



# Unconscionable Contracts: From Hollywood Deals to Cruise Ship Contracts

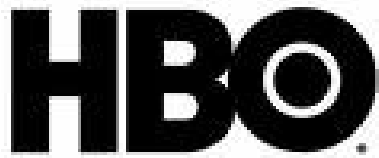
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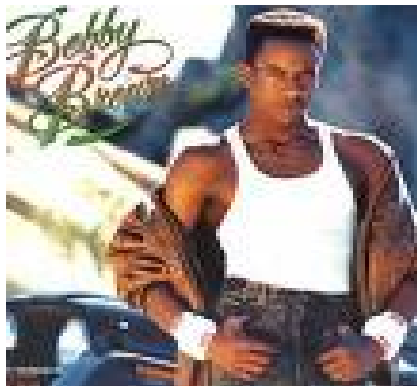
# My background

- Companies I've represented:



# Other representations:

- Hey, it was a living!



# Standard Form Contracts

- As consumers, we rarely experience the common law contract model of “assent”
- Instead, we get “signitus” from form K’s



"I slept with your wife."

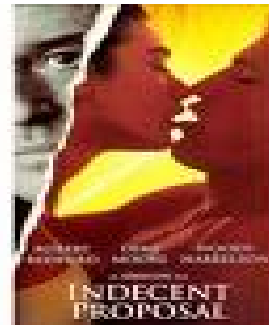
# General Rule on Form Contracts: Enforceable!

- Contract scholars posit that we “assent” to form contracts, as long as they are not far outside of reasonable expectations



# Unconscionable Contracts

- At common law, the agreement had to be one that “no man in his right mind would willing assent to.”
- This “shock the conscience” standard was strict at common law



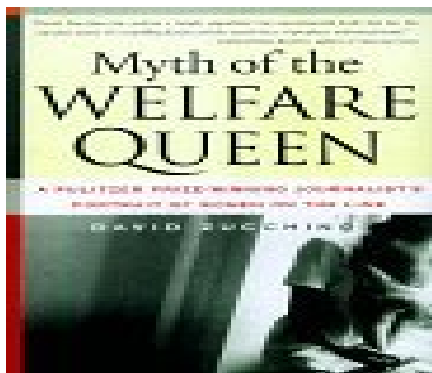
# Modern Standard

- Begins with UCC 2-302, which says courts can refuse to enforce unconscionable contracts



# Modern Standard

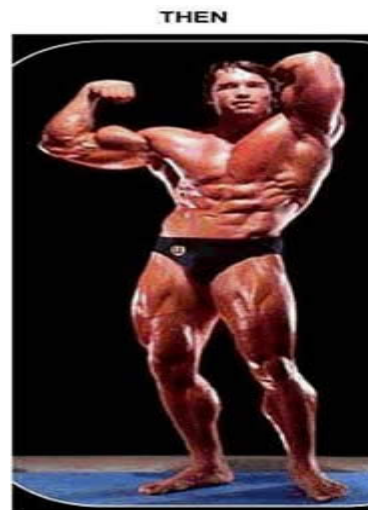
- Williams v. Walker-Thomas focused on absence of reasonable choice, combined with grossly unfair terms
- Two prongs: procedural and substantive unconscionability





# What could be considered unconscionable?

- Few good examples exist!
- Usually a losing battle as a defense
- Consumer protection law has gaps



"I'll be back!"



"Oh, my back!"

# No-class action and restrictive arbitration unconscionable

- California courts are finding restrictive arbitration clauses and no class action provisions unconscionable

T-Mobile



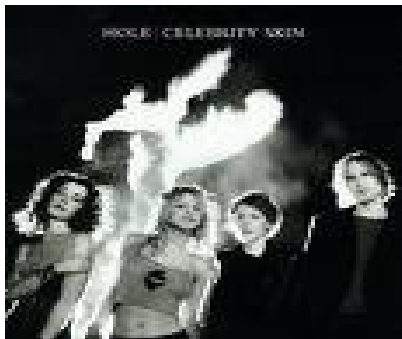
# Entertainment and Unconscionable Contracts

- Long history of abusive contract practices by record labels



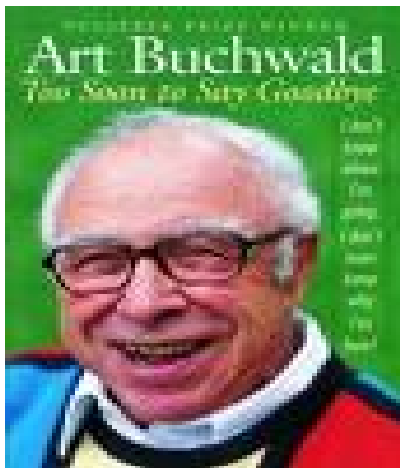
# Courtney Love Suit

- A challenge to the entire music industry



# Overreaching in Contracts leads to Unconscionability Claims

- Net Profit Film Litigation—all those sales, and on profits for the suckers!



# Cruise Ships from Hell

- Route changes
- Arbitration in Florida
- No class actions



# At the end of the day: power disparities

- Consumers want “things”
- Entertainers want deals
- Law does not stop overreaching

