

Unconscionability

Ground of relief whenever one party by reason of some condition or circumstance is placed at a special disadvantage vis-à-vis one another and unfair or unconscientious damage is taken of the opportunity therefore created (***Commercial Bank of Australia Ltd v Amadio (1983)***)

Elements (***Amadio***)

1. The weaker party was under a *special disadvantage* vis a vis the stronger party (which affected their capacity to judge their own best interest)
2. To the extent that there was *no equality of bargaining power* between them
3. The stronger party must have been *aware to the disability*, and
4. It must be unconscientious or *unconscionable* for the stronger party to secure assent to the agreement in the circumstances.

Another element that increases the burden on the plaintiff (***Kakavas***)

5. Predatory state of mind

Factors include (***Blomley v Ryan***)

1. Poverty of any kind
2. Sickness
3. Age
4. Sex
5. Infirmary of body or mind
6. Drunkenness
 - a. Not enough to be merely drunk
7. Illiteracy
8. Lack of explanation when necessary
9. Lacked advice and assistance plainly necessary to be any reasonable degree of equality (***Amadio***)