

STEPS 1-3 are from Deane J in *Commercial Bank of Australia v Amadio*

STEP 1- Is there a SPECIAL DISADVANTAGE?

Can be CONSTITUTIONAL or SITUATIONAL (*ACCC v Stanton Holdings*)

CONSTITUTIONAL:

'sickness, age, sex, infirmity of body or mind, drunkenness, illiteracy or lack of education, lack of assistance of explanation where necessary' (Fullagar J in *Blomley v Ryan*)

E.g. in *Amadio*- advanced age, poor language skills lack of understanding of surrounding circumstances, and absence of advice where plainly necessary.

NOTE- list is open to novel additions so be mindful of proclivities on the facts.

SITUATIONAL:

Infatuation when it amounts to strong emotional dependency and can be manipulated (*Louth v Diprose*).

BUT NOT when it amounts to anything less than emotional dependency (*Mackintosh v Johnson*).

NOT the gambling addiction of a 'high-roller' (*Kakavas v Crown Melbourne*).

BUT perhaps the gambling addiction of someone with an additional disadvantage (see above).

STEP 2- Is there KNOWLEDGE of the disadvantage?

From Mason J in *Amadio*, a party must have EITHER:

ACTUAL knowledge;

OR awareness of the POSSIBILITY that the situation may exist;

OR awareness of FACTS that would raise the possibility in the mind of a reasonable person.

From Mason J in *Kakavas*, WILFUL IGNORANCE (see above, 2 and 3) may constitute sufficient knowledge.

Examples of ACTUAL knowledge:

- a) *Commercial Bank of Australia v Amadio*- Bank knew of Amadio's advanced age, lack of understanding, and poor language skills;