

Yerkey v Jones (1939) 63 CLR 649

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Facts

- John Yerkey and his wife, Mary Yerkey brought an action in the Supreme Court of South Australia against Florence Jones and her husband, Estyn Jones.
- The claim was for principal and interest secured by a memorandum of mortgage registered under the *Real Property Act 1886* (SA).
- Mrs. **Jones** alleged undue influence on the part of the plaintiffs and her husband acting together and also on the part of her husband separately.
- Mrs Jones alleged various fraudulent misrepresentations and non-disclosures. She contended that the mortgage which she actually signed was of a different nature from that which it was represented to her to be and from that which she understood it to be.
- Mrs Jones also alleged that the mortgage failed to carry out a preliminary agreement which had been made, particularly in that it created a personal liability on her part instead of merely charging her property with a liability which would become enforceable after three years and only after three years.

Issues

- Could the memorandum of mortgage be rescinded due to undue influence?

Held

- No, Mrs Jones could not rely on undue influence.
- The High Court held that the relationship of husband and wife is not enough of itself to raise a presumption of undue influence.
- The Court is not ignorant of the potential for a husband to obtain and unfairly use influence over a wife which the husband often possesses.
- However, there is nothing unusual in a wife, due to affection or for other reasons, conferring substantial financial benefits on her husband.
- The Court will note, as a matter of fact, the opportunities for abuse which flow from a wife's confidence in her husband will take this into account with all the other evidence in the case.

The Rule of *Yerkey v Jones*

- The wife entered without understanding the contract; and
- The wife entered without dealing with the other party personally.

- The rule also applies if:
 - the wife understood the transaction but her consent was obtained by the husband's undue influence; or
 - if the wife guaranteed a company controlled by the husband, and if she does not have a significant interest in it.
- This rule does not apply if the wife stands to benefit from the contract.
- This rule, while somewhat outdated, has been subsequently applied in *Garcia v National Australia Bank Ltd* (1998) 194 CLR 395.

Full Text

The full text is available here:

[http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1939/3.html?stem=0&synonyms=0&query=title\(yerkey%20and%20jones%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1939/3.html?stem=0&synonyms=0&query=title(yerkey%20and%20jones%20))

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