



1 aside deeds and contracts). Many cases involve either a confidential or fiduciary  
2 relationship. *Shultz v. Ramey*, 1958-NMSC-099, 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); *Cardenas v. Ortiz*, 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 [~~causing~~]causes the burden of proof to shift. *Nance*  
3       *v. Dabau*, 1967-NMSC-173, 78 N.M. 250, 430 P.2d 747 [~~supra~~]; *Walters v. Walters*, 1920-NMSC-  
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. *Giovannini v. Turrietta*, 1966-NMSC-103, 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.]