

# LAWS70383 Commercial Unconscionability

<b>Credit Points:</b>	12.5
<b>Level:</b>	7 (Graduate/Postgraduate)
<b>Dates &amp; Locations:</b>	This subject is not offered in 2016.
<b>Time Commitment:</b>	Contact Hours: The total class time is between 24 and 26 hours. Total Time Commitment: The pre-teaching period commences four weeks before the subject commencement date. From this time, students are expected to access and review the Reading Guide that will be available from the LMS subject page and the subject materials provided by the subject coordinator, which will be available from Melbourne Law School. Refer to the Reading Guide for confirmation of which resources need to be read and what other preparation is required before the teaching period commences.
<b>Prerequisites:</b>	None
<b>Corequisites:</b>	None
<b>Recommended Background Knowledge:</b>	Applicants without legal qualifications should note that subjects are offered in the discipline of law at an advanced graduate level. While every effort will be made to meet the needs of students trained in other fields, concessions will not be made in the general level of instruction or assessment. Most subjects assume the knowledge usually acquired in a degree in law (LLB, JD or equivalent). Applicants should note that admission to some subjects in the Melbourne Law Masters will be dependent upon the individual applicant's educational background and professional experience.
<b>Non Allowed Subjects:</b>	None
<b>Core Participation Requirements:</b>	The Melbourne Law Masters welcomes applications from students with disabilities. The inherent academic requirements for study in the Melbourne Law Masters are: The ability to attend a minimum of 75% of classes and actively engage in the analysis and critique of complex materials and debate; The ability to read, analyse and comprehend complex written legal materials and complex interdisciplinary materials; The ability to clearly and independently communicate in writing a knowledge and application of legal principles and interdisciplinary materials and to critically evaluate these; The ability to clearly and independently communicate orally a knowledge and application of legal principles and interdisciplinary materials and critically evaluate these; The ability to work independently and as a part of a group; The ability to present orally and in writing legal analysis to a professional standard. Students who feel their disability will inhibit them from meeting these inherent academic requirements are encouraged to contact the Disability Liaison Unit: <a href="http://www.services.unimelb.edu.au/disability/">www.services.unimelb.edu.au/disability/</a>
<b>Contact:</b>	For more information: Email: <a href="mailto:law-masters@unimelb.edu.au">law-masters@unimelb.edu.au</a> ( <a href="mailto:law-masters@unimelb.edu.au">mailto:law-masters@unimelb.edu.au</a> ) Phone: +61 3 8344 6190 Website: <a href="http://www.law.unimelb.edu.au/masters">www.law.unimelb.edu.au/masters</a> ( <a href="http://www.law.unimelb.edu.au/masters">http://www.law.unimelb.edu.au/masters</a> )
<b>Subject Overview:</b>	<p>'Unconscionability' increasingly underpins a number of vitiating factors, excuses, complaints or 'liabilities' in contract and commercial law. It is now a large and highly relevant subject. This subject explores the nature, development and meaning of 'conscience', and conscience-based reasoning, in connection with legal commercial relations in Anglo-Australasian law. It combines both theoretical and doctrinal analysis of core areas of contract and commercial law, including misrepresentation, estoppel, unfair pressure (or duress), undue influence, unconscionable dealing, and the Yerkey/Garcia 'special equity' doctrine. It also explores 'statutory' unconscionability, for example under Part 2-2 of Chapter 2 of the Australian Consumer Law. Through these doctrines and statutory provisions, the subject aims to expose and dissect core values, themes and assumptions expressed and administered by contract and commercial law in Australia (and beyond). The lecturer has published extensively in Australia and overseas on most of the topics canvassed in the subject. He has won several Melbourne Law School teaching awards or honours, as well as a national teaching excellence award (from the New Zealand government).</p> <p>Principal topics will include:</p> <ul style="list-style-type: none"> <li># Introduction to the classical 'liberal' conception of contract</li> </ul>

	<ul style="list-style-type: none"> <li># The 'values' (or normative preferences) of modern contract/commercial law</li> <li># 'Transformation' themes in contract/commercial law</li> <li># The nature, role(s) and meaning of 'conscience' in modern law</li> <li># Equitable estoppel (post Waltons Stores)</li> <li># Unconscionable dealing</li> <li># Duress</li> <li># Undue influence</li> <li># The Yerkey/Garcia 'special equity' doctrine</li> <li># Misrepresentation and non-disclosure (select topics)</li> <li># 'Legal contractual exploitation'</li> <li># 'Transactional neglect'</li> <li># Statutory unconscionability.</li> </ul>
<b>Learning Outcomes:</b>	<p>A student who has successfully completed this subject should:</p> <ul style="list-style-type: none"> <li># Possess critical knowledge and understanding of the values and assumptions that inform or are advanced by the core concepts, principles, doctrines, rules, etc of Anglo-Australian contract/commercial law according to the classical liberal conception of contract, and the extent to which those values and assumptions are "essentially contestable";</li> <li># Be aware of the development, nature and limits of "conscience" as administered by Anglo-Australasian courts in relation to modern commercial activity;</li> <li># Appreciate what "conscience"/"unconscionability" means, and how it functions, in relation to modern contract/commercial law and contractual/commercial activity;</li> <li># Know and understand the juristic bases and criteria of a number of discrete conscience-based doctrines or bodies of law (eg, equitable estoppel, unconscionable dealing, duress, misrepresentation, undue influence, Yerkey/Garcia special equity rules, and current statutory unconscionability schemes);</li> <li># Appreciate the "moral" dimension of contract and contractual/commercial relationships;</li> <li># Understand the nature and criteria of "justice", particularly as it affects contracts and contractual/commercial relations; and</li> <li># Know and understand the meaning and criteria of interpersonal "victimisation" or "exploitation" in relation to the validity (or otherwise) of commercial transactions.</li> </ul>
<b>Assessment:</b>	Take-home examination (100%) or 10,000 word research paper (100%) on a topic approved by the subject coordinator
<b>Prescribed Texts:</b>	Core subject materials will be provided free of charge to all students. Some subjects require further texts to be purchased. Details regarding any prescribed texts will be provided prior to the commencement of the subject.
<b>Breadth Options:</b>	This subject is not available as a breadth subject.
<b>Fees Information:</b>	Subject EFTSL, Level, Discipline & Census Date, <a href="http://enrolment.unimelb.edu.au/fees">http://enrolment.unimelb.edu.au/fees</a>
<b>Links to further information:</b>	<a href="http://www.law.unimelb.edu.au/subject/LAWS70383/2012">www.law.unimelb.edu.au/subject/LAWS70383/2012</a>
<b>Notes:</b>	This subject has a quota of 30 students. Please refer to the website <a href="http://www.law.unimelb.edu.au/masters/courses-and-subjects/subjects/subject-timing-and-format">www.law.unimelb.edu.au/masters/courses-and-subjects/subjects/subject-timing-and-format</a> ( <a href="http://www.law.unimelb.edu.au/masters/courses-and-subjects/subjects/subject-timing-and-format">http://www.law.unimelb.edu.au/masters/courses-and-subjects/subjects/subject-timing-and-format</a> ) for further information about the management of subject quotas and waitlists.
<b>Related Course(s):</b>	Graduate Diploma in Legal Studies Master of Commercial Law Master of Laws Master of Private Law