25 Wash. Prac., Contract Law And Practice § 9:6 (3d ed.)

Washington Practice Series TM | November 2023 Update

Contract Law And Practice
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Chapter 9. Ignorance, Unconscionability, and Misconduct Defenses

§ 9:6. Unconscionability—Procedural and substantive

Procedural unconscionability relates to impropriety arising out of the contract formation. [1] This type of unconscionability has been described as eliminating a "meaningful choice" in the bargaining process. [2] It has also been characterized as involving "blatant unfairness in the bargaining process and a lack of meaningful choice." [2.50] It looks at all of the events surrounding the formation of a contact, including the method of bargaining, whether the parties had a reasonable opportunity to comprehend and understand the terms, and whether any material terms were hidden or inconspicuous. [3] In assessing whether the parties lacked equity in bargaining power, courts consider factors like the expertise or sophistication of the parties, which of the parties drafted the contract, and whether the term or provision at issue was separately negotiated or bargained for. [3.50] In addition, a prior course of dealings between the parties and the usage of trade are factors, especially in commercial transactions, which may aid in defining unconscionability. [4] For example, in *Schroeder v. Fageol Motors*, the court found that a contract could be conscionable in spite of a lack of negotiations or the inconspicuous appearance of a limiting clause if, through prior contracts, the parties had established a consistently adhered to policy or if there was a recognized practice within the trade. [5] Thus, it is essential that the court consider the overall circumstances when determining procedural unconscionability. [6] The circumstances that should be considered include "(1) the manner in which the parties entered into the contract, (2) whether the parties had a reasonable opportunity to understand the terms, and (3) whether the terms were hidden in a maze of fine print." [6.10] These factors are not to be applied mechanically, but instead to aid in determining whether the agreement was the result of meaningful choice. [6.20] Neither the fact that the parties had unequal bargaining power, nor the fact that the contract was an adhesion contract —presented on a "take it or leave it" basis—is a sufficient basis by itself to render a contract procedurally unconscionable. [6.25] Instead, the key inquiry is whether one of the parties lacked meaningful choice in entering into the contract. [6.27] In cases where the terms of the agreement were available only *after* the agreement was entered into, it weighs against a finding that there was meaningful choice *before* the agreement was signed. [6.30] Refusal to negotiate is not per se an unconscionable practice. [6.50]

Substantive unconscionability, on the other hand, may be found in cases where a clause or term in the contract is one-sided, overly harsh, or includes a gross disparity. [7] The contract or term therein must violate the reasonable expectations of the parties. [8] The courts have used phrases such as "shocking to the conscience," "monstrously harsh," and "exceedingly calloused" to define this type of unconscionability. [9] In analyzing substantive unconscionability, courts will focus on the effect the contractual provision has on existing statutorily established rights and the policies underlying those statutory rights, as well as assessing the unfairness of the contract term or result. [9.30] "A contract provision becomes substantively unconscionable when it eliminates otherwise established statutory rights and is one sided, benefiting the contract drafter, is also not prominently set out in the contract, is not negotiated or bargained for, and provides no benefit to the affected party." [9.50] For example, a class action waiver in an arbitration agreement between employee and employer was found to be substantively unconscionable because it was "used as a tool of oppression to prevent vindication of small but widespread claims." [9.70] Substantive unconscionability also extends to the remedies provisions in a contract. If a remedy is permitted to one party to the contract, but not the other,

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it may render that aspect of the contract so "one-sided" as to become substantively unconscionable. [10] A one-sided remedy —such as giving only one part the right to recover attorney's fees—is not by itself void, but principles of equity may require making it reciprocal rather than one-sided. [10.30] At the same time, the fact that a remedy is granted to one party but not the other may be valid; the test for unconscionability is whether the entire contract is one-sided. [10.50] Thus, absence of reciprocity with respect to one aspect of the contract may be reasonable in light of the contract as a whole. [10.70]

Substantive unconscionability alone can be the basis of a court's refusal to enforce all or part of a contract; [11] however, the Washington Supreme Court has not yet determined whether procedural unconscionability by itself is sufficient [12] although it has said so in dicta. [13] In addition, Division 3 has held that procedural unconscionability alone is sufficient to void an agreement. [14]

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Footnotes

1 Burnett v. Pagliacci Pizza, Inc., 470 P.3d 486, 2020 Wage & Hour Cas. 2d (BNA) 316812 (Wash. 2020) (trial court properly denied motion to compel arbitration of wage dispute where "agreement" was procedurally unconscionable); Mayne v. Monaco Enterprises, Inc., 191 Wash. App. 113, 361 P.3d 264 (Div. 3 2015) (trial court properly found that arbitration clause in original employment agreement was not unconscionable); Romney v. Franciscan Medical Group, 186 Wash. App. 728, 349 P.3d 32, 39 I.E.R. Cas. (BNA) 1618, 24 Wage & Hour Cas. 2d (BNA) 409 (Div. 1 2015) (trial court erroneously found that arbitration clause was unconscionable and therefore unenforceable); Gorden v. Lloyd Ward & Associates, P.C., 180 Wash. App. 552, 323 P.3d 1074 (Div. 3 2014) (trial court properly denied motion to compel arbitration where arbitration clause was procedurally unconscionable); Mattingly v. Palmer Ridge Homes LLC, 157 Wash. App. 376, 238 P.3d 505 (Div. 2 2010) (trial court erred in dismissing home buyer's claim when third-party warranty that limited builder's liability was procedurally unconscionable and unenforceable); Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 210 P.3d 318 (2009), as corrected, (July 16, 2009) (court found that buyers in condominium purchase had limited remedy under agreement that was not unconscionable); Walters v. A.A.A. Waterproofing, Inc., 120 Wash. App. 354, 85 P.3d 389, 20 I.E.R. Cas. (BNA) 1862 (Div. 1 2004), review granted, cause remanded, 153 Wash. 2d 1023, 108 P.3d 1227 (2005) (trial court properly declined to invalidate arbitration clause giving only one party choice of arbitration since contract as a whole was supported by consideration on both sides); Tjart v. Smith Barney, Inc., 107 Wash. App. 885, 28 P.3d 823, 86 Fair Empl. Prac. Cas. (BNA) 1134 (Div. 1 2001) (trial court properly enforced arbitration clause contained in employment agreement); State v. Brown, 92 Wash. App. 586, 965 P.2d 1102 (Div. 2 1998) (no procedural unconscionability where real estate contract vendors' agreement with government provided for a division of surplus proceeds from nonjudicial forfeiture and sale of the property despite claim of government "coercion"). Schroeder v. Fageol Motors, Inc., 86 Wash. 2d 256, 544 P.2d 20, 18 U.C.C.

Rep. Serv. 584 (1975) (clause in contract between buyer and seller of truck which excluded consequential damages was conscionable).

2 Cornelius v. Alpha Kappa Lambda, 19 Wash. App. 2d 862, 502 P.3d 910, 399 Ed. Law Rep. 393 (Div. 1 2021) (trial court improperly denied motion to compel arbitration based on unconscionability in case brought by pledge against fraternity for negligence arising from alleged hazing incident where record on appeal was insufficient to determine legality of agreement); Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 470 P.3d 486, 2020 Wage & Hour Cas. 2d (BNA) 316812 (Wash. 2020); Steven Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 442 P.3d 1267 (Div. 1 2019) affirmed sub nom. Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 470 P.3d 486 (2020) (arbitration provision included in employment contract was part of an adhesion contract, and was therefore unenforceable); Mayne v. Monaco Enterprises, Inc., 191 Wash. App. 113, 361 P.3d 264 (Div. 3 2015) (trial court properly found that arbitration clause in initial employment agreement was not unconscionable); Mattingly v. Palmer Ridge Homes LLC, 157 Wash. App. 376, 238 P.3d 505 (Div. 2 2010); Satomi Owners Ass'n v. Satomi, LLC, 167 Wash. 2d 781, 225 P.3d 213 (2009) (arbitration clause in agreement was neither substantively nor procedurally unconscionable); Townsend v. Quadrant Corp., 153 Wash. App. 870, 224 P.3d 818 (Div. 1 2009), aff'd on other grounds, 173 Wash. 2d 451, 268 P.3d 917 (2012) (arbitration clause was not unconscionable); Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 210 P.3d 318 (2009), as corrected, (July 16, 2009); Adler v. Fred Lind Manor, 153 Wash. 2d 331, 103 P.3d 773 (2004); Johnson v. Cash Store, 116 Wash. App. 833, 68 P.3d 1099 (Div. 3 2003) ("payday loan" properly held procedurally unconscionable; contract was so one-sided as to lack meaningful choice, debtor lacked bargaining power, and loan was at grossly excessive interest rate); Tjart v. Smith Barney, Inc., 107 Wash. App. 885, 28 P.3d 823, 86 Fair Empl. Prac. Cas. (BNA) 1134 (Div. 1 2001); Schroeder v. Fageol Motors, Inc., 86 Wash. 2d 256, 544 P.2d 20, 18 U.C.C. Rep. Serv. 584 (1975) (quoting Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 2 U.C.C. Rep. Serv. 955, 18 A.L.R.3d 1297 (D.C. Cir. 1965)).

2.50 Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 518, 210 P.3d 318 (2009), as corrected, (July 16, 2009), quoted in Public Utility Dist. No. 2 of Pacific County v. Comcast of Washington IV, Inc., 184 Wash. App. 24, 336 P.3d 65, 77 (Div. 1 2014), review denied (Wash. Aug. 5, 2015) (trial court properly found that rates set by agency were not unconscionable). See also Tadych v. Noble Ridge Construction, Inc., 200 Wash. 2d 635, 519 P.3d 199 (2022) (trial court erroneously dismissed homeowner's claim against builder where contractual provision requiring construction defect action to be brought within one year was unconscionable); Riley v. Iron Gate Self Storage, 198 Wash. App. 692, 395 P.3d 1059 (Div. 2 2017) (trial court properly enforced liquidated damages provision that was not unconscionable).

3 Mayne v. Monaco Enterprises, Inc., 191 Wash. App. 113, 361 P.3d 264 (Div. 3 2015) (trial court properly found that arbitration clause in original employment agreement was not unconscionable); Romney v. Franciscan Medical Group, 186 Wash. App. 728, 349 P.3d 32, 39 I.E.R. Cas. (BNA) 1618, 24 Wage & Hour Cas. 2d (BNA) 409 (Div. 1 2015); Public Utility Dist. No. 2 of Pacific County v. Comcast of Washington IV, Inc., 184 Wash. App. 24, 336 P.3d 65 (Div. 1 2014), review denied (Wash. Aug. 5, 2015); Mattingly v. Palmer Ridge Homes LLC, 157 Wash. App. 376, 238 P.3d 505 (Div. 2 2010); Satomi Owners Ass'n v. Satomi, LLC, 167 Wash. 2d 781, 225 P.3d 213 (2009); Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 210 P.3d 318 (2009), as corrected, (July 16, 2009)); Puget Sound Financial, L.L.C. v. Unisearch, Inc., 146 Wash. 2d 428, 47 P.3d 940 (2002) (liability limitation provision not unconscionable where financial company had reasonable time to understand terms of contract, provision was not inconspicuous, and trade usage and course of dealing supported **enforceability** of provision); Tjart v. Smith Barney, Inc., 107 Wash. App. 885, 28 P.3d 823, 86 Fair Empl. Prac. Cas.

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(BNA) 1134 (Div. 1 2001); M.A. Mortenson Co., Inc. v. Timberline Software Corp., 140 Wash. 2d 568, 998 P.2d 305, Prod. Liab. Rep. (CCH) P 15893, 41 U.C.C. Rep. Serv. 2d 357 (2000) (clause of license agreement for software limiting consequential damages not procedurally unconscionable where the license was set forth on each diskette pouch and inside cover of the instruction manuals and on the initial screen of the program, and buyer purchased similar software from seller previously); Nelson v. McGoldrick, 127 Wash. 2d 124, 896 P.2d 1258, 37 U.C.C. Rep. Serv. 2d 937 (1995) (court remanded case for a hearing on the issue of whether an heir-locating service had a conscionable contract with heir).

3.50 Tadych v. Noble Ridge Construction, Inc., 200 Wash. 2d 635, 519 P.3d 199 (2022) (trial court erroneously dismissed homeowner's claim against builder where contractual provision requiring construction defect action to be brought within one year was unconscionable).

4 Puget Sound Financial, L.L.C. v. Unisearch, Inc., 146 Wash. 2d 428, 47 P.3d 940 (2002); Schroeder v. Fageol Motors, Inc., 86 Wash. 2d 256, 544 P.2d 20, 18 U.C.C. Rep. Serv. 584 (1975).

5 Schroeder v. Fageol Motors, Inc., 86 Wash. 2d 256, 544 P.2d 20, 18 U.C.C. Rep. Serv. 584 (1975).

6 Adler v. Fred Lind Manor, 153 Wash. 2d 331, 103 P.3d 773 (2004) (remand to trial court was necessary to evaluate all the facts surrounding formation of contract); Puget Sound Financial, L.L.C. v. Unisearch, Inc., 146 Wash. 2d 428, 47 P.3d 940 (2002) (court applied "totality of circumstances" test to determine that liability limitation provision was not unconscionable); Planet Ins. Co. v. Wong, 74 Wash. App. 905, 877 P.2d 198 (Div. 1 1994) (prohibited use clause in **lease** for rental car was not unconscionable because, although in fine print, the clause was accompanied by a heading in capital letters).

6.10 Cornelius v. Alpha Kappa Lambda, 19 Wash. App. 2d 862, 502 P.3d 910, 399 Ed. Law Rep. 393 (Div. 1 2021) (trial court improperly denied motion to compel arbitration based on unconscionability in case brought by pledge against fraternity for negligence arising from alleged hazing incident where record on appeal was insufficient to determine legality of agreement); Steven Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 442 P.3d 1267 (Div. 1 2019), affirmed sub nom. Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 470 P.3d 486 (2020) (arbitration provision included in employment contract was part of an adhesion contract, and was therefore unenforceable); Riley v. Iron Gate Self Storage, 198 Wash. App. 692, 710, 395 P.3d 1059, 1070 (Div. 2 2017) (trial court properly enforced liquidated damages clause that was not unconscionable).

6.20 Cornelius v. Alpha Kappa Lambda, 19 Wash. App. 2d 862, 502 P.3d 910, 399 Ed. Law Rep. 393 (Div. 1 2021); Steven Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 442 P.3d 1267 (Div. 1 2019), affirmed sub nom. Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 470 P.3d 486 (2020) (arbitration provision included in employment contract was part of an adhesion contract, and was therefore unenforceable); Zuver v. Airtouch Communications, Inc., 153 Wash. 2d 293, 103 P.3d 753, 22 I.E.R. Cas. (BNA) 446 (2004) (since evidence established that employee had ample opportunity to review agreement and was able to make meaningful choice, arbitration provision in employment agreement was not procedurally unconscionable).

6.25 Cornelius v. Alpha Kappa Lambda, 19 Wash. App. 2d 862, 502 P.3d 910, 399 Ed. Law Rep. 393 (Div. 1 2021); Steven Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 442 P.3d 1267 (Div. 1 2019), affirmed sub nom. Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 470 P.3d 486 (2020) (admission that employment contract was an adhesion contract supported finding that arbitration provision was procedurally unconscionable and therefore unenforceable); Mayne v. Monaco Enterprises, Inc., 191 Wash. App. 113, 361 P.3d 264 (Div. 3 2015) (trial court properly found that arbitration clause in initial employment agreement was not unconscionable).

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6.27 Cornelius v. Alpha Kappa Lambda, 19 Wash. App. 2d 862, 502 P.3d 910, 399 Ed. Law Rep. 393 (Div. 1 2021).

6.30 Mattingly v. Palmer Ridge Homes LLC, 157 Wash. App. 376, 238 P.3d 505 (Div. 2 2010) (trial court erroneously found that terms in warranty booklet were enforceable where booklet was not available prior to signing).

6.50 Public Utility Dist. No. 2 of Pacific County v. Comcast of Washington IV, Inc., 184 Wash. App. 24, 336 P.3d 65 (Div. 1 2014), review denied (Wash. Aug. 5, 2015).

7 Tadych v. Noble Ridge Construction, Inc., 200 Wash. 2d 635, 519 P.3d 199 (2022) (trial court erroneously dismissed homeowner's claim against builder where contractual provision requiring construction defect action to be brought within one year was unconscionable); Burnett v. Pagliacci Pizza, Inc., 196 Wash. App. 2d 384, 470 P.3d 486, 2020 Wage & Hour Cas. 2d (BNA) 316812 (Wash. 2020) (trial court properly denied motion to compel arbitration of wage dispute where provision in employee handbook was substantively unconscionable); Riley v. Iron Gate Self Storage, 198 Wash. App. 692, 395 P.3d 1059 (Div. 2 2017) (where tenant represented that goods were worth $5,000, enforcing cap on damages was not unconscionable); Romney v. Franciscan Medical Group, 186 Wash. App. 728, 349 P.3d 32, 39 I.E.R. Cas. (BNA) 1618, 24 Wage & Hour Cas. 2d (BNA) 409 (Div. 1 2015) (trial court erroneously found that arbitration clause in contract was unconscionable); Public Utility Dist. No. 2 of Pacific County v. Comcast of Washington IV, Inc., 184 Wash. App. 24, 336 P.3d 65 (Div. 1 2014), review denied (Wash. Aug. 5, 2015) (trial court properly found that some of the terms in the contract between utility and utility district were unenforceable); Satomi Owners Ass'n v. Satomi, LLC, 167 Wash. 2d 781, 225 P.3d 213 (2009) (arbitration clause in agreement was neither substantively nor procedurally unconscionable); Townsend v. Quadrant Corp., 153 Wash. App. 870, 224 P.3d 818 (Div. 1 2009), aff'd on other grounds, 173 Wash. 2d 451, 268 P.3d 917 (2012) (arbitration clause was not unconscionable); Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 210 P.3d 318 (2009), as corrected, (July 16, 2009) (court found that buyers in condominium purchase had limited remedy under agreement that was not unconscionable); Walters v. A.A.A. Waterproofing, Inc., 151 Wash. App. 316, 211 P.3d 454, 15 Wage & Hour Cas. 2d (BNA) 314 (Div. 1 2009) (court found clause in arbitration agreement unconscionable and, thus, unenforceable; unconscionable provisions were severed from agreement); McKee v. AT & T Corp., 164 Wash. 2d 372, 191 P.3d 845 (2008) (court found class action waiver provision in arbitration agreement in consumer services contract with telephone company substantively unconscionable); Adler v. Fred Lind Manor, 153 Wash. 2d 331, 103 P.3d 773 (2004); Walters v. A.A.A. Waterproofing, Inc., 120 Wash. App. 354, 85 P.3d 389, 20 I.E.R. Cas. (BNA) 1862 (Div. 1 2004), review granted, cause remanded, 153 Wash. 2d 1023, 108 P.3d 1227 (2005) (trial court properly declined to invalidate arbitration clause giving only one party choice of arbitration since contract as a whole was supported by consideration on both sides); Tjart v. Smith Barney, Inc., 107 Wash. App. 885, 28 P.3d 823, 86 Fair Empl. Prac. Cas. (BNA) 1134 (Div. 1 2001); State v. Brown, 92 Wash. App. 586, 965 P.2d 1102 (Div. 2 1998) (no substantive unconscionability where real estate contract vendors' agreed with government to split surplus proceeds from nonjudicial forfeiture and sale of the property; in the absence of agreement, government could have obtained forfeiture based on drug activity of vendee); Nelson v. McGoldrick, 127 Wash. 2d 124, 896 P.2d 1258, 37 U.C.C. Rep. Serv. 2d 937 (1995) (court remanded case for a hearing on the issue of whether an heir-locating service had a conscionable contract with heir); Schroeder v. Fageol Motors, Inc., 86 Wash. 2d 256, 544 P.2d 20, 18 U.C.C. Rep. Serv. 584 (1975) (clause in contract between buyer and seller of truck which excluded consequential damages held conscionable).

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8 Nelson v. McGoldrick, 127 Wash. 2d 124, 896 P.2d 1258, 37 U.C.C. Rep. Serv. 2d 937 (1995); Schroeder v. Fageol Motors, Inc., 86 Wash. 2d 256, 544 P.2d 20, 18 U.C.C. Rep. Serv. 584 (1975).

9 Steven Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 442 P.3d 1267 (Div. 1 2019), affirmed sub nom. Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 470 P.3d 486 (2020) (trial court erroneously ordered arbitration; mandatory arbitration provision in employee handbook was so one-sided and harsh that it was substantively unconscionable); Public Utility Dist. No. 2 of Pacific County v. Comcast of Washington IV, Inc., 184 Wash. App. 24, 336 P.3d 65 (Div. 1 2014), review denied (Wash. Aug. 5, 2015); Gandee v. LDL Freedom Enterprises, Inc., 176 Wash. 2d 598, 293 P.3d 1197 (2013) (trial court properly refused to compel arbitration where contractual provision was substantively unconscionable); Torgerson v. One Lincoln Tower, LLC, 166 Wash. 2d 510, 210 P.3d 318 (2009), as corrected, (July 16, 2009); M.A. Mortenson Co., Inc. v. Timberline Software Corp., 140 Wash. 2d 568, 998 P.2d 305, Prod. Liab. Rep. (CCH) P 15893, 41 U.C.C. Rep. Serv. 2d 357 (2000) (court held that provision of computer software license limiting consequential damages, when examined at the time the software was purchased, did not shock the conscience and thus was not substantively unconscionable); Nelson v. McGoldrick, 127 Wash. 2d 124, 896 P.2d 1258, 37 U.C.C. Rep. Serv. 2d 937 (1995) (quoting Montgomery Ward & Co., Inc. v. Annuity Bd. of Southern Baptist Convention, 16 Wash. App. 439, 556 P.2d 552 (Div. 3 1976)).

9.30 Tadych v. Noble Ridge Construction, Inc., 200 Wash. 2d 635, 519 P.3d 199 (2022) (trial court erroneously dismissed homeowner's claim against builder where contractual provision requiring construction defect action to be brought within one year was unconscionable).

9.50 Tadych v. Noble Ridge Construction, Inc., 200 Wash. 2d 635, 519 P.3d 199 (2022).

9.70 Oakley v. Domino's Pizza LLC, 23 Wash. App. 2d 218, 516 P.3d 1237 (Div. 1 2022), review denied, 200 Wash. 2d 1028, 523 P.3d 1188 (2023) (trial court properly denied motion to compel arbitration where dispute was governed by transportation worker exemption to FAA).

10 Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 470 P.3d 486, 2020 Wage & Hour Cas. 2d (BNA) 316812 (Wash. 2020) (trial court properly denied motion to compel arbitration of wage dispute where provision in employee handbook was substantively unconscionable); Zuver v. Airtouch Communications, Inc., 153 Wash. 2d 293, 103 P.3d 753, 22 I.E.R. Cas. (BNA) 446 (2004) (provisions of employment contract permitting employer to recover punitive damages for breach of **confidentiality agreement** but waiving such damages for violation of Washington Law Against Discrimination were substantively unconscionable).

10.30 Public Utility Dist. No. 2 of Pacific County v. Comcast of Washington IV, Inc., 184 Wash. App. 24, 336 P.3d 65 (Div. 1 2014), review denied (Wash. Aug. 5, 2015) (contract between utility district and utility properly contained attorney fee provision applicable only to district).

10.50 Steven Burnett v. Pagliacci Pizza, Inc., 9 Wash. App. 2d 192, 442 P.3d 1267 (Div. 1 2019), affirmed sub nom. Burnett v. Pagliacci Pizza, Inc., 196 Wash. 2d 384, 70 P.3d 486 (2020) (right to arbitration was given only to employer, not employee, making overall effect of contract one-sided and substantively unconscionable); Romney v. Franciscan Medical Group, 186 Wash. App. 728, 349 P.3d 32, 39 I.E.R. Cas. (BNA) 1618, 24 Wage & Hour Cas. 2d (BNA) 409 (Div. 1 2015) (trial court erroneously concluded that arbitration clause was unconscionable).

10.70 Romney v. Franciscan Medical Group, 186 Wash. App. 728, 349 P.3d 32, 39 I.E.R. Cas. (BNA) 1618, 24 Wage & Hour Cas. 2d (BNA) 409 (Div. 1 2015) (availability of injunctive relief for enforcement of non-compete clause did not require invalidation of arbitration clause with respect to other issues).

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11 Gandee v. LDL Freedom Enterprises, Inc., 176 Wash. 2d 598, 293 P.3d 1197 (2013) (trial court properly refused to compel arbitration where contractual provision was substantively unconscionable); Townsend v. Quadrant Corp., 153 Wash. App. 870, 224 P.3d 818 (Div. 1 2009), aff'd on other grounds, 173 Wash. 2d 451, 268 P.3d 917 (2012) (arbitration clause in agreement to sell condominium was not unconscionable); Adler v. Fred Lind Manor, 153 Wash. 2d 331, 103 P.3d 773 (2004).

12 McKee v. AT & T Corp., 164 Wash. 2d 372, 191 P.3d 845 (2008) (court found class action waiver provision in arbitration agreement in consumer services contract with telephone company substantively unconscionable); Adler v. Fred Lind Manor, 153 Wash. 2d 331, 103 P.3d 773 (2004); Zuver v. Airtouch Communications, Inc., 153 Wash. 2d 293, 103 P.3d 753, 22 I.E.R. Cas. (BNA) 446 (2004).

13 Gandee v. LDL Freedom Enterprises, Inc., 176 Wash. 2d 598, 603, 293 P.3d 1197, 1199 (2013) ("In Washington, either substantive or procedural unconscionability is sufficient to void a contract[.]").

14 Gorden v. Lloyd Ward & Associates, P.C., 180 Wash. App. 552, 323 P.3d 1074 (Div. 3 2014) (trial court properly denied motion to compel arbitration where arbitration clause was procedurally unconscionable).

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