

EPISODE 15

WHY DO PARTIES OPPOSE RESCISSION APPLICATIONS?

Understanding the Balance Between Finality and Fairness in Civil Litigation

Estimated Reading Time: 6–7 minutes

Introduction

Should a court judgment always be final?

Or should there be circumstances where a court is allowed to revisit one of its own decisions?

These questions lie at the heart of rescission proceedings.

Every legal system values certainty and finality.

At the same time, every justice system recognises that there may be exceptional situations where fairness requires a judgment to be reconsidered.

This episode explains what rescission is, why parties oppose it, and why the balance between finality and fairness matters to every citizen.

What Is a Rescission Application?

A rescission application is a legal process through which a party asks a court to set aside or reconsider an existing judgment under circumstances recognised by law.

The law provides for rescission in specific situations, for example where a judgment may have been granted by default, where procedural requirements were not met, or where other recognised legal grounds exist.

A rescission application is **not** simply an opportunity to argue the case again because one party is dissatisfied with the result.

It is a recognised legal remedy governed by established legal principles.

Why Do Parties Oppose Rescission?

Parties commonly oppose rescission applications for a variety of reasons.

For example, they may argue that:

- the original judgment was correctly granted;

- the legal requirements for rescission have not been met;
- the matter should remain final;
- reopening the dispute would cause prejudice;
- the applicant has another legal remedy available.

The court must then consider the applicable legal principles and decide whether rescission should be granted.

The Case Study

One of the important issues arising in my own litigation concerns an application for rescission.

This raises broader educational questions:

- Why would a party oppose rescission?
- When should a court reconsider an earlier judgment?
- How should courts balance legal certainty with fairness?
- What role does new evidence play where it becomes available after judgment?

These questions arise in many areas of civil litigation and illustrate why rescission is an important legal remedy.

This episode uses those questions as an educational case study and does **not** determine the outcome of any particular proceedings.

Why This Matters

Court judgments affect people's lives.

They may determine:

- property rights;
- financial obligations;
- business interests;
- employment;
- family relationships.

For that reason, the legal system seeks to balance two important values:

- finality; and
- fairness.

Understanding rescission helps citizens appreciate how courts attempt to achieve that balance.

OUBAS Analysis

Finality brings certainty.

Fairness protects justice.

Neither principle should automatically outweigh the other.

OUBAS believes that every legal system should provide mechanisms to correct decisions where the law permits, while also recognising the importance of bringing disputes to an end.

The challenge is finding the appropriate balance.

Public confidence is strengthened when courts clearly explain why a judgment should remain final—or why the interests of justice require it to be reconsidered.

Understanding that balance is an essential part of legal literacy.

OUBAS Reform Proposal

OUBAS proposes that greater public education be provided on:

- the purpose of rescission;
- the legal grounds upon which rescission may be granted;
- the distinction between appeals and rescission;
- the importance of finality in litigation; and
- the circumstances in which fairness may justify reopening a judgment.

An informed public is better equipped to understand both the opportunities and the limits of this important legal remedy.

Key Lessons

After reading this episode you should understand that:

- rescission is a recognised legal remedy;
 - rescission is different from an appeal;
 - courts balance fairness against the need for finality;
 - parties often oppose rescission for legitimate legal reasons; and
 - understanding the legal principles helps citizens participate more effectively in the justice system.
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OUBAS Knowledge Check

1. What is the purpose of a rescission application?

- ☐ To ask a court to reconsider or set aside a judgment where recognised legal grounds exist.
 - ☐ To begin a criminal case.
 - ☐ To increase legal costs.
 - ☐ To replace an appeal.
-

2. Is rescission the same as an appeal?

- ☐ Yes
 - ☐ No
-

3. Which two important principles are balanced in rescission proceedings?

- ☐ Speed and cost
 - ☐ Finality and fairness
 - ☐ Contracts and property
 - ☐ Civil and criminal law
-

4. Can parties legitimately oppose a rescission application?

- ☐ Yes
 - ☐ No
-

5. Why is understanding rescission important?

- ☐ It helps people understand one of the legal mechanisms for correcting judgments where the law permits.
 - ☐ It guarantees that every judgment can be reopened.
 - ☐ It replaces ordinary court procedures.
 - ☐ It eliminates appeals.
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OUBAS Public Sentiment Survey

Help OUBAS understand public opinion.

1. Before reading this episode, did you know the difference between an appeal and a rescission application?

- ☐ Yes
 - ☐ No
-

2. Do you believe courts should have the power to revisit judgments in appropriate circumstances?

- ☐ Strongly Agree
 - ☐ Agree
 - ☐ Neutral
 - ☐ Disagree
 - ☐ Strongly Disagree
-

3. Which principle do you think is more important?

- ☐ Finality
 - ☐ Fairness
 - ☐ Both should be balanced equally
-

4. Have you ever been involved in litigation where a judgment was challenged after it had been granted?

- ☐ Yes
- ☐ No
- ☐ Prefer not to say
-

5. What aspect of rescission would you like OUBAS to explain in greater detail?

OUBAS Innovation Challenge

Every justice system must balance certainty with fairness.

If you were asked to improve the rescission process, **what one change would make it more understandable, more accessible or more effective for ordinary citizens while preserving legal certainty?**

The best ideas may be featured in future **OUBAS Reform Papers** and discussed within the AAP professional community.

Share Your Experience

Have you ever applied for, opposed or observed a rescission application?

What did you learn from the experience?

What would you improve?

Your experience contributes to the **OUBAS People's Index** and helps educate others.

Continue Your Learning

 Visit the **OUBAS Bookstore** for books exploring civil procedure, appeals, rescission, insolvency and constitutional accountability in greater depth.

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Next Episode

Episode 16

Can Decisions of Higher Courts Ever Be Challenged?

When is a judgment truly final?

Can later developments give rise to new legal proceedings?

How does the hierarchy of courts interact with new causes of action?

Join us in Episode 16 as we explore one of the most challenging questions in constitutional and appellate law.

OUBAS exists to educate, stimulate informed discussion and inspire practical solutions.

Knowledge grows when it is shared. Institutions improve when people participate.

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