9. Unfairness: undue influence, non-commercial guarantees, unconscionable bargains

This chapter examines three doctrines that allow a party to set aside a contract: (i) undue influence, which deals with the abuse of relationships of trust and confidence; (ii) a doctrine protecting non-commercial parties who guarantee another’s debts; and (iii) unconscionable bargains, which deals with the exploitation of bargaining weaknesses. It addresses the following questions: (1) What is the justification for these doctrines? (2) What is the burden of proof for undue influence, unfair non-commercial guarantees, and unconscionable bargains? (3) In practice, how is each element of the respective burdens of proof satisfied? (4) Is the law satisfactory? If not, how might it be developed in the future?
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