

STUDY UNIT 11 / UNDOE INFLUENCE

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Undue influence is a ground for rescission of a contract, which is available to a contractant who has been persuaded by someone who has influence over him, to conclude a contract which with an unfettered will he would not have concluded.

STATE & DISCUSS THE REQUIREMENTS FOR UNDOE INFLUENCE

In *Preller v Jordaan* the Appellate Division accepted the doctrine of undue influence is part of our law & held the sources of common law indicate the concept of *dolus* is wide enough to cover instances which would be regarded in English law as undue influence.

It must be accepted that a contract may be rescinded if a contracting party has exercised undue influence over someone in relation to whom he stood in a position of trust, so causing a person to enter into a contract.

In *Patel v Grobbelaar* the A.D. reaffirmed the decision in *Preller v Jordaan* & held where a party to a contract requests a court to set aside a contract on the ground of undue influence, an onus rests on the party to prove.

- (1) \perp other party exercised influence over him
- (2) \Rightarrow this ~~resists~~ influence weakened his power of resistance & made his will pliable.
- (3) \perp other party exercised this influence in an unscrupulous manner in order to induce him to consent to a transaction which firstly was to his detriment & 2ndly which he with normal free will would not have concluded.

Proof: \perp existence of a relationship of trust can be used as proof of \perp existence of \perp above requirements.

only Remedies are)

Rescission & restitution

Undue influence renders a contract voidable at \perp instance of \perp aggrieved party