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ARTICLE

The doctrine of unconscionable bargains in equity: Potent sword for estate lawyers – *Barbara Hamilton*

The decision in *Wittman v Wittman* [2006] QSC 142 clearly illustrates the difference between the doctrine of unconscionable bargains and the doctrine of undue influence in equity. *Wittman* reinforces the High Court's decision in *Bridgewater v Leahy* (1998) 194 CLR 457 in making clear that the doctrine of unconscionable bargains is a potent tool for estate lawyers in setting aside "murky" transactions entered into prior to death after death for the benefit of the estate. This is particularly so since the recognition of "emotional dependence" as a special disability within the terms of the unconscionable bargains doctrine. This article also illustrates the difference between the equitable doctrine of undue influence and the doctrine of undue influence in estate cases. This article suggests equitable doctrines should be applied in estate cases as the burden of proof with the estate doctrine means it is practically unenforceable. 180

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