

Rethinking Unconscionable Bargains:

Intersectionality and Vulnerability in English Contract Law

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Research Question

Should and how can the doctrine of unconscionable bargains in English contract law be reframed to address intersectional disadvantage and structural vulnerability?

Conclusions

This paper has argued that the rigid English doctrine of unconscionable bargains is too narrow to address cases where overlapping forms of structural disadvantage undermine meaningful consent. The existing three-limbed test focuses heavily on procedural individual moral culpability, leaving many substantively unfair transactions beyond its reach.

Drawing on intersectionality theory and comparative insights from Australian jurisprudence, the paper proposed a reformed three-part test. The revised framework incorporates a broader conception of vulnerability, a constructive knowledge requirement on stronger parties, and a positive obligation to take reasonable steps to ensure fairness. Importantly, the doctrine would remain exceptional, applying only where the cumulative effect of vulnerability, knowledge, and oppressive terms renders enforcement unconscionable.

Such reform would align with the doctrine's role as a safety net in contract law capable of responding to structural disadvantage where no other vitiating factor is present.

Reflections

- Learned how to narrow a broad theoretical idea into a focused research question and manageable project scope.
- Learned how to balance technical doctrinal analysis with interdisciplinary perspectives, particularly critical theory.
- Recognised the challenges of anticipating and responding to counterarguments.

Methodology

Step 1: Review of case law.

Examined leading English cases on unconscionable bargains to understand how the three-limbed test (serious disadvantage, exploitation, oppressive terms) has been applied in practice.

Step 2: Review of secondary literature.

Engaged with academic commentary on contract law, equity, and critical legal theory to identify debates around fairness, vulnerability, and autonomy in private law.

Step 3: Application of intersectionality theory.

Used intersectionality as an analytical lens to evaluate the limits of the current doctrine, particularly in recognising structural and overlapping forms of disadvantage.

Step 4: Comparative analysis.

Studied Australian jurisprudence on unconscionable conduct to explore how courts elsewhere have imposed positive duties on stronger parties and whether similar reforms could be adapted for English law.

Step 5: Formulate and propose reformed test.

Synthesised insights from English law, intersectionality theory, and comparative analysis to design a revised doctrinal test balancing fairness, commercial certainty, and equitable intervention.

