



Undue Influence in Halacha

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An elderly gentleman spends the final years of his life in a nursing home. In his will, which was drafted shortly before his death, he left a significant bequest to a member of the staff that cared for him during his final days. His family was, naturally quite upset, and suspected that the staff member had abused their position of power and influence over the increasingly feeble patient. What are the Halachic factors involved in asserting claims of undue influence?

There are two halchic concepts that may play a role in such litigation: Shoteh/mental capacity, and Oness/Duress.

Shoteh/Mental Capacity

A Shoteh that lacks mental capacity cannot transact. The Gemara Chagiga defines a shoteh as one who sleeps in a cemetery and engages in similar abnormal activity. Rambam explains that although this person can carry on normal rational conversation, nevertheless his behavior classifies him as a shoteh. The Rambam adds that a person that is especially foolish and cannot grasp when things contradict each other, and does not have a normal understanding of the world, is also classified as a shoteh.

Maharit (Even Haezer 16) writes that this added requirement of the Rambam is required only when determining the fitness to testify; a person that does not have a clear grasp of the world around him cannot be relied upon in his testimony. In other matters, such as the ability to transact, as long as he understands the transaction he is entering into, he is bound to his actions. However, many Poskim disagree and disqualify people with a subnormal grasp of the world around them from binding themselves in any transaction. Nevertheless, while this interpretation of the Rambam may disqualify the actions of a patient with some form of dementia, a feeble patient who has a clear grasp of the world would certainly not be classified as a shoteh, regardless of his vulnerability.

Duress

Under most circumstances, a sale for appropriate consideration is halachically valid even if a party only agreed under duress. A classic example of this concept is the idea of תלוהו וזבין זביניה זביניה if one was literally hung in order to be coerced into entering a sale, the sale is valid. The rationale is that since the seller received full consideration for the sale, his agreement to sell is valid. While he certainly would not have entered into the transaction if he was not coerced, when he has the misfortune of being faced with the choice of either confronting the duress by selling the item to rescue himself, he has full intent to consummate the sale. While the buyer



certainly violates lo sachmod for forcing the sale, he is not a gazlan and he acquires valid halachic ownership of the item.

In fact, even without proper consideration, the sale may be upheld. The Mishna writes that in periods of danger where bandits would readily murder Jews, a person that saves his life by giving the bandit his possessions does in fact lose his ownership. Since the person's life was in danger, we view the payment as a 'sale' whereby he is paying to spare his life, and the transaction is valid. (of course the bandit would be liable to his victim- the question is whether a third party that purchased the goods from the bandit has any obligation to the victim)

What emerges is that if at the time of the transaction the coerced person has conscious and deliberate intent to sell an item, the sale is valid even if it arose out of duress. In contrast, if the seller did not have true intent to sell, or if he did not receive appropriate consideration, he may challenge the validity of the transfer.

In the case at hand, if the testator believed that by providing the staff member with a bequest he would obtain better quality service, he is essentially buying himself service, and the bequest would be valid.

Conclusion

What emerges is that undue influence is a very weak halachic argument. In contrast, there are very significant legal protections concerning undue influence, and it is a very prominent aspect of many will contests. The reason for this disparity of treatment arises from the very basis of choshen mishpat versus civil law. Civil law incorporates values- to the extent that it seems unfair to allow a person with a position of power to wield that power for their personal benefit over those that are helpless to resist, civil law creates limits and protections to prevent such scenarios. In contrast, Choshen Mishpat focuses on strict rights and obligations, without incorporating outside factors and considerations. While there is certainly a concept of acting Lifnim Meshuras Hadin that requires us to act in a fair and equitable manner, the actual halachos that define people's rights are narrowly constructed. The parties, and to a limited extent Bais Din, should add these yashrus considerations to their behaviors, but the fundamental rights and obligations are generally unchanged by the ethical considerations.