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# UNDUE INFLUENCE & GIFTS TO RELIGIOUS ORGANIZATIONS

JOHN B. JARBOE

## INTRODUCTION

Churches, like all charitable organizations, rely for their continued existence upon the solicitation of gifts. The extent that bequests or gifts to churches may be viewed differently than bequests or gifts to other entities or individuals is a reflection of the natural tendency to suspect that people who are desperate for salvation and inclined to propagate their own faith are particularly susceptible to coercion. This may be especially true when someone else's religious belief and discipline are involved.

Issues raised in litigations challenging gifts to religious organizations as opposed to other organizations are not necessarily unique, except to the extent that they involve a backdrop of religious influence. This backdrop may sometimes rise to the level of undue influence because of the unique relationship of trust and confidence that arises between a person and his pastor, his minister, or his church. Where donors or their legal representatives develop second thoughts about the wisdom of charitable contributions, an attack on such contributions often arises in the traditional form of "undue influence."

Envision for a moment the Diocese of Oz which has had several "good years" in that several projects have been undertaken, and fund-raising has been well received—especially the fund-raising which was devoted to building the Marian Retreat Center. This Center was one of the bishop's pet projects and was to be constructed as a retreat center in honor of the Blessed Virgin. Mr. Brown, an apparently successful entrepreneur known for taking rather substantial risks, had donated a hundred thousand dollars in cash to the Center about a year ago. In addition, Mr. Smith, a successful contractor, had signed a pledge card last year, pledging a hundred thousand dollars to be paid over four years. The first payment was received within the last sixty days. About a year and a half ago, Mrs. Reilly, a widow with grown children, donated several acres of land, part of the family farm, valued at five hundred thou-

sand dollars for the Center. At the time of the gift, Mrs. Reilly told her pastor that she had heard voices which convinced her that if she would donate the land, the Blessed Virgin would appear at the Center when it was completed and would deliver a message of world peace. Mrs. Reilly also told the bishop that she wanted the gift to be anonymous and asked him not to make any announcement or tell her family. Mrs. Reilly had never made any large gift before, but had generally put envelopes in the weekly collection and had responded modestly to most special appeals. She was a little different. She usually sat in the front pew and mumbled to herself and others during Mass. Sometimes her shoes did not match and she would forget to put on her coat in cold weather. She quite frequently called the pastor by the wrong name but she was a nice lady and had a good heart.

Finally, there was the bequest by Mr. Green. Mr. Green left half of his estate which was approximately \$350,000 by bequest to the Diocese. Mr. Green died last month, after living the last five years in a nursing home operated by the Diocese and the Sisters of the Sorrowful Mother, where he was attended to daily by the Sisters, visited regularly by the Chaplain, occasionally by the bishop and sometimes, but not very often, by his son and daughter. Mr. Green did not have an attorney, only a trusted friend and CPA who had called the diocesan attorney to draw a will for Mr. Green since the Diocese was going to be the primary beneficiary of his will anyway.

The deed has been filed, the proceeds of the gifts have been put in the bank, Mr. Green's probate has been filed and distribution is expected shortly.

This morning, however, the bishop receives two letters in the mail. The first is from Mr. Green's son who says he is contesting the will on the ground that his father would never have drawn such a will had he not been under the constant pervasive and undue influence of the church and its agents in the nursing home. Secondly, he receives a letter from Mrs. Reilly, who says that she has been enlightened by something that she saw on television. She now realizes that the notion about Mary's apparitions was put in her mind by the Catholic Church to entice people like her to build shrines. She insists on the immediate reconveyance of the property which was unduly influenced in the first place. Furthermore, she must have it within the next sixty days because if she doesn't give it to Oral Roberts, he will be called home.

Abandoning the mail for the morning paper, the bishop sees an article about Mr. Brown, who has been sued by four banks, resulting from a default on highly leveraged loans that they made about the time of his \$100,000 gift. At the bottom of the same page of the paper is an article about Mr. Smith, the contractor, who had to seek protection in bankruptcy after losing his biggest customer. The bishop then calls the dioc-

san attorney to inquire whether any of this could possibly have any effect on the completion of the Center. The answer, I suppose that may be best, if I can borrow a favorite phrase of one of my law school professors, is "more than likely yes, but probably no."

## FRAUD AND UNDUE INFLUENCE

### A. *Challenges and Defenses*

Contracts, gifts, and testamentary dispositions may be set aside if procured by fraud or undue influence.<sup>1</sup> The nature of the vehicle which confers the benefit upon the church or charitable organization—whether by gift, testamentary disposition or contractual device—may dictate the nature of the remedy sought and define the boundaries of the battleground. In recent years, it has been common for dioceses to have offices of development which compete for long-range fundraising. These offices emphasize *inter vivos* instruments and *inter vivos* concepts as substitutes for wills in estate planning. The increasing use of *inter vivos* transfers, through trust or otherwise, will bring about significant distinctions in the types of challenges to such transfers and the kinds of defenses to assert when donors or their legal representatives have second thoughts.

#### 1. Statutes of Limitations

The first major distinction has to do with the various statutes of limitations. The probate codes of most states provide a relatively limited time frame during which a will may be challenged, regardless of the type of challenges being asserted.<sup>2</sup> An action to set aside an *inter vivos* gift, however, is generally considered to be an equitable action and may or may not be subject to any particular statute of limitations. At the very minimum, such an action would most likely be subject to the usual state two-year fraud statute. However, where the action is not one to recover damages for fraud, but rather for equitable relief, it would be measured by whatever is the longest statute, generally the state's catch-all, none-of-the-above, all-other-actions type statute of limitations, which may vary from five to fifteen years. An action concerning an annuity or trust may either be limited by the statute of limitations dealing with contracts if the instrument itself is being attacked, or it might be attacked on equitable grounds if the transfer action itself is being challenged.

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<sup>1</sup> See JESSE DUKEMINIER, *WILLS, TRUST, AND ESTATES* 143-75 (1990).

<sup>2</sup> See, e.g., ILL. S. CT. R. 108 (providing six months from probate to file a petition contesting validity of will); MA. GEN. P. CT. R. 16 (30 days); MICH. COMP. LAWS ANN. § 700.358 (six months); NEV. REV. STAT. ANN. § 137.080 (Michie 1991) (three months); OKLA. STAT. ANN. tit. 58, § 61 (West 1993) (three months).

## 2. Burden of Proof and Evidentiary Requirements

There are significant differences in the requisite burden of proof and evidentiary requirements which must be met depending upon whether the challenge is to a will or to an *inter vivos* gift. A properly executed will is presumed to be valid even when provisions are made for one in a confidential relationship with the testator.<sup>3</sup> In a will contest, before the burden to defend the bequest will shift to a beneficiary, the will contestant must show: (1) that the person enjoyed a relationship of trust and confidence with the testator; (2) that the person in a confidential relationship received the bulk of the testator's property; and (3) the testator was in an intellectually weakened position.<sup>4</sup>

In the case of an *inter vivos* gift, the establishment of a confidential relationship between the donor and the donee, by itself, is insufficient to shift the burden of persuasion to the donee to support the transfer.<sup>5</sup> However, when the transfer is made through the operation of a will, the law creates a presumption of undue influence, thereby shifting the burden to the donee.<sup>6</sup> As to this burden, the courts have held that the donee acting in a fiduciary capacity must prove by clear and convincing evidence that he exercised his own good faith in the transaction and must show the grantor's free, voluntary, and intelligent, i.e. informed, action.<sup>7</sup>

## 3. Issues Raised at Trial

During the trial of these cases, some critical issues involve evidence on the issue of the donor's capacity. Such evidence goes to the donor's mental and physical condition. It is important to gain as much evidence of the physical and mental condition of the donor as possible. This may be done through medical records, records of examinations, and evidence of medication being taken at the time of the gift which may or may not have affected the rational processes of the donor. Testimony of treating physicians and nurses as to whether the donor was a strong-willed person at the time of the gift and whether the donor appeared to understand what he was doing are also helpful. Also important is whether the donor relied on the donee for such things as personal or financial advice.

The question of whether the influence affected the specific transaction may have more bearing in a will contest than it will in a challenge to

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<sup>3</sup> See, e.g., *Lipper v. Weslow*, 369 S.W.2d 698, 703 (Tx. Ct. App. 1963). The confidential relationship is only one factor which the contestant must prove; see also *In Re Estate of Riley*, 479 P.2d 1, 8 (Wash. 1970); *Ableman v. Katz*, 481 A.2d 1114, 1117 (Del. 1984).

<sup>4</sup> *DUKEMINIER*, *supra* note 1, at 150-51.

<sup>5</sup> See *In Re Will of Smith*, 95 N.Y. 516, 522-23 (1884); *In Re Smith*, 170 Misc. 572, 577-78, 10 N.Y.S.2d 775, 780 (Sur. Ct. Kings County 1939).

<sup>6</sup> *Id.*

<sup>7</sup> See *Klaber v. Unity School of Christianity*, 51 S.W.2d 30 (Mo. 1932); *In Re Timken's Estate*, 280 P.2d 561 (Kan. 1955).

a gift. In a will contest, generally speaking, the contestant must prove that the favored beneficiary exercised direct control over the testator as to the specific testamentary act to the extent that the testator was deprived of his free will in that particular transaction. In gift litigation, that may or may not be the case.

The issue of predisposition is mentioned casually in most of the cases, but it is perhaps one of the more important issues that comes up at trial because it sets the pattern in a circumstantial evidence case. Past history of gifts is an important source of evidence on this issue and may include the church envelopes. Some relevant questions include: Was the donor a regular contributor to the church? Did he put in his church envelopes? Did he contribute regularly to the various fund drives? The tax returns and other financial records of the donor may be used as an additional source of evidence.

Perhaps the most critical issue in these cases, however, is the credibility of witnesses. In a fact case, the standard of review is the "clearly erroneous" standard. It is difficult once a decision is made in a fact case to get it reversed on appeal. In undue influence cases in particular, judges and juries decide early who is wearing the "white hat" and whether this is the kind of person that would have done such a dreadful thing.

The same type of evidence often used to sustain a testamentary bequest, such as proof of a close relationship between the parties or examples of kindness shown by the donee to the donor, is exactly the same type of evidence which may be used *against* the donee in a gift situation by giving rise to a presumption of undue influence. The issue then is: Under what circumstances in these challenges may a confidential relationship be presumed, so as to give rise to a presumption that the transaction was influenced unduly?

## *B. Factors Affecting Finding of Undue Influence*

### 1. Confidential Relationship

Generally speaking, courts have held that a presumption of undue influence arises in fiduciary relationships such as attorney and client,<sup>8</sup> guardian and ward,<sup>9</sup> parent and child, and sometimes, physician and patient.<sup>10</sup> The critical question is when, if ever, does the relationship be-

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<sup>8</sup> See, e.g., *Markell v. Sidney B. Pfeifer Foundation, Inc.*, 402 N.E.2d 76 (Mass. App. Ct. 1980).

<sup>9</sup> See, e.g., *In Re Conservatorship of Spindle*, 733 P.2d 388 (Okla. 1986) (holding that any transaction by ward which benefits guardian is viewed with strong presumption against its validity).

<sup>10</sup> See, e.g., *Ostertag v. Donovan*, 331 P.2d 355 (N.M. 1958); see also Annotation, Undue Influence in Nontestamentary Gift from Patient to Physician, Nurse or Other Medical

tween a spiritual advisor and parishioner gives rise to a presumption of a confidentiality which would require the advisor or church to bear the burden of proof in defending a gift.

Some early cases suggest that a presumption of a confidential relationship arises *per se* out of the relationship between priest and parishioner.<sup>11</sup> The Court of Errors and Appeals of New Jersey stated in *Corigan v. Pironi*<sup>12</sup> that the relationship "naturally suggests the idea of a donor possessed with a general purpose, without thought or self-guidance as to the mode of its execution, and ready to adopt without hesitation any suggestion on the subject."<sup>13</sup>

In *Ryan v. St. Michaels Roman Catholic Church of Whitlemore*,<sup>14</sup> the Supreme Court of Iowa discussed placing the burden of proving a lack of undue influence on the donee as a result of the relationship of priest and parishioner, but found that the burden had been sustained.<sup>15</sup> In *Ryan*, there were no facts other than the relationship of priest and parishioner which would give rise to the presumption of undue influence.<sup>16</sup> Thus, the court implied, without specifically holding, that it was the relationship itself which automatically gave rise to a *per se* confidential relationship.

The majority of cases which hold that the existence of religious influence creates a confidential relationship generally include other factors which strengthen that presumption, such as the religious atmosphere of a health care setting. For example in *Muller v. St. Louis Hospital Assoc.*,<sup>17</sup> a patient named the hospital as chief beneficiary of his will,<sup>18</sup> which itself was drawn by the hospital administrator.<sup>19</sup> The court held that it would not sustain a will that was made in favor of one's spiritual advisor or religious institution, within whose walls the patient lies and whose ministers are assisting in a professional capacity at his bedside.<sup>20</sup>

More recently, courts have held that in order to establish a confidential relationship, there must be more than the mere existence of a minis-

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Practitioner, 70 A.L.R.2d 591 (1960). However, in the physician-patient relationship other facts are usually required such as an elderly or extremely ill patient who has come to rely rather heavily on the physician.

<sup>11</sup> See, e.g., *Gilmore v. Lee*, 86 N.E. 568 (Ill. 1908); *McClellan v. Grant*, 83 A.D. 599, 82 N.Y.S. 208 (4th Dep't. 1903), *aff'd by* 181 N.Y. 581, 74 N.E. 1119 (1905); *Good v. Zook*, 88 N.W. 376 (Iowa 1901).

<sup>12</sup> 23 A. 355 (N.J. 1891).

<sup>13</sup> *Id.*

<sup>14</sup> 216 N.W. 713 (Iowa 1927).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> 5 Mo. App. 390, *aff'd*, 73 Mo. 242 (1878).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

ter-parishioner or priest-parishioner relationship.<sup>21</sup> Courts have consistently held that undue influence sufficient to set aside a gift need not be exerted by the beneficiary himself, but rather may be exerted by a third party.<sup>22</sup> Indeed, this situation often arises when gifts are made to a church or institution. It could be the pastor or person in charge, but it could also be some outside party acting in his own interest to inspire a gift that the donor might not otherwise have made.

Generally, the evidence in these cases is circumstantial. Among the circumstances that the courts consider relevant in determining whether a confidential relationship exists and whether that confidential relationship was abused so as to result in undue influence are the mental and physical condition of the donor.<sup>23</sup> A number of courts have considered other factors such as old age, senility and forgetfulness of the donee, although they are not necessarily sufficient to prove that undue influence existed when they are standing alone.<sup>24</sup>

One critical factor is whether the donee had advice independent from the donor. The courts have said that the advice need not be legal advice so long as it is competent and given by some person so disassociated with the donor as not to be interested in the outcome of the gift.<sup>25</sup> In *Estate of Riley*, an attorney who was on retainer for a nursing home operated by the beneficiary organization had been called in to draft a will for a new and ailing resident.<sup>26</sup> The majority held that the attorney was not "disqualified" as an attesting witness to the will.<sup>27</sup>

Two cases are illustrative of courts' discussions of the presumption of undue influence. *First Nat'l Bank in Sioux City v. Curran* involved an elderly woman who was confined to a nursing home.<sup>28</sup> Due to the woman's infirmities, she transferred some bank accounts into joint tenancy with her nurse, the defendant, Curran, with whom she had developed a close relationship.<sup>29</sup> The woman had made a will around the age of ninety-five and then later transferred these bank accounts into joint ten-

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<sup>21</sup> See, e.g., *Else v. Fremont Methodist Church*, 73 N.W.2d 50 (Iowa 1955); *Guill v. Wolpert*, 218 N.W.2d 224 (Neb. 1974) (expressly rejecting holding in *Corigan*); *Lindley v. Lindley*, 356 P.2d 455 (N.M. 1960); *Longenecker v. Zion Evangelical Lutheran Church*, 50 A. 244 (Pa. 1901).

<sup>22</sup> See, e.g., *Longenecker*, 50 A. at 247; *Good v. Zook*, 88 N.W. 376, 378 (Iowa 1901).

<sup>23</sup> *Good*, 88 N.W. at 377.

<sup>24</sup> See, e.g., *Klaber v. Unity School of Christianity*, 51 S.W.2d 30 (Mo. 1932) (where court sustained a gift from a ninety year old physically and mentally infirmed woman after evidence was presented showing she had received independent advice).

<sup>25</sup> See Annotation, *Undue Influence in Nontestamentary Gift to Clergyman, Spiritual Advisor, or Church*, 14 A.L.R.2d 649, 666-70 (1950).

<sup>26</sup> *In Re Estate of Riley*, 479 P.2d 1 (Wash. 1970).

<sup>27</sup> *Id.* at 20.

<sup>28</sup> 206 N.W.2d 317 (Iowa 1973).

<sup>29</sup> *Id.* at 320.

ancy with her nurse.<sup>30</sup> The court held that a confidential relationship had developed between the nurse and the donor despite their finding that the donor was competent at the time of her death at age ninety-seven.<sup>31</sup> At the request of the bank, which was named executor of the woman's will, the court set aside the gift, holding that the donee had not sustained the burden of disproving the presumption of undue influence which arose from the existence of the confidential relationship.<sup>32</sup> This case is one of the few cases that set aside a gift absent a showing of something more than just a confidential relationship. This case demonstrates, in rather draconian fashion, how courts may rule when they mean what they say and say what they mean about presumptions.

An interesting contrast to the *First Nat'l Bank* case is found in *Doveydenas v. The Bible Speaks*.<sup>33</sup> Elizabeth Doveydenas was the heiress to the Dayton-Hudson Department Store fortune, which in 1984 was worth approximately nineteen million dollars.<sup>34</sup> She had become interested in a ministry called The Bible Speaks ("TBS"), which was started by Carl Stevens.<sup>35</sup> In 1984, she had become very involved in supporting Stevens as shown by her driving him to all of his speeches.<sup>36</sup> During this time Stevens discovered what Doveydenas was worth and told her that she was a "special person who should give and to whom God could speak."<sup>37</sup> Doveydenas took that suggestion to heart and donated one million dollars to TBS stating that she hoped her donation would cure the migraine headaches of Stevens' fiance/assistant, Barbara Baum.<sup>38</sup> Stevens and Baum suggested to her that Doveydenas' gift cured the migraine headaches.<sup>39</sup> The headaches in fact continued, but this fact was kept from Doveydenas.<sup>40</sup>

Several months later, having been told that her gifts had made great differences and had brought about great events, Doveydenas was "inspired by God" to make a five million dollar gift to the ministry.<sup>41</sup> When it was suggested that she might do this at some point, Baum had told her that one of their pastors had been restrained in Romania and that "they're probably pulling his fingernails out right now."<sup>42</sup> Caught up in

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<sup>30</sup> *Id.* at 319.

<sup>31</sup> *Id.* at 321-22.

<sup>32</sup> *Id.* at 322-24.

<sup>33</sup> 869 F.2d 628 (1st Cir.), *cert. denied*, 493 U.S. 816 (1989).

<sup>34</sup> *Id.* at 631.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 632.

<sup>37</sup> *Id.* at 633.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 634.

<sup>42</sup> *Id.*

this urgency, and believing that the gift would secure the release of the pastor, she immediately went ahead with this five million dollar gift, and at their suggestion, did not discuss it with her family or anyone else.<sup>43</sup> Approximately three days later, the pastor came home, having actually been released after a brief detention, two or three days *prior* to the five million dollar gift.<sup>44</sup> However, the minister's release was not disclosed to Mrs. Doveydenas at that time and therefore she continued to believe that her gift had, in fact, now wrought another great temporal event.<sup>45</sup>

During the summer of 1985, there were several gifts which totalled eighty thousand dollars, all of which produced little or no evidence concerning the circumstances.<sup>46</sup> In the Spring of 1985, Doveydenas, at the suggestion of Stevens, replaced her attorney, her accountant, and her stockbroker with three other people who had been doing work for TBS. Doveydenas' new attorney drafted a new will, which she signed, leaving only jewelry to her children and the statutory minimum to her husband, for most of which Stevens became trustee.<sup>47</sup>

Thereafter, an agent of TBS suggested to Doveydenas that the ministry was in desperate need of television equipment and that five hundred thousand dollars would probably be sufficient. The agent stated that it would be wonderful if someone could come up with a gift in that amount.<sup>48</sup> Doveydenas responded that she was having marital troubles and hoped that by making a gift her problems would be solved. TBS encouraged her to donate money anonymously and thereafter, Doveydenas made a gift of five hundred thousand dollars to TBS.<sup>49</sup>

Eventually, Doveydenas had a reconciliation with her family, and an awakening.<sup>50</sup> She filed suit against TBS to recover the gifts.<sup>51</sup> Thereafter, TBS sought protection in bankruptcy, which explains why this is a First Circuit case rather than a state supreme court case.<sup>52</sup> The Bankruptcy Court and the United States District Court for the District of Massachusetts set aside all of these gifts on the ground that there was a

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<sup>43</sup> *Id.* at 635.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 637.

<sup>47</sup> *Id.* at 638.

<sup>48</sup> *Id.* at 639.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 640-41.

<sup>51</sup> *Id.* at 629. In 1986, the plaintiff sought rescission of the gifts she had made from 1984 to 1985, asserting that there had been both undue influence and fraud involved in the transactions.

<sup>52</sup> *Id.*

showing of a pervasive, overall undue influence at the time of the making of these gifts.<sup>53</sup>

Despite the fact that at the time of the first gift Doveydenas had been well indoctrinated, the First Circuit reversed in part, upholding the first million dollar gift on the grounds that the idea of curing the headaches originated with the donor and although she was not told otherwise, at least through the time that the first gift was made, the motivation for the gift had come from the donor.<sup>54</sup>

The court set aside the five million dollar gift on the following grounds: first, that the gift was induced by suggesting to the plaintiff that her previous gift had brought about temporal events; second, that Doveydenas was told to keep the gift a secret from her family; third, that the defendants failed to disclose that the pastor had been released by the Romanians prior to the gift; and fourth, that Stevens prompted Doveydenas to write a letter stating that the gifts were inspired by God and that no one from TBS knew about the gift prior to her making it.<sup>55</sup>

The court upheld the eighty thousand dollar gifts made in the summer, saying that there was no evidence concerning the circumstances of those gifts.<sup>56</sup> However, the court did set aside the five hundred thousand dollar gift for the television equipment. The court reached this conclusion on the ground that the defendants had preyed on Mrs. Doveydenas by instilling in her the notion that her gifts could bring about temporal events when they knew she could be taken advantage of because she had been isolated from her family and denied independent advice.<sup>57</sup>

The two aforementioned cases provide an interesting contrast because, notwithstanding the language in a number of cases holding that undue influence will be presumed when a confidential relationship is shown, the First Circuit in *Doveydenas* not only required a showing of undue influence, but also required a showing that the undue influence specifically affected the specific gift.<sup>58</sup> This second requirement is not normally found in gift cases.

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<sup>53</sup> *Id.* The bankruptcy court found that the gifts were the result of undue influence and awarded the plaintiff \$6,581,356.25. *In Re The Bible Speaks*, 73 B.R. 848 (Bankr. D. Mass. 1987). The district court fully adopted the bankruptcy court's findings. *The Bible Speaks v. Doveydenas*, 81 B.R. 750 (D. Mass. 1988).

<sup>54</sup> *Doveydenas*, 869 F.2d at 643.

<sup>55</sup> *Id.* at 643-44.

<sup>56</sup> *Id.* at 644.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 641. The First Circuit expressly stated that their decision was not affected by a presumption of undue influence. *Id.* The court stated that there is merely a duty on the part of one involved in a confidential relationship to disclose certain facts and that this legal principle applies to both religious and non-religious circumstances. *Id.* In addition, the court applied a strict legal rule that the one seeking to avoid the transfers is responsible for establishing the alleged undue influence. *Id.*

## 2. Active Solicitation

Undue influence is generally found where the donee promises something to the donor in return for the gift. Such promises may include, for example, an increased hope of salvation and promises that wonderful events will occur as a result of the gift as in the *Doveydenas* case.<sup>59</sup>

The issue of active solicitation was a factor in the two cases discussed above.<sup>60</sup> *Whitmire v. Kroelinger*<sup>61</sup> is similar to *Doveydenas* in that those gifts which were determined to be a product of the donor's own mind were upheld<sup>62</sup> whereas other gifts were set aside because the pastor had discovered and preyed upon the donor's religious fervor.<sup>63</sup>

## 3. Fanaticism of Donor

Courts have held that the fanaticism of a donor as to religion or spiritualism is not, in and of itself, grounds for setting aside a gift.<sup>64</sup> In *Held v. Florida Conference Ass'n of Seventh Day Adventists*,<sup>65</sup> the court stated that despite the donor's religious fanaticism, the donor's conduct did not "indicate that, in contemplation of the law, . . . he was subject to any undue influence."<sup>66</sup>

## 4. Predisposition to Make Gifts

One of the most important factors in defending challenges to gifts is the idea of the predisposition of the donor to make a gift. If there is a pattern of giving by the donor, the question becomes whether the recent gift is outside of that pattern. For example, in *Klaber v. Unity Schools of Christianity*,<sup>67</sup> the fact that the donor had previously discussed several methods of making gifts indicated that the idea originated with the donor.<sup>68</sup> However, other courts have found that if the donor's present gifts are radically different from previous testamentary intentions, this may be an indication of undue influence.<sup>69</sup>

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<sup>59</sup> See, e.g., *Doveydenas v. The Bible Speaks*, 869 F.2d 628 (1st Cir.), cert. denied, 493 U.S. 816 (1989) (holding that gifts invalid where donor coerced into believing such gifts were producing positive results).

<sup>60</sup> See *supra* notes 23 to 55 and accompanying text.

<sup>61</sup> 42 F.2d 699 (W.D.S.C. 1930).

<sup>62</sup> *Id.* at 702-05.

<sup>63</sup> *Id.* at 708-10.

<sup>64</sup> See 14 A.L.R.2d 649, *supra* note 23, at 665-66.

<sup>65</sup> 193 So. 828 (Fla. 1940).

<sup>66</sup> *Id.* at 828.

<sup>67</sup> 51 S.W.2d 30 (Mo. 1932).

<sup>68</sup> *Id.* at 33.

<sup>69</sup> See, e.g., *In Re Rupert's Estate*, 54 P.2d 274, 286 (Or. 1936) and *In Re Hampton's Estate*, 103 P.2d 611, 617-18 (Cal. Ct. App. 1940).

### 5. Failure to Provide for One's Family

Another important factor is whether the gift impoverished the donor or went against the natural requirement that the donor provide for himself or his family.<sup>70</sup> A factual issue that often arises in litigating this issue is the percentage of the gift as a percentage of the overall estate of the donor and what the gift does to the donor's remaining assets. In *Longenecker v. Zion Evangelical Lutheran Church*,<sup>71</sup> the court observed that the size of the gift as a percentage of the estate did not show want of understanding on the part of the donor.<sup>72</sup> Courts have stated that in order to be sustained, the gift must be intelligently given and the donor must understand the circumstances and the nature of the transaction.<sup>73</sup>

### 6. Ratification of Gift

Other issues which courts have examined include whether the donor has ratified or confirmed the gift. In *First Nat'l Bank of Sioux City v. Curran*,<sup>74</sup> the court pointed out that expressions of satisfaction made concurrently with the gift are likely to be subject to the same influence that motivated the gift in the first place.<sup>75</sup>

## CONCLUSION

The question of when and under what circumstances gifts and bequests to religious organizations may be accorded some finality is difficult to ascertain and may well depend upon the type of the gift, the package in which it is wrapped and the individual circumstances of the donor. The issues discussed above should assist attorneys in dealing with donors, their heirs, and their legal representations who may want another chance at rendering unto Caesar that which the donor thought had been rendered unto God.

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<sup>70</sup> See 14 A.L.R.2d 649, *supra* note 23, at 677-78.

<sup>71</sup> 50 A. 244 (Pa. 1901).

<sup>72</sup> *Id.* at 247 (stating that \$5,000 was not an undue proportion of plaintiff's \$60,000 estate sufficient to constitute evidence of lack of plaintiff's understanding about transaction).

<sup>73</sup> *Id.* at 246 (stating that recipient must prove that donor was sound and understood his act and its consequences).

<sup>74</sup> 206 N.W.2d 317 (Iowa 1973).

<sup>75</sup> *Id.* at 323 (citing *Johnson v. Johnson*, 191 N.W. 353, 355 (Iowa 1923)).