that testator may have been prompted by an affection for defendant greater than his affection for his own children, feeling morally bound to her. It is immaterial that such illicit and intimate relationship might have been a transgression against good character, in the absence of a showing that the defendant by her affection used her position to influence the testator.[47]

When a beneficiary takes affirmative steps of an overreaching nature so as to obtain a bequest while diminishing or eliminating bequests to other natural heirs, the court will probably find the activities improper. Most cases inspect carefully the circumstances surrounding the drafting and execution of the will. The relevant considerations which tend to show disposition and the necessary conduct at the time of execution can be grouped as follows: the beneficiary upon his own initiatitve contacts the draftsman;[48] the testator goes to proponent's home to have the will drawn;[49] the will is drawn or typed by the beneficiary;[50] the presence of the beneficiary when the will is made and the terms discussed with him;[51] the will is witnessed by the friends or relatives of a beneficiary;[52] the beneficiary retains possession of the will until offered for probate.[53] Whether any of these circumstances, standing alone, would be sufficient to show disposition at the time the will is made is difficult to predict; however, they add to an impressive total when taken together.

On the other hand, certain factors tend to diminish, if not extinguish, the existence of disposition at the time the will is drawn: testator dictates the will to his secretary;[54] testator requests beneficiary to drive him to his lawyer's

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45 Denning v. Butcher, 91 Iowa 425, 59 N.W. 69 (1894).

46 238 Iowa 140, 25 N.W.2d 379 (1946).

47 Contestants failed to show any inference that the proponent had a plan or scheme to have testator draw the will in her favor. There was no evidence contestants were denied admittance to the sickroom or that proponent coerced testator into marrying her. The evidence also showed that testator was a man of definite ideas and managed his own affairs.

48 *In re* Estate of Soderland, 239 Iowa 569, 30 N.W.2d 128 (1947).

49 *In re* Estate of Ramsey, 252 Iowa 48, 105 N.W.2d 657 (1960).

50 *In re* Estate of Ankeny, 238 Iowa 754, 28 N.W.2d 414 (1947).

51 *In re* Estate of Gormly, 188 Iowa 467, 176 N.W. 252 (1920).

52 *In re* Estate of Ramsey, 252 Iowa 48, 105 N.W.2d 657 (1960).

53 *In re* Estate of Ramsey, 252 Iowa 48, 105 N.W.2d 657 (1960); *In re* Estate of Soderland, 239 Iowa 569, 30 N.W.2d 128 (1947); *In re* Estate of Ankeny, 238 Iowa 754, 28 N.W.2d 414 (1947).

54 *In re* Estate of Roberts, 258 Iowa 880, 140 N.W.2d 725 (1966).

office where testator then requests the lawyer to come to his home and prepare the will;[55] testator requests the presence of his friends or requests a beneficiary to contact neighbors to act as witnesses;[56] the will is prepared and mailed to testator at his request;[57] the beneficiary is not present in the room where the will is prepared;[58] the draftsman is not an attorney for the beneficiaries;[59] the will is in possession of someone other than a beneficiary until offered for probate.[60] However, in one case it was proper for a beneficiary to remind her husband to have his will drawn, asking testator if she should call his attorney, after she had requested the attending physician's advice on these matters.[61] From these considerations the court enforces the basic policy of the freedom of testation.

The Iowa Supreme Court has inferred disposition to unduly influence by previous attempts of the beneficiaries to obtain deeds to testator's real estate from the testator. In *In re Estate of Soderland,*[62] testator deeded all his real estate to three of his four beneficiaries after they had advised him that this would eliminate taxes. The fourth beneficiary started guardianship proceedings since she was left out of the deeds, but she ultimately settled with the other three by contract. Under the contract the property would be held in trust so that they could care for the real estate and distribute it under the will when testator died. The court found that the taking of such deeds and the difficulties in obtaining the contract showed a desire to get testator's property in a wrongful manner, especially when these beneficiaries would not take if testator died intestate.[63]

Another situation which gives rise to an inference of improper disposition is where the conduct of the beneficiary is a result of a preconceived plan successfully put into operation. This may be evidenced by a vigorous campaign by the family of a beneficiary to maintain close relations with testator by visiting, entertaining or constantly sending cards to testator after the death of his wife.[64] The same type of situation arises when the executive secretary of a charity states that he and testator's attorney, who was also attorney for the charitable organization, have taken two years to make testator's will and testator would bequeath more if his health kept up.[65] It was also shown that the executive secretary signed a receipt assuring testator the money would be

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55 *In re* Estate of Burrell, 251 Iowa 185, 100 N.W.2d 177 (1959).
56 *In re* Estate of Roberts, 258 Iowa 880, 140 N.W.2d 725 (1966); Glider v. Melinski, 238 Iowa 140, 25 N.W.2d 379 (1946).
57 *In re* Estate of Willesen, 251 Iowa 1363, 105 N.W.2d 640 (1960).
58 *In re* Estate of Burrell, 251 Iowa 185, 100 N.W.2d 177 (1959).
59 *In re* Estate of Klein, 241 Iowa 1103, 42 N.W.2d 593 (1950).
60 *In re* Estate of Roberts, 258 Iowa 880, 140 N.W.2d 725 (1966).
61 Drosos v. Drosos, 251 Iowa 777, 103 N.W.2d 167 (1960).
62 239 Iowa 569, 30 N.W.2d 128 (1947).
63 *Id.* Testator had a brother living with whom testator had strained relations. The beneficiaries were children of this brother. Testator's relationship with his other nieces and nephews was friendly. Consequently, the issue of unnatural and unjust distribution enters in.
64 *In re* Estate of Ankeny, 238 Iowa 754, 28 N.W.2d 414 (1947).
65 Olsen v. Corporation of New Melleray, 245 Iowa 407, 60 N.W.2d 832 (1953).

used the way testator wished, that the executive secretary blessed testator's home and that the attorney paid visits to the hospital during testator's last illness. These joint efforts showed a disposition to unduly influence the testator.

The other area of judicial inspection in finding a disposition to influence unduly is the attempt by the alleged influencer to diminish or extinguish bequests to testator's natural heirs. These attempts may be evidenced by isolating testator from his friends or relatives at the time he had his will made,[66] by disallowing testator any independent advice to reach him while his will was being prepared,[67] by committing testator's most natural beneficiary to an institution resulting in the influencer receiving the whole estate[68] and by obtaining power of attorney over testator and having the will changed to provide for the influencer's heirs.[69] These types of surveillance exercised by the alleged influencer raise sufficient doubt to put the court on inquiry. However, disposition to influence unduly for the purpose of procuring an improper favor must be taken in conjunction with the other elements and, standing alone, will not take the issue to the fact finder.

D. *Result Clearly Appearing to be the Effect of Undue Influence*

The will must in some way benefit the alleged influencer and this benefit must clearly appear to be the effect of undue influence. This requirement to the doctrine of undue influence is one where social policy is most clearly considered by the court. It is expected that both the court and jury will apply the community standard of fairness. Whether or not there is any unfairness depends on the type of transaction and the surrounding circumstances. To be actionable, the unfairness must manifest itself in a will which is clearly out of line with the standard pattern of similar wills, the standard being set by the community. Where a testator passes over the natural objects of his bounty and gives his property to others, the court frequently identifies such conduct as unnatural, unjust, harsh, unreasonable or unfair. However, if the testator properly provides for the natural objects of his bounty, or the will is reasonable and just under the circumstances of the particular case, then the court will regard this as strong evidence that undue influence was not exercised.

Although economic dissatisfaction underlies most will contests, the court must determine whether or not there is any basis to such dissatisfaction, this determination being couched in the formalities of the doctrine of undue influence. The court must first decide who is the most deserving person. To do

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66 Squires v. Cook, 175 Iowa 586, 157 N.W. 253 (1916) (It was error to exclude testimony that defendant and his wife prevented plaintiff from visiting the testatrix.).

67 *In re* Estate of Soderland, 239 Iowa 569, 30 N.W.2d 128 (1947); *In re* Estate of Ankeny, 238 Iowa 754, 28 N.W.2d 414 (1947).

68 *In re* Estate of Rogers, 229 Iowa 781, 295 N.W. 103 (1940).

69 *In re* Estate of Dashiell, 250 Iowa 401, 94 N.W.2d 111 (1959).

so the court considers the proximity of relationship between the testator and the opposing litigants, whether these litigants were dependent upon testator in any manner, whether any of the litigants contributed toward his welfare or comfort, the pecuniary condition of all parties and the size, value and source of the estate. With this information the court will do equity though it may couch its decision in the formalities of legal principle.[70]

In Iowa an unreasonable, unequal or unjust devise is not a sufficient basis for finding undue influence when these facts stand alone, but when there is evidence of the other elements of undue influence then the unreasonableness tends to confirm the claim.[71] Reasonableness can be viewed as naturalness. In other words, is this the type of disposition which *this* testator would make, considering his relations with the litigants? Reasonableness can also be equated with fairness. In other words, is it equitable to the heirs or to those who could justifiably expect to take by devise? Therefore, in order to understand each case, the viewpoint of both the contestants and testator must be taken. It essentially is a procedure of maintaining a protective balance—the freedom of testation on the one hand and preserving the estate for the natural objects of the bounty on the other.

In *In re Estate of Latch*,[72] testator, divorced, left all of his estate to proponent who had cared for testator for thirty years. The contestants were his grandchildren who visited testator on very few occasions, one granddaughter seeing him fourteen times in ten years. Testator was friendly with this granddaughter but there was no evidence testator felt any obligation toward his grandchildren nor was there any evidence he ever did anything for them or they for him. Testator expressed a desire to proponent's daughter that proponent should receive some of his money, and in the will he stated his devise to proponent was made because she had provided and cared for him. Viewing these facts on the element of result it cannot be said the will was unreasonable or unfair. Testator was considered a strong-minded individual and

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[70] *See generally* Epstein, *Testamentary Capacity, Reasonableness & Family Maintenance: A Proposal for Meaningful Reform*, 35 TEMP. L.Q. 231 (1962); Green, *Proof of Mental Incompetence & the Unexpressed Major Premise*, 53 YALE L.J. 271 (1944); Green, *Fraud, Undue Influence & Mental Incompetency*, 43 COLUM. L. REV. 176 (1943).

[71] *In re* Estate of Roberts, 258 Iowa 880, 889, 140 N.W.2d 725, 731 (1966); *In re* Estate of Klein, 241 Iowa 1103, 1116, 42 N.W.2d 593, 601 (1950).

[72] 162 N.W.2d 465 (Iowa 1968). *See also In re* Estate of Roberts, 258 Iowa 880, 140 N.W.2d 725 (1966), where testator had ten children by a previous marriage and one child by his current marriage. Testator at death had a net worth of $375,000 and his will created a trust whereby this one child and testator's widow were trustees who were to pay $1000 to each of his children by the prior marriage. At trial it appeared that the children by his first marriage had received substantial benefits from testator and the one child by his current marriage had been testator's constant companion and did not know the will even existed. The contestants did not show undue influence. In *In re* Estate of Burrell, 251 Iowa 185, 100 N.W.2d 177 (1959), decedent was a prosperous cattle buyer before a stroke paralyzed his body but did not affect his mental faculties. His niece, the primary beneficiary under the will, attended to decedent's needs. Testator's granddaughter, his only heir, contested the will. Contestant lived in Colorado and saw testator only intermittantly. There was also evidence that after the will was drawn testator drew up a contract assuring the niece that she would be paid for her services to him. Contestant was unsuccessful in establishing undue influence.

probably felt morally obligated to proponent. Testator was free to dispose of his property as he saw fit and contestants were not unjustly treated since their visits with him were few. Contestants failed to show undue influence. However, in *In re Estate of Ankeny*,[73] the attorney who drafted testator's will and his wife were left one-third of the total estate. Testator was friendly to his relatives and contestant, a sister, who lived nearby. There was no blood relation between proponents and testator. The court held there were facts sufficient to submit the question of undue influence to the jury.

It appears that if there is a close blood relationship between testator and beneficiary and the will provides a devise to a stranger, the court will then examine whether or not testator had a reason for devising to the stranger. It may appear that the friendship or services from the stranger down through the years impressed testator into feeling morally obligated. However, testator must be able to exercise his own will in a competent fashion. If it appears that testator was friendly to his relatives and the stranger appeared on the scene recently, the devise to the stranger may infer unnaturalness. However, other facts must be considered, such as the financial conditions of the relatives. It is not unreasonable when testatrix' brothers receive a substantial share of the estate and in another part of the will one-half of the estate goes to a church and hospital, especially when the record shows that the brothers were men of considerable means and testatrix was aware of this.[74] In a contest by a child of a decedent, evidence as to the property of this child's husband is admissible as tending to show her financial condition and that she was provided for.[75]

Another circumstance tending to show an unnatural or unreasonable result is where under a prior will the devise to blood relatives was more than the devise under the will offered for probate. The reduction of bequests to blood relatives of testator by a codicil for no apparent reason, especially when testator previously declared to others that he was going to devise certain property to them, but did not, are relevant considerations into which the court inquires.[76] Persons making wills do not usually change their bequests without good reason. This is especially true when the period of time between the wills is short and a beneficiary is added who is a stranger to the bloodline.[77] In *In re Estate of Ramsey*,[78] testatrix had executed a will six months prior to the one drawn up by proponent in which testatrix had not named proponent as a beneficiary. However, under the second will proponent was devised nearly one-half the entire estate. Under these circumstances the court should carefully scrutinize the differences and determine what the reasons were for the change

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73 238 Iowa 754, 28 N.W.2d 414 (1947). *See also In re* Estate of Ramsey, 252 Iowa 48, 105 N.W.2d 657 (1960), where the will left proponent, who drafted the will, one-half of the total estate. Testatrix' relations with her relatives were friendly. Proponent was not related to testatrix. The jury returned a verdict against proponent which was affirmed on appeal.

74 *In re* Estate of Willesen, 251 Iowa 1363, 105 N.W.2d 640 (1960).

75 James v. Fairall, 168 Iowa 427, 148 N.W. 1029 (1914).

76 Olsen v. Corporation of New Melleray, 245 Iowa 407, 60 N.W.2d 882 (1953).

77 *Id.*

78 252 Iowa 48, 105 N.W.2d 657 (1960).

in distribution. However, testator has the freedom to dispose of his property as he wishes. Therefore, the questioning must go to those events occurring between the two wills when attempting to explain the different provisions, and not just an inquiry into the unnaturalness of the devise itself.

A result clearly the effect of undue influence is an element containing the basis to each undue influence contest—the economic consideration. If the will is entirely natural and reasonable, then there are no grounds for complaint. The court, when faced with determining a just result, must inquire into the blood relationships and needs of the parties plus those questionable events surrounding the will. The decision will be a determination of many factors of differing weight with very little predictability. However, the reasoning will show judicial concern for the fairness accorded not only to the litigants as beneficiaries but also to the testator's freedom to devise his property.

III. The Confidential Relationship

The situation where a confidential relationship is deemed to exist is unique to the cases of undue influence but may be viewed as a situation which takes into consideration all the elements of the usual undue influence case. A confidential relationship exists when a person gains the confidence of another and purports to act or advise with the other's interest in mind.[79] Such a relationship does not arise solely from a blood relationship as parent and child, and it is clear that it may exist although there is no fiduciary relation. The gist of the doctrine is the presence of a dominant party who acts for a subservient party.[80] If such a situation arises it is presumed that a confidential relationship exists, the purpose of the presumption being to defeat and correct betrayals of trust and abuses of confidence.[81] However, if a party induces affectionate regard on the part of another by kind treatment, no presumption arises in the absence of showing that a dominant influence was obtained over a subservient party.[82]

The following statement gives rise to a crucial distinction made by the courts: "The courts must scrutinize with jealous vigilance transactions between persons sustaining relations of trust and confidence, to the end that the dominating member shall conduct himself with . . . utmost good faith."[83] With this statement a distinction must be made between inter vivos transactions and testamentary dispositions. Ordinarily, one who attacks an inter vivos transfer of property on grounds of fraud or undue influence must show its existence by clear, satisfactory and convincing proof, but where it appears the trans-

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79 Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962); Groves v. Groves, 248 Iowa 682, 693, 82 N.W.2d 124, 131 (1957).

80 Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962); Groves v. Groves, 248 Iowa 682, 693, 82 N.W.2d 124, 131 (1957).

81 Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962); Groves v. Groves, 248 Iowa 682, 693, 82 N.W.2d 124, 131 (1957).

82 Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962).

83 Merritt v. Easterly, 226 Iowa 514, 530, 284 N.W. 397, 405 (1939).

feree was the dominant person in a confidential relationship with the transferor a presumption arises that the transfer was obtained by fraud or undue influence which the transferee must rebut by clear, satisfactory and convincing proof.[84] However, when a confidential relationship exists, the rule of a presumption of overreaching has no application to testamentary gifts.[85]

The reason for the distinction is that in inter vivos transactions a person is not likely to part with his property without adequate consideration. When it appears he has given his property to one in a dominant position, the presumption arises that he has not freely parted with it but was induced by undue exercise of the influence which the transferee may have had over him. However, the reason for the rule is not present where an individual desires to dispose of his property by will. Testator does not undertake to part with the use or enjoyment of his property since the will speaks only at the time of death. Therefore, its use and enjoyment by him are not interrupted. It cannot be assumed that testator does not desire to part with his property since this is the object of his drawing a will and the property must pass to others at death.[86]

The confidential relationship and its association with testamentary undue influence can be best illustrated by considering a recurring problem area—the attorney-client situation.

There is a fine line between what an attorney may or may not do. The attorney may suggest and advise his client when requested to do so, but any effort to persuade or dissuade the client takes on the suggestion of influence that a jury may find to be undue. This is particularly true where the attorney is made a beneficiary or another client of the attorney is made the object of the devise.[87] In *In re Estate of Ankeny,* the court commented on the situation where the attorney is made a beneficiary:

> Ordinarily, an attorney . . . knowing that he was the beneficiary of a large part of decedent's property, would have taken steps at least to secure the taking of advice and the consultation with another attorney. The court had a right, under these circumstances, to feel that there was at least some indication that desire for gain had overcome not only the attorney's ethical ideas but his sense of prudence.[88]

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84 Luse v. Grenko, 251 Iowa 211, 214, 100 N.W.2d 170, 172 (1959).

85 *In re* Estate of Rogers, 242 Iowa 627, 635, 47 N.W.2d 818, 823 (1951); Glider v. Melinski, 238 Iowa 140, 145, 25 N.W.2d 379, 382 (1946); Graham v. Courtright, 180 Iowa 394, 405, 161 N.W. 774, 777 (1917).

86 This argument was used successfully in Graham v. Courtright, 180 Iowa 394, 405-06, 161 N.W. 774, 777-78 (1917). Another reason advanced for the distinction was that a transferee in an inter vivos transaction is a party and possesses knowledge thereto and, therefore, is in a position to present the facts to the court or jury. On the other hand, a beneficiary is not necessarily a party to the execution of the will and may have no knowledge thereof until many years after it is made.

87 The attorney may advise his client in determining what disposition he desires and the attorney may make "such suggestions" as will assist him, but this is not equivalent to "using influence." Olsen v. Corporation of New Melleray, 245 Iowa 407, 424, 60 N.W.2d 832, 843 (1953).

88 238 Iowa 754, 764, 28 N.W.2d 414, 419 (1947).

Consequently, lack of independent advice is a circumstance that will be considered by the court in these situations. Presented with the attorney-client relationship, the court approaches the issue of testamentary undue influence with extreme care.

Graham v. Courtright[89] appears to be the leading case in Iowa on the attorney-client relationship:

> All that can be said is that the existence of a confidential relation, such as . . . attorney and client, . . . affords peculiar opportunities for unduly exercising influence over the mind; and, where the dominant party in such relation initiates the preparation of the will, or gives directions as to its contents to the scrivener, or writes it himself,—in other words, is active in its preparation or execution and is made beneficiary thereunder,—a suspicion arises that the benefaction may have resulted from the exertion of undue influence over the testator, rather than from his free volition. The strength of this suspicion necessarily depends on the circumstances of each particular case.[90]

Such condition of affairs merely raises a suspicion, and no presumption of undue influence arises when the will is drawn by the attorney-beneficiary. However, such wills are not looked upon with favor and the court will carefully examine the circumstances surrounding their execution.[91] The fact that the will is drawn by the beneficiary is a fact to be considered with the other facts and is unquestionably suspicious. However, its weight will depend upon the facts and circumstances with which it is related, and not solely on its own character.

In determining the effect of such a relationship, the court in *Graham* considered those additional circumstances relevant to a determination on the issue of undue influence:

> No one could well claim that an inconsiderable legacy, as compared with a large estate, to a legal adviser for many years, who prepared the will, is unnatural or indicative of the exertion of undue influence. Something more or different would seem necessary in order to raise such an inference. This much merely excites suspicion, and possibly enough to put the court on inquiry; but to justify an inference of the perpetration of fraud, something unlikely to have been brought about by fair means, or contrary to what was likely to happen in the ordinary course of events, must appear.[92]

The court stated that the additional factors indicative of undue influence necessary to raise the suspicion to an inference are a substantial benefit out of proportion with the entire estate, weak mental or physical condition of testator, opportunity and inadequate devise to natural objects of affection

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89 180 Iowa 394, 161 N.W. 774 (1917).
90 *Id.* at 407, 161 N.W. at 778.
91 Olsen v. Corporation of New Melleray, 245 Iowa 407, 414, 60 N.W.2d 832, 837 (1953); *In re* Estate of Ankeny, 238 Iowa 754, 761, 28 N.W.2d 414, 418 (1947).
92 180 Iowa 394, 411, 161 N.W. 774, 779 (1917).

and those connected by bloodline. However, apparently in the attorney-client situation the contestant need not show all of the four elements, while in the nonconfidential undue influence case contestant is required to show all four elements.

Such an inference of undue influence makes no more than a prima facie case; what is to be inferred depends so much upon the facts of each particular case that such a showing is treated as a mere item of evidence with varying weight, persuasive of or compelling certain inferences, rather than denominating the inferences drawn therefrom as presumptions.[93] In *Graham* the court found that testatrix' bequest to the attorney was not small as compared with the rest of the estate (he received one-fifth of the estate), and if the devise had been smaller the court would have had no hesitancy in saying that the issue of undue influence should not have been submitted to the jury.[94] However, since the amount to the attorney was large and he was not of the bloodline, these facts were sufficient to carry the case to the jury.

If testator is weak of mind and under the care of the person or attorney supervising or preparing the will, the inference of undue influence is much stronger than where the faculties of the testator are unimpaired and the fiduciary relation is that of merely preparing the will.[95] Whatever the evidence, however, the burden of proof is upon the contestant at all times, and it can never be said that the burden is upon the proponent to negate the allegation of undue influence. The jury in such cases should be advised that the burden is on the contestant throughout the trial and informed in the instructions of the facts from which a finding of undue influence may be inferred.[96] If this is done, attention should also be directed specifically to those factors which tend to obviate such an inference, such as long acquaintances, obligations to the beneficiary or to others, whether any secrecy was observed, conversations with the legatees or others in the presence of the testator when the will was prepared and whether the beneficiary was forced into drawing the will.[97]

If the attorney has a client who desires a will drafted which makes a bequest to the attorney, the client should be directed to another drafter. Though

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[93] *Id.*

[94] *Id.* The court would not have allowed the case to go to the jury since the two had been friends for nearly fifty years, testatrix transacted her own business and possessed all her faculties at the time the will was drawn and was under no obligation to the other beneficiaries except through ties of blood and her promise to the residuary legatee. Also, no secrecy was observed at the time testatrix proposed the gift to the attorney.

[95] In Olsen v. Corporation of New Melleray, 245 Iowa 407, 60 N.W.2d 832 (1953), testator's state of mind was such that he could easily be influenced by someone he admired and respected, and the jury found that the attorney was disposed to influence as evidenced by the large residue bequeathed to a client of the attorney. However, in *In re* Estate of Ankeny, 238 Iowa 754, 28 N.W.2d 414 (1947), there was no evidence of unsound mind. Yet, the beneficiary-attorney was not allowed the bequest, primarily because he received one-third of the total estate, and the will was signed by him as witness and in his possession until offered for probate.

[96] Graham v. Courtright, 180 Iowa 394, 416, 161 N.W. 774, 781 (1917).

[97] These are the factors in Graham v. Courtright, 180 Iowa 394, 161 N.W. 774 (1917), which would tend to obviate the inferences; however, the list is not exhaustive.

the attorney who is made a beneficiary may be innocent of any wrongful influence, the mere fact of the confidential relationship and the resulting bequest arouses a suspicion and puts the court on inquiry. In such instances it is best to have the client seek advice elsewhere.

IV. Conclusion

Undue influence cases are of an unpredictable nature mainly because each case is built upon its own facts and inferences. Although precedent may be of little value since no two testators are alike, certain factors recur in the opinions with a consistency which may be helpful to the prospective litigant. However, the weight accorded these factors varies with each factual situation as do the inferences to be drawn therefrom. When dealing with a fiduciary relationship it is best to cite such cases and not the ordinary undue influence case. Conduct which raises a suspicious fact in the one case does not arise naturally in the other. It must also be remembered that the court must balance two objectives: maintenance of the freedom of testamentary disposition and preservation of the estate for the most natural objects of the bounty. The court has wide discretion, for it can attempt to probe the subjective mind of the testator or view the facts objectively when attempting to determine reasonableness of the devise. Therefore, a party planning to contest or defend a will is offered no easily-applied guidelines but must base his case on the strength of the facts therein, since his case in all probability will be unique.

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