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] is excused from performing [his] [her] [its] obligations
4	under the contract. "Undue influence" is the abuse of a [elose or special relationship] position of
5	trust or a dominant position in a relationship by one party which persuades the other party to enter
6	into the contract.
7	has the burden of proving undue influence by clear and convincing
8	evidence.]
9	
10	USE NOTES
11	This instruction is intended for use in contract cases and is not intended for use in its present
12	form in other situations, such as gifts, wills, etc. If the contract in question is a written release of
13	claims, the jury also should be instructed that undue influence must be proven by clear and
14	convincing evidence. See UJI 13-304 NMRA.
15	[Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006,
16	effective for all cases pending or filed on or after December 31, 2020 .]
17	Committee commentary. — Undue influence is not susceptible to a fixed formula. <i>Brown</i>
18	v. Cobb, <u>1949-NMSC-016</u> , 53 N.M. 169, 204 P.2d 264 [(1949)] (legatees sue to cancel decedent's
19	ranch lease); Restatement (Second) of Contracts § 177 (1981). While influence alone is not
20	prohibited, undue influence will relieve the party of that contract obligation. Nance v. Dabau,
21	1967-NMSC-173, 78 N.M. 250, 430 P.2d 747 [(1967)] (suit brought by widow's guardian to set

1	aside deeds and contracts). Many cases involve either a confidential or fiduciary
2	relationship. Shultz v. Ramey, <u>1958-NMSC-099</u> , 64 N.M. 366, 328 P.2d 937 [(1958)] (suit to
3	cancel farm lease with son-in-law); Salazar v. Manderfield, 1943-NMSC-005, 47 N.M. 64, 134
4	P.2d 544 [(1943)] (suit to cancel deed to fiduciary); <i>Cardenas v.Ortiz</i> , 1924-NMSC-039, 29 N.M.
5	633, 226 P. 418 [(1924)] (suit to cancel deed to farm[-]). However, a formal fiduciary or
6	confidential relationship is not required; a person may also occupy a "position of trust" with respect
7	to another "where there exists such trust and confidence between the parties of whatever character
8	that confidence may be as enables the person in whom such confidence is reposed to exert it or so
9	influence the opposite person with the result that some transaction financially beneficial to the
10	person trusted takes place." Cardenas, 1924-NMSC-039, ¶ 10; see also Beals v. Ares, 1919-
11	NMSC-067, ¶ 88, 25 N.M.459, 185 P. 780 (holding that the "number or character" of relationships
12	giving rise to undue influence "are not defined by law"). Undue influence may also occur where
13	one party unfairly persuades another party who is under the domination of the person exercising
14	the persuasion. Restatement (Second) of Contracts § 177(1).
15	Undue influence must be contrasted with the concept of "duress" (see UJI 13-838
16	NMRA) or "incapacity" (see UJI 13-837 NMRA). Duress focuses on threats which induce fear
17	and hence the deprivation of free will. Undue influence focuses on improper influence of a weaker
18	or dependent party by a person who, through a special relationship, abuses his or her favorable
19	position to influence the weaker party into an agreement that he or she normally would not enter.
20	"Undue influence" does not need to rise to the level of "duress," nor is fraud or actual
21	misrepresentation required.

1	A confidential or fiduciary relationship, coupled with suspicious circumstances, [may]
2	raises a presumption of undue influence and [eausing]causes the burden of proof to shift. Nance
3	v. Dabau, <u>1967-NMSC-173, 78 N.M. 250, 430 P.2d 747</u> [supra]; Walters v. Walters, <u>1920-NMSC-</u>
4	021, 26 N.M. 22, 188 P. 1105 [(1920)] (ill father transferred all properties to his son who promised
5	to treat brothers and sisters equally); see [N.M. Evid.] Rule 11-301 NMRA. Parent and child
6	relationship or kinship alone is not sufficient to raise a presumption of undue
7	influence. <i>Giovannini v. Turrietta</i> , <u>1966-NMSC-103</u> , 76 N.M. 344, 414 P.2d 855 [(1966)] (deed
8	by mother to son and daughter did not create confidential relationship); Trujillo v. Trujillo, 1966-
9	NMSC-019, 75 N.M. 724, 410 P.2d 947 [(1966)] (parents conveyed farm to son who worked it for
10	sixteen years before parents sought to recover it).
11	Where the undue influence arises from a fiduciary relationship, a special instruction may
12	be necessary to define the term. "A confidential or fiduciary relationship exists 'whenever trust
13	and confidence is reposed by one person in the integrity and fidelity of another." In re Ferrill,
14	1981-NMCA-074, ¶ 6, 97 N.M. 383, [387,] 640 P.2d 489[, 493 (Ct. App. 1981)] (quoting 94 C.J.S.
15	Wills § 230 at 1078 (1956)).
16	Where the contract in question is a written release of claims, undue influence must be
17	proven by clear and convincing evidence. P. Mendenhall v. Vandeventer, 1956-NMSC-064, 61
18	N.M. 277, 299 P.2d 457 (written release settling all injuries and property damages resulting from
19	a car accident); Quintana v. Motel 6, 1984-NMCA-134, 102 N.M. 229, 693 P.2d 597; Hendren v.
20	Allstate Ins. Co., 1983-NMCA-129, 100 N.M. 506, 672 P.2d 1137.

- 1 [As amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed
- 2 on or after December 31, 2020.]