
Book reviews

Editor: Judge Alan Wilson SC

UNCONSCIONABLE CONDUCT – THE LAWS OF AUSTRALIA

Unconscionable Conduct – The Laws of Australia by Vout P (ed): 2005, Lawbook Co., ISBN 0455222711. Pages: 572. Price: \$152.95, softcover.

The expression “unconscionable conduct” has been said by the High Court to be misleading for a number of reasons. No cause of action exists simply because conduct is unconscionable, and neither is there an equitable defence simply because conduct can be described in that way. Just because conduct is not unconscionable does not mean it does not give rise to rights that may be unconscionable to enforce (*Tamwar Enterprises Pty Ltd v Cauchi* (2003) 217 CLR 315). As confusing as that may sound, this book is not.

This is not a standard text on unconscionability: Vout is not the author of the book, but its editor. Hence, it resembles a compendium of cases and materials that might be published on a given topic. However, there are no lengthy case excerpts and no compilations of material.

Conveniently, each paragraph begins with a statement of the principle of law with which it deals. In that respect, the layout is similar to older works, with an initial statement of a proposition – the kind of thing found in the likes of “Bowstead on Agency”. I have always found that a short, succinct and pithy statement of the law not only directs the reader’s mind to the important point under consideration, but is also a useful tool for persuading a court that the proposition has substance, and should be followed.

It was clearly the intention of the editor and the authors of the various topics to model the book on the format used in *The Laws of Australia*. This is done even to the point of applying the same paragraph numbering system. However, not all areas covered in the section “Unfair Dealing” in *The Laws of Australia* are covered here and the numbering system therefore has some gaps. At first glance, the set out is disconcerting but it becomes clear the book is intended to be an adjunct to *The Laws of Australia*. Once this is understood, the format becomes easier to understand.

As Justice Kirby quite rightly asserts in his foreword: “*This book will prove a marvellous research tool. It is comprehensive, analytical and well presented.*” Its emphasis is upon statutory unconscionable conduct, but is certainly not limited to it. Misrepresentation, estoppel, duress, undue influence and unconscionable dealing are thoroughly canvassed, with a plethora of authority. Further references to *The Laws of Australia* are helpfully noted.

Rather than a separate chapter on the remedies available for each type of conduct, each section has its own. It is completely apt, for example, to deal with the complexities of remedy available for estoppel at the same place as the topic itself. Shaping orders on the basis of reliance rather than detriment requires its own considerations not relevant to other unconscionable conduct. *The Laws of Australia* has, as is readily pointed out in the book, been a guiding format. An advantage of this book is that you do not have to go to the expense of purchasing *The Laws of Australia*.

Unconscionable Conduct will be a good acquisition for any practitioner looking for a solid reference work in the area.

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DISPUTES AND DILEMMAS IN HEALTH LAW

Disputes and Dilemmas in Health Law by Freckelton I and Petersen K (eds): 2006, The Federation Press, ISBN 1862875537 (from Jan 2007: 9781862875531). Pages: 698. Price: \$125.00, softcover.

Disputes: “reproductive” human cloning unacceptable; cloning for “therapeutic” purposes full steam ahead; sourcing stem cells from human embryos no smooth road; freedom in research versus the moral status of an embryo.