

I. INTRODUCTION

We live in a consumer culture. Over the past thirty years, the Internet and the proliferation of standard-form contracts have tremendously influenced consumer transactions.¹ In *Douglas v. U.S. Dist. Court (Douglas II)*, issues related to standard-form contracts and e-commerce create a situation that is becoming progressively more common in today's society.² In particular, *Douglas II* highlights three key issues related to consumer transactions: notice, assent, and unconscionable terms.³ The case illustrates the importance of notice in consumer transactions, especially transactions that occur online and those that involve standard-form contracts. Additionally, *Douglas II* is significant because it demonstrates the way courts use the doctrine of unconscionability as a tool to invalidate certain provisions.⁴ Traditionally reserved for one-sided agreements that "shocked the conscience," courts now apply the doctrine of unconscionability with increasing frequency to invalidate unfair provisions and contracts resulting from unfair procedures.⁵

In Part II, the note discusses the basic principles of contract formation and issues related to standard forms. Part III details the facts of *Douglas I*, the district court's ruling, and the Ninth Circuit's holding and reasoning in *Douglas II*. Part IV discusses *Douglas II* in light of relevant case law regarding standard-form contracts and issues related to notice, assent, and the liberal way California courts use the doctrine of unconscionability to invalidate certain terms. In Part V, the note concludes that *Douglas II* raises important issues regarding the need for proper notice of contract terms, particularly in today's e-commerce environment. The note argues that when it comes to disputes involving standard-form consumer contracts, considerations of fairness and consumer expectations must be at the forefront of a court's analysis. Moreover, the note asserts that in the absence of legislation, California's active use of the unconscionability doctrine is a necessary tool to protect buyers and influence consumer transactions.

¹. See generally Mo Zhang, *Contractual Choice of Law in Contracts of Adhesion and Party Autonomy*, 41 AKRON L. REV. 123, 123–24 (2008) ("[C]ontracts of adhesion and standard contracts quite often are interchangeably used to mean the contracts that are formed through a fine-print form prepared by one party in advance.").

². *Douglas v. U.S. Dist. Court (Douglas II)*, 495 F.3d 1062, 1065 (9th Cir. 2007), *cert. denied*, 128 S. Ct. 1472 (2008).

³. *Id.*

⁴. See *id.* at 1067.

⁵. E. ALLEN FARNSWORTH, *CONTRACTS* § 4.27 (2d ed. 1990). See *Szetela v. Discover Bank*, 118 Cal. Rptr. 2d 862, 867–68 (Cal. Ct. App. 2002) (stating that "[s]ubstantive unconscionability addresses the fairness of the term[s] in dispute" and "traditionally involves contract terms that are so one-sided as to shock the conscience, or that impose harsh or oppressive terms." (quoting *24 Hour Fitness, Inc. v. Superior Court*, 78 Cal.Rptr.2d 533, 541 (Cal. Ct. App. 1998))).