

Interpreting Insurance Contracts: Fairness and Reasonableness

“A court may not refuse to enforce contractual terms on the basis that the enforcement would, in its subjective view, be unfair, unreasonable or unduly harsh. It is only where a contractual term or its enforcement is so unfair, unreasonable or unjust that it is contrary to public policy that a court may refuse to enforce it. The public policy considerations are informed by the wide range of constitutional values,” writes Donald Dinnie in *Norton Rose Fulbright’s Insurance*.

“Courts do not make decisions about the enforcement of contractual provisions on the basis of abstract considerations of good faith, reasonableness or fairness. They do so on the basis of established legal rules. Good faith, reasonableness and fairness form the basis of our law but are not themselves, legal rules.”

“The Constitutional Court in *Barkhuizen* said that, while public policy imports notions of fairness, justice and reasonableness into our law, parties are generally required to honour contractual obligations that they have freely and voluntarily undertaken.”

Read the article.