

## Unconscionable Conduct (2nd edn)

Paul Vout (ed), *Unconscionable Conduct, The laws of Australia (2nd edn)*, 2009, Lawbook Co, pb \$159.

Unconscionability probably evokes in a lawyer's mind the case of the elderly Amadios who, with little English, mortgaged their house to guarantee a son's ill fated business; or perhaps *Garcia's case*, where a court overturned a wife's guarantee for her husband on the grounds of poor advice from the bank. In fact, since ancient times equity has allowed the courts to intervene in a contract where it can be demonstrated there has been a blatant misuse of power, or obviously inadequate consideration. In modern times the courts are even more willing to consider power imbalances and bad behaviour when judging whether a contract should be enforceable (or even re-written), particularly by force of a range of provisions under the commonwealth *Trade Practices Act*, as is outlined in this quite comprehensive publication. What constitutes unconscionable behaviour is fairly wide and this book refers, for example, to estoppel and mistake, along with some intriguing categories of duress.

This book is basically the printed version of unconscionability topics from the electronic compendium of *The Laws of Australia*, and as such represents an indexed outline of unfair contractual behaviour assembled by various expert authors. Words and phrases used in the text are explained and specifically referenced, cases are up to date to the start of 2009, and there is an excellent table of legislation detailing commonwealth legislation (in particular ss51AA–51AC and s52 of the *TPA*) and individual state statutes. Each chapter is written in a manner that allows the reader to readily identify the nature and elements of each topic, defences and ultimate remedies.

While there is still some speculation as to how "unconscionable" statutes may be progressively interpreted, statutory intervention at both commonwealth and state level indicates that legal advisers have various tools with which to unravel an unfair contract, while needing at the same time to ensure their clients are aware of potential pitfalls – particularly when dealing with illiterate, poorly educated or stressed parties who may be pressured into an agreement they later see as unfair. Unconscionability is an important subset of contract law; practitioner and student alike will find this book to be a valuable first resource.

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## The Queen's Other Realms

Peter Boyce, *The Queen's Other Realms*, 2009, The Federation Press, hb \$59.95.

This is an interesting and well-written work on a topic that has not been the subject of as much attention as it deserves: the extraordinary fact that the British monarchy has managed to survive not only in its home, but also in many of the former constituent parts of the British Empire, and how it has been adapted in those countries.

The author confines his work to the three settler dominions of Canada, Australia and New Zealand and their associated states and provinces.

This restriction is understandable, although it might be regretted that Papua New Guinea, for example, was not selected as a seriously different comparator.

The book takes the form of an extended essay on various subjects connected with the topic that occur to the author as interesting and warranting a comparison among his three nations.

I think his judgment on this was very sound. His essay repays reading by anyone with even a passing interest in the subject.

Unfortunately there are some errors of detail. Some of these are quite minor (for example, Malcolm Fraser sought a double dissolution in 1983, not 1982), while a few are not (the crown has not been removed from the Canadian Arms).

The author points out that there is a crisis of legitimacy for the monarchy, so far from its home and in a democratic age. This was exemplified for me in Canada in late 2008, when the prime minister declared that he would use all legal means to avoid a looming no-confidence motion.

It is not intuitively obvious that a monarchy will operate well in the absence of a monarch. The moral appeal to politicians, embodied in a noble and gracious monarch, to engage in only the most honourable actions is too often disregarded in the ex-colonies because there is no monarch there.

With vice-regal representatives now largely devoid of security of tenure, in fact as well as in law, perhaps the monarchy would be most honoured by being graciously extricated from the political system except in its home, where there is a prestigious and irremovable monarch to keep the monarchical spirit alive.

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