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(1) A finding of undue influence can be proven by establishing three factors: (i) the existence and exertion of undue influence, (ii) for the purpose of overcoming the power and mind of the testator, (iii) to create a gift and / or will that would not have existed but for the undue influence.

Based on the record, the jury was correct in finding that undue influence was exerted over Hattie May for the purpose of altering her will in favor of Jimmy and his descendants. Jimmy will argue that undue influence is not supported by the mere fact that someone had the opportunity to unduly influence someone. He will support his stance by arguing that Mary Lou was in fact living with Hattie May until Mary Lou's death. However, it's the will that was drafted after Mary Lou's death that is of concern here. Jimmy has testified that Hattie May did not understand how to handle her legal and financial matter and deferred to him not only on these affairs, but on all things as she basically did whatever he told her. Jimmy certainly had the opportunity to exert undue influence, and was quite motivated to so after Mary Lou's daughters received distributions of Mary Lou's life insurance policy. The testimony presented ample evidence that Jimmy was adamant to update the will after his nieces received policy distributions, as evidenced by documentation retained by the attorney who drafted the wills. In what looks like a matter of the essence, Jimmy had Hattie May sign the will at the attorney's office without the attorney even there.

Undue influence also cannot merely be supported by the fact that someone is merely susceptible to undue influence, due to old age. Nothing in the facts indicate how old Hattie May was when she passed; however, given that she deferred to Jimmy on all her matters up to her death, the facts indicate that she was susceptible to undue influence as she trusted her eldest son to manage her affairs.

The jury also was correct in determining that Hattie May did not intend to disinherit Mary Lou or her descendants. An unnatural disposition, on its own, does not support a finding of undue influence, however, taken with the above evidence, the jury was correct in finding undue influence. The 2002 will left Hattie May's estate in equal proportion to each of her children, and then to their descendants. The testimony also revealed that Hattie May's granddaughters kept in regular contact with her and Ralph, Hattie May's grandson, testified that Hattie May was fair and equal when it came to family. This testimony supports the finding that the unnatural disposition

was a result of undue influence.

The jury was correct in finding that Jimmy exerted undue influence for the purpose of altering the will to favor himself and his descendants.

(2) Under the 2002 will, Hattie May, as noted above, left her estate in equal proportion to each of her children, and then to their descendants, per stirpes. This would mean that \$375,000 would be distributed to Jimmy; and \$375,000 would be distributed to Mary Lou. Ashley, Bridget and Connie would then each take one-third of the \$375,000.

The court may also find, that because of Jimmy's wanton behavior, his \$375,000 should be put in a constructive trust for Ralph.

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(1) I would make numerous arguments in support of the jury's findings. Under the Texas Probate Code, "undue influence" is defined as the existence and exertion of an influence that was so dominant as to overpower the will of the testator in such a way that the testator made dispositions in his will that the testator would not have otherwise made but for the existence of this influence. Here, there are several examples proving that Hattie May was unduly influenced by Jimmy. First, Hattie May's previous 2002 will left her estate "in equal proportions to each of her children." Further, Mary Lou lived with Hattie May until her death in 2003. Next, only when Jimmy learned of the life insurance proceeds to Mary Lou's children did he suggest that Hattie May "update" her will. Hattie May was unaware of the life insurance proceeds, so it cannot be argued that Hattie May adjusted her gifts to Mary Lou's children because she knew that they would be provided for under Mary Lou's life insurance policy. Additionally, the "existence and exertion of a dominant influence" is proven by the fact that Jimmy stated that Hattie May "pretty much did what I told her" with regard to all financial matters and other affairs. Jimmy also stated that he knew Hattie May trusted him to be fair, so Hattie was vulnerable to any dominant influence that Jimmy could have exerted over her. Furthermore, Jimmy continued to exert this dominant influence by paying an attorney to execute the wills and instructing them as to their contents. While this would be permissible for the 2002 will, the 2004 will was so clearly slanted in favor of Jimmy that this shows the exercise of a dominant influence. Plus, the attorney did not discuss the 2004 will with Hattie May, nor was he present when she signed it. Moreover, the note found in the attorney's file with regard to Jimmy shows that he intended to change the will because Mary Lou's children had received proceeds from her life insurance policy. The element of undue influence that the influence caused the testator to make dispositions in her will that she would not have otherwise made but for the existence of the influence is shown by the fact that Ashley, Bridget, and Connie each maintained regular contact with Hattie May and visited her frequently. Further, Ashley, Bridget, Connie, and Jimmy's son Ralph all testified that Hattie May was fair and equal when it came to her family. Therefore, because there is no indication that Hattie May intended to disinherit Ashley, Bridget, and Connie, and there is no evidence that Hattie May ever even knew of the dispositions of the life insurance proceeds to Ashley, Bridget, and Connie (which gave rise to Jimmy wanting Hattie May to change the will), it can be proven that Jimmy exercised an undue influence over Hattie May in the making of the 2004.

(2) If the court's judgment is upheld, then the court will set aside the 2004 will as being

invalidated because of undue influence, and the estate will be distributed under the 2002 will. Under the Texas Probate Code, if it is proven that a will is procured because of undue influence, then the court will set aside the will. "Undue influence" is defined as the existence and exertion of an influence that was so dominant as to overpower the will of the testator in such a way that the testator made dispositions in his will that the testator would not have otherwise made but for the existence of this influence. Here, it is proven that Jimmy exerted an undue influence over Hattie May that was so dominant that it made her create dispositions under the will that she would not have made but for the influence. Therefore, the court will set aside the 2004 will, and the 2002 will will be admitted to probate. Under the 2002 will, Hattie May left her estate "in equal proportion to each of her children, and then to their descendants, per stirpes." So, under the will, 1/2 of Hattie May's \$750,000 estate will go to Jimmy and 1/2 of Hattie May's estate will go to Ashley, Bridget, and Connie, who will each take 1/3 of 1/2. Because his father Jimmy is still alive, Ralph will inherit Jimmy's share when Jimmy passes away.

END OF EXAM

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(1) The jury properly found that Hattie May's 2004 will was the product of Jimmy's undue influence and that Hattie May did not intend to disinherit Mary Lou or her descendants; therefore, judgment was in favor of Mary Lou's children under the 2002 will. The issue here is whether the 2004 will written by Hattie May ("Hattie") was the product of Jimmy's undue influence. Undue influence means that a person (here, Jimmy) had the power to exercise undue influence over the testator (here, Hattie), such that the influence overpowered the free will of the testator and the will was the product of such influence and would not have been written but for such influence. While circumstantial evidence is admissible to prove undue influence, mere susceptibility, mere opportunity and an unnatural disposition are not enough by themselves to prove undue influence.

First, Ashley, Bridget and Connie have standing to bring a will contest because their economic interests are adversely affected by the 2004 will. That is because they would have received a per stirpes share pursuant to Hattie's 2002 will, and now they are receiving nothing. In an undue influence proceeding, the burden of proof is on the will contestants.

Here, there are several facts showing that the will was the product of Jimmy's undue influence. Most importantly, the attorney's notes indicate that Jimmy was the one who wanted to change Hattie's will because his sister had passed on and he knew that her kids got "\$25K each from" insurance. Thus, it appears that because he thought Ashley, Bridget and Connie were "set," he didn't think they needed any additional distributions from Hattie pursuant to Hattie's 2002 will. Furthermore, based on the facts, his influence did overtake Hattie because Jimmy testified that "she pretty much did what I told her," thus, when he told her to "update her will" she did so. Therefore, this was not just a mere opportunity by Jimmy to overpower his mother's free will, but a specific influence over his mother that did in fact overpower her free will and influenced her decisions. Moreover, the facts further indicate that she "deferred to him on all matters involving her financial and other affairs because she did not understand the legal stuff and trusted him to be fair." Therefore, once again, this points towards the powerful influence Jimmy had over his mother. It appears that she was dependent on him not only concerning her financial matters, but also with respect to her will. The facts also indicate that Hattie wasn't the one who instructed the

attorney as to the will's contents, it was Jimmy. Furthermore, when Hattie went to the attorney's office to sign her will, she did not consult with the attorney (in fact, he wasn't even there) and never discussed its contents with him. Therefore, based on these facts it is clear that Hattie did not intend the contents of her will; rather it was Jimmy's undue influence who basically caused her to sign this new will.

Additionally, it is unlikely that Hattie wanted to disinherit Mary Lou and her children because Mary Lou lived with Hattie and Mary Lou's children maintained regular contact with her and visited her frequently. Therefore, it seems like Mary Lou and her children had a good relationship with Hattie and there was no reason why Hattie may want to disinherit them. Moreover, Ashley, Connie, Bridget and even Jimmy's son, Ralph, testified that Hattie was fair and equal when it came to her family. Therefore, the disposition under her original will, written in 2002 pursuant to which she attempted to leave her estate "in equal proportions to each of her children, and then to their descendants, per stirpes" appears to be the more fair and equal result and desires of Hattie to which Connie, Ashley, Bridget and Ralph testified.

Therefore, based on the facts analyzed above, the 2004 will executed by Hattie is more than a mere susceptibility to influence, mere opportunity or a mere unnatural disposition of her estate; rather it is the clear product of her son's undue influence, which had the effect of overpowering her free will.

(2) In furtherance to the analysis above, Hattie May's estate shall be distributed pursuant to her 2002 will, that is 1/2 of her estate will be distributed to her son, Jimmy and the other 1/2 will be distributed to Mary Lou's children - Ashley, Connie and Bridget. Each of Mary Lou's children will take 1/6th each. Because their mother predeceased Hattie (the testator), the will indicates that they will take per stirpes (that is by representation).

END OF EXAM