

1 **13-839. Undue influence.**

2 If \_\_\_\_\_ (name of party claiming undue influence) entered into the contract  
3 through undue influence, then ~~[[he] [she] [it]]~~ \_\_\_\_\_ (name of party claiming  
4 undue influence) is excused from performing ~~[[his] [her] [its]]~~ their obligations under the contract.  
5 “Undue influence” is the abuse of a position of trust or a dominant position in a relationship by  
6 one party which persuades the other party to enter into the contract.

7 USE NOTES

8 This instruction is intended for use in contract cases and is not intended for use in its present  
9 form in other situations, such as gifts, wills, etc. If the contract in question is a written release of  
10 claims, the jury also should be instructed that undue influence must be proven by clear and  
11 convincing evidence. *See* UJI 13-304 NMRA.

12 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006,  
13 effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme  
14 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after  
15 December 31, 2025.]

16 **Committee commentary.** — Undue influence is not susceptible to a fixed formula. *Brown v.*  
17 *Cobb*, 1949-NMSC-016, ¶ 8, 53 N.M. 169, 204 P.2d 264 (legatees sue to cancel decedent’s ranch  
18 lease); Restatement (Second) of Contracts § 177 (1981). While influence alone is not prohibited,  
19 undue influence will relieve the party of that contract obligation. *Nance v. Dabau*, 1967-NMSC-  
20 173, 78 N.M. 250, 430 P.2d 747 (suit brought by widow’s guardian to set aside deeds and  
21 contracts). Many cases involve either a confidential or fiduciary relationship. *Shultz v. Ramey*,  
22 1958-NMSC-099, 64 N.M. 366, 328 P.2d 937 (suit to cancel farm lease with ~~[son-in-law]~~ child-in-  
23 law); *Salazar v. Manderfield*, 1943-NMSC-005, 47 N.M. 64, 134 P.2d 544 (suit to cancel deed to

1 fiduciary); *Cardenas v. Ortiz*, 1924-NMSC-039, 29 N.M. 633, 226 P. 418 (suit to cancel deed to  
2 farm). However, a formal fiduciary or confidential relationship is not required; a person may also  
3 occupy a “position of trust” with respect to another “where there exists such trust and confidence  
4 between the parties of whatever character that confidence may be as enables the person in whom  
5 such confidence is reposed to exert it or so influence the opposite person with the result that some  
6 transaction financially beneficial to the person trusted takes place.” *Cardenas*, 1924-NMSC-039,  
7 ¶ 10; *see also Beals v. Ares*, 1919-NMSC-067, ¶ 88, 25 N.M. 459, 185 P. 780 (holding that the  
8 “number or character” of relationships giving rise to undue influence “are not defined by law”).  
9 Undue influence may also occur where one party unfairly persuades another party who is under  
10 the domination of the person exercising the persuasion. Restatement (Second) of Contracts §  
11 177(1).

12 Undue influence must be contrasted with the concept of “duress” (*see* UJI 13-838 NMRA) or  
13 “incapacity” (*see* UJI 13-837 NMRA). Duress focuses on threats which induce fear and hence the  
14 deprivation of free will. Undue influence focuses on improper influence of a weaker or dependent  
15 party by a person who, through a special relationship, abuses [~~his or her~~]their favorable position  
16 to influence the weaker party into an agreement that [~~he or she~~]they normally would not enter.  
17 “Undue influence” does not need to rise to the level of “duress,” nor is fraud or actual  
18 misrepresentation required.

19 A confidential or fiduciary relationship, coupled with suspicious circumstances, raises a  
20 presumption of undue influence and causes the burden of proof to shift. *Nance v. Dabau*, 1967-  
21 NMSC-173, ¶ 13, 78 N.M. 250, 430 P.2d 747; *Walters v. Walters*, 1920-NMSC-021, 26 N.M. 22,  
22 188 P. 1105 (ill [~~father~~]parent transferred all properties to [~~his son~~]their child who promised to  
23 treat [~~brothers and sisters~~]siblings equally); *see* Rule 11-301 NMRA. Parent and child relationship

1 or kinship alone is not sufficient to raise a presumption of undue influence. *Giovannini v. Turrietta*,  
2 1966-NMSC-103, 76 N.M. 344, 414 P.2d 855 (deed by [~~mother~~parent to [~~son~~and  
3 ~~daughter~~children did not create confidential relationship); *Trujillo v. Trujillo*, 1966-NMSC-019,  
4 75 N.M. 724, 410 P.2d 947 (parents conveyed farm to [~~son~~child who worked it for sixteen years  
5 before parents sought to recover it).

6 Where the undue influence arises from a fiduciary relationship, a special instruction may be  
7 necessary to define the term. “A confidential or fiduciary relationship exists ‘whenever trust and  
8 confidence is reposed by one person in the integrity and fidelity of another.’” *In the Matter of*  
9 *Ferrill*, 1981-NMCA-074, ¶ 6, 97 N.M. 383, 640 P.2d 489 (quoting 94 C.J.S. Wills § 230 at 1078  
10 (1956)).

11 Where the contract in question is a written release of claims, undue influence must be proven by  
12 clear and convincing evidence. *P. Mendenhall v. Vandeventer*, 1956-NMSC-064, 61 N.M. 277,  
13 299 P.2d 457 (written release settling all injuries and property damages resulting from a car  
14 accident); *Quintana v. Motel 6*, 1984-NMCA-134, ¶ 4, 102 N.M. 229, 693 P.2d 597; *Hendren v.*  
15 *Allstate Ins. Co.*, 1983-NMCA-129, ¶ 9, 100 N.M. 506, 672 P.2d 1137.

16 [As amended by Supreme Court Order No. 20-8300-006~~], effective for all cases pending or filed~~  
17 ~~on or after December 31, 2020~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]