

National Centre for the Protection of Older People
 University College Dublin, 22 February 2011
 Seminar: The Legal and Policy Challenges of Financial Elder Abuse



**LEGAL IMPLICATIONS OF
 AMBIVALENCE IN CAREGIVER
 RELATIONSHIPS**

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Overview

- Brief Review of Legal Research on Financial Abuse & Exploitation in Caregiver Settings
 - Definition, Interventions, Remedies, Prevention Techniques
- Summary/Review of Recent Studies on Financial Abuse in Ireland & USA
- Introducing Gerontology Research on "Ambivalence" in Family Relationships
- **Key Question: What role does ambivalence in contributing to financial abuse & exploitation?**
- 3 Case Studies (drawn from court records & interviews) & Survey Results in several states and Northern Ireland
- **Lessons & Future Action**

Working Definition

Financial Abuse or Exploitation:

- Act or course of conduct
- By a caretaker or other person against an older adult or an older adult's resources
- Without the **informed consent** of the older adult (or with consent obtained through misrepresentation, coercion or threats of force)
- That results in:
 - Monetary or personal or other benefit, gain or profit to the perpetrator OR
 - Monetary or personal loss to the older adult

Source: Pennsylvania Older Adult Protective Services Act, 35 P.S. §10225.103, similar to definition contained in Older Americans Act, 42 U.S.C. § 3002(18). All 50 states in U.S. have laws authorizing public investigations of suspected financial abuse or exploitation.

Studies of Elder Abuse in Ireland

- 2010: "Abuse & Neglect of Older People in Ireland," Naughton & Drennan, Nat. Centre For Protection of Older People
 - ▣ Concluding **financial abuse** is *most* prevalent issue reported during interviews
- 2009: "Elder Abuse & Legislation in Ireland," Lyons, National Centre for Protection of Older People
 - ▣ Noting legislation governing "Powers of Attorney" with protective features, including medical & attorney affidavits re capacity and execution & registration of POAs

Recent U.S. Reports

- **BROKEN TRUST: ELDERS, FAMILY AND FINANCES** (MetLifeMature Market Institute *et al*, 2009): *Review of news sources during 3-month window showed elder financial abuse of \$397,000,000+ with "largest % of cases involving close associates of victim -- families, friends, caregivers, neighbors" often through use of "powers of attorney"*
- **GUARDIANSHIPS: CASES OF FINANCIAL EXPLOITATION, NEGLECT & ABUSE OF SENIORS** (GAO, Sept. 2010): *Reviewing abuse by court-appointed guardians & custodians in 45 states & highlighting 20 cases in which guardians stole or otherwise improperly obtained \$5.4 million in assets*

Background: "Ambivalence"

- **"Intergenerational ambivalence"** (Luescher & Pillemer, 1998):
- **"Contradictions in relationships between parents and adult offspring that cannot be reconciled."**
- **"Two dimensions: (a) contradictions at the level of social structure, evidenced in institutional resources and requirements, such as statuses, roles, and norms -- (b) contradictions at the subjective level, in terms of cognitions, emotions, and motivations."**
- **Distinct from: "conflict" and "ambiguity"**

Literature: Understanding Ambivalence

- "Gaining a better understanding of family relationships from newly emerging ambivalence framework has potential to provide new insights into communication patterns, support exchanges, and family decision making." (Peters, Hooker, Zvonkovic, 2006)
- Adult children who report parental rejection/hostility in early life more likely to report ambivalence. (Willson et al., 2003)
- Older persons tend to minimize differences with children and grandchildren. (Pyke, 1999)
- Mothers experienced more ambivalence toward adult children for whom they provided financial help than other forms of interaction. (Pillemer & Suito, 2002)
- "Parents consistently report reluctance toward asking for help from their children. . . . Although not all parents will need care from their adult children, it is possible that ambivalent perceptions prohibit conversations . . . about the realities of future concerns." (Peters, Hooker, Zvonkovic, 2006)

Working Definition

- **Ambivalence in Caregiver Relationships:**
Simultaneous, contradictory feelings of willingness to provide (or accept) care, and rejection of role (of care-giver or care-recipient).

3 CASE STUDIES

- "Bertha Trout" Case
- "Good Daughter Holly" Case
- "Carroll v. Carroll" Irish Pub Case

Case Study #1: Bertha Trout

- At age 94 ...
- Great-niece promised to care for her if she moved in with family
- 30 Minute Meeting with Lawyer to prepare:
 - Unlimited Power of Attorney
- Joint Bank Accounts
 - Questioned by Bank Tellers
- In two and a half years...

\$850,000+ ... gone



Case Study #1: Transcript Reviews

- Civil and Criminal Cases – led to conviction of Niece for multiple crimes
- Bertha Trout's Testimony:
 - Describes self as "stingy"
 - Does not dispute that she gave Niece gifts, incl. three rings
 - "When I came up to live with them, I put my -- or she -- I put my stocks, certificates and bonds and things in her safe deposit box in . . . her bank and gave her permission to pay my bills out of my money."
 - Gave money for home repairs and improvements? "Maybe. I didn't worry about every little thing that goes on in the family."
 - She may have given them express permission to buy new car:
 - "Lon's a nice boy, had accident, he should have new car."
 - A Mercedes? "I'm too stingy for that."
 - "I trusted her."

Case Study #1: Transcript Reviews

- Niece's Testimony:
 - No criminal record – "not even a speeding ticket"
 - "I promised my mother that I would take care of Aunt Bertha."
 - Moved her into first floor suite in own home.
 - When Bertha "told me to buy something, I bought it – I never questioned when she told me to get something."
 - "I bought the fur coat – Bertha had one, gave it to me, didn't fit."
 - Moved Bertha into apartment because of allergies to cats, but visited daily and son lived next door.
 - Own illness made it increasingly difficult to care for Aunt Bertha.
 - "I did my best. She just ran out of money and we couldn't pay for [assisted living facility] because she was tapped out."

Is Bertha Trout Case Unique?

- **Another example: Brooke Astor, NY** philanthropist/socialite:
 - ▣ September 2009: Her only son (age 85!) and attorney convicted of fraud by misusing Power of Attorney and alteration of wills (five month trial)
 - **Long history of problematic mother/son relationship**
 - **Son's own father had earlier sued him in attempt to access trust funds**

Case Study #2: Good Daughter Holly

- Phase 1:
June 2009
to
October 2009
- "New England Rock" = 76 year old mother
 - **Jamaican Sweepstakes Scam:** "You've won; send \$__ for taxes."
 - Send "more, more, more" (4 month total = \$95,000)
 - October 2009: Mom's financial advisor calls Holly & together they intervene to save \$35,000 account
 - Mother's response: "Mind your own business" but agreed to discuss "later"

Case Study #2 - Phase 2

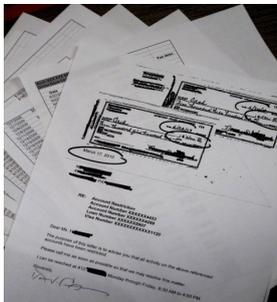
- **BUT** "Omar" still part of mother's life:
 - ▣ Multiple fraud lists
 - ▣ "Emergencies"
 - ▣ "Local" numbers
- From Oct 2009- March 2010, **\$209,000 gone....**
- Daughter negotiated with mother to get formal authority



Omar used on-line images of mother's house & neighborhood to pretend he was "local"

Is Good Daughter Holly's Case Unique?

- Why didn't other banks intervene?
 - ▣ *Banking Law & Policies*
- Why *DID* financial advisor intervene?
- **Why didn't Good Daughter seek POA/Guardian in Oct. 2009? Ambivalence about mother's capacity?**



Case Study #3: Carroll v. Carroll

- 1959: Thomas Sr. (born @ 1912) marries Sophie, a "younger" woman
- "Happy" hard-working family:
 - ▣ Three children:
 - Daughter W (born 1962)
 - Son: Thomas Jr. (born 1964)
 - Daughter M J (born 1968)
- 1960: Thomas Sr. buys a Co. Tipperary Pub
 - ▣ which Sophie runs until her death in 1989
- At various times all 3 children work in the Pub



Photo with permission from Fethard.com

Fethard, Co. Tipperary, Ireland

Case Study #3 (Continued)



Carroll's Pub Patron. Photo by John Kenrick, Fethard Historical Society. Used with permission.

- After Sophie's death, Thomas Sr. struggles...
- **3 May 1990: At lawyer's office, Thomas Sr. (age @79) signs transfer of pub and house to Thomas Jr., with a reserved right of residence in the house**
- Daughters not told about transfer and continue to work weekends in the Pub

Case Study #3 (continued)

- 1992: Thomas Sr. dies
- 1992: Thomas Jr. marries
- 1994: Thomas Jr. killed in car accident
- 1994: Thomas Jr.'s widow explains to W & MJ they have no rights to Home or Pub; they are "devastated" – eventually bring suit to recover family pub



Photos by John Kenrick, Fethard Historical Society Used with permission.

Carroll v. Carroll, [1999]4 IR 241

- **Supreme Court of Ireland: Reviews interactions between Lawyer, Father & Son during Home/Pub Transaction, noting Lawyer did not:**
 - Inquire re father's other assets
 - Ask about father's means of support, if any
 - Ask about other children
 - Discuss possibility that son could die before father, and
 - Although father reportedly said he did not want to keep "anything," lawyer still gave him a life estate in the house - why? (Whose instructions was he following? OR, did he recognize some element of risk for father?)
- **Court concludes that lawyer failed to provide "independent advice" to father, thereby making it impossible to conclude that transaction was the product of father's "own free will."**
- **Sets aside original transaction as "improvident"**

Legal Implications: Failure to Recognize Ambivalence



2004. Photos with permission from Fethard.com

Legal Implications of Ambivalence

Common Ground in Case Studies?

- In *Trout & Carroll* cases, financial authority -- financial loss -- was complete; *but* good care/no indication physical harm
- In *Trout & Carroll* cases, attorneys testified that key transaction was made with **"informed consent"** of elder
- In *Trout & Carroll* cases, attorneys saw no red flags regarding role of younger family members
- In *Trout & Carroll* cases, attorneys called to court to explain own roles in facilitating transactions
- **Lawyers have professional roles as "counselors at law" – but how to recognize grounds for counseling if no acknowledgement of potential for ambivalence?**

Common Grounds in Case Studies?

- All 3 cases: older adult is 75+ in age
- In *Trout & Good Daughter* cases, banks & daughter seemed to recognize potential for financial abuse, but initially took little action
- In *Trout & Good Daughter* cases, younger family members treated older adult as entitled to make financial decisions even when elder's financial security was affected
- In *Carroll & Good Daughter* cases, family dynamic part of picture – contributing to **ambivalence** about their parent?

Related Studies

Older Adults' Access to Legal Information, Advice and Representation:
Northern Ireland and U.S.

2009 Northern Ireland Study

- Subhajit Basu (School of Law) & Joe Duffy (School of Sociology, Social Policy & Social Work) at Queens University, Belfast, Northern Ireland
- Commissioned by Changing Ageing Partnership (CAP), with funding from Atlantic Philanthropies

Northern Ireland Study: Conclusions

- Need for improved communication between medical and social care professionals and legal profession at critical points, such as early point of dementia
- Legal System needs to recognize acute pressures felt by carers
- Need for information & signposting in facilities attended by older people
- Need for jargon-free, understandable information
- Need for specialized legal services, especially for marginalized or socially excluded seniors
- Improved legal education for future attorneys re: older adults
- More affordable legal services – including pricelists
- Access to legal services to those already in residential care
- Targeted development of internet-based sources of legal information for older adults

NI Study: Intriguing Statements

- **"Fear of alienating" family members by seeking legal advice** (Focus Group Respondents)
- "When an older person is in potentially abusive situation either at home or in residential care, and has no means to contact solicitor, it is acknowledged by most of the service providers that it becomes very difficult to provide help." (Service Provider Interview Respondent)
- Reluctance to involve social services because of perception that they "will take person into care" (Older Adult Interview Respondent)
- "[C]aring for dementia sufferer is exhausting and most carers don't have the energy to even consider legal rights, never mind enforce them." (Focus Group Respondent)
- **"Many older people . . . may be unaware that [legal] advice is needed."** (Older Adult Interview Respondent)

Conclusion

Lessons and Future Action

Potential Common Goals

- **Better awareness potential ambivalence & recognition of implications in care-giving relationships**
- **More effective laws/policies/strategies for intervention & prevention**
 - **Ireland**
 - *Fresh slate?*
 - *Example: Should financial institutions have "safe harbor" when reporting/cooperating/intervening in suspected abuse?*
- **Facilitate advice giving, better tailored to ambivalent nature of care-giving relationships**
- **Reduce potential for harm, including financial loss**

Comments & Contact Welcome:

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Additional Selected Resources

- Basu & Duffy, "Providing Legal Information and Advice to Older People," *European J. Law & Technology* (Vol. 1, Issue 3, 2010), detailing N.I. study <http://ejlt.org//article/view/2/82>
- Gordon, *Mrs. Astor Regrets* (Houghton Mifflin NY, 2009), detailing Brooke Astor case, including long history of ambivalent relationship with adult son
- Pearson & Cowart, *The Law of Financial Abuse & Exploitation* (Bisel, Philadelphia, 2011), using Pennsylvania case & statutory law to examine abuse against resources of older adults
