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ARTICLES

Unconscionable conduct in equity and under statute: The Australian Consumer Law and the Lux decision – *Hayden Fielder*

The test for what constitutes “unconscionable” conduct under s 21 of the Australian Consumer Law (ACL) changed significantly when the Full Court of the Federal Court of Australia handed down its 2013 decision in *ACCC v Lux Distributors Pty Ltd*. Conduct must now be assessed by reference to a “norms and standards” test in determining whether there has been a contravention of s 21. The extent to which this new test differs with the previous “moral obloquy” test is somewhat unclear. This article will examine and compare the current tests applied by the courts under the ACL and in equity when assessing whether conduct is unconscionable. Further, it will outline the circumstances in which an action under the ACL may be more favourable than an action in equity, particularly in regard to the different remedies available. 161

Government exemption from competition and consumer law: Has Harper patched the holes? – *Nick Seddon*

At all levels of government in Australia (with some exceptions), there is immunity from competition law and from the Australian Consumer Law when government bodies are engaged in procurement for governmental purposes. This is because government bodies are bound only insofar as each “carries on a business”. The final Harper Report has recommended that the words “carries on a business” be replaced by “in trade or commerce”. If implemented, this recommendation will remove a serious flaw in the way in which the legislation has operated. 181

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