

Commercial Bank of Australia v Amadio (1983) 151 CLR 447

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Facts

- The Amadios have very poor English
- They guaranteed their son's debt to the bank
- The bank did not tell them there was no limit to the liability, they thought it was \$50,000
- The bank knew the son's financial position was precarious
- The bank did not recommend they seek independent advice
- The son's business failed, and the bank tried to enforce the guarantee

Held

- It was unconscionable due to factors #3 - #5
- *Mason J*: "Relief on the ground of unconscionable conduct will be granted when unconscientious advantage is taken of an innocent party whose will is overborne so that it is not independent and voluntary, just as it will also be granted when such advantage is taken of an innocent party who though not deprived of an independent and voluntary will, is unable to make a worthwhile judgment as to what is in his best interests."
- In the case of unconscionable conduct, the Courts can either order rescission of the contract, refuse to order specific performance, or award damages if there has been a statutory breach.
- *Gibbs CJ*: The appellant (bank) should fail only because they failed to disclose matters they should have disclosed, e.g. the actual cost of the liability
- *Deane J*: "The whole transaction should properly be seen as flowing from the special disability which was evident to the bank and as being unfair, unjust and unreasonable"

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