

BUILDING AND CONSTRUCTION LAW JOURNAL

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Autonomy, unconscionability and entitlement in the operation of performance bonds in Australia – *Veno Panicker*

This article examines the circumstances in which parties should be entitled to call on performance bonds held as security for performance during construction projects in Australia. Consistent with the line of authorities following Bachmann, it is submitted that the need for certainty, particularly in light of current world markets, warrants a very narrow reading of the exceptions to the “autonomy principle”. Further, it is contended that a necessary adjunct to this narrow reading is to limit the application of statutory unconscionability to circumstances tantamount to fraud. By adopting this framework, it is concluded that greater clarity as to notions of autonomy, unconscionability and entitlement will further safeguard the effective commercial use of such instruments.	230
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The value is whatever I say it is: Determinations by the principal under construction contracts – *Trevor Thomas*

This article considers situations where a construction contract is administered by either a principal or a principal’s agent. It concerns the extent to which determinations which purport to be “final and binding” can be disputed by a contractor and opened up, reviewed and revised by an arbitrator or a court. The different approaches taken in England and Australia are reflected upon, including the Australian dichotomy between determinations calling for a “discretionary judgment” and those involving a “mechanical exercise”.	246
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