Contractual Choice of Law

• **Interstate Commerce**
  • Typically, businesses, among themselves, can choose law for the transaction subject to . . .
    • Chosen state law bears a reasonable relationship to the transaction; or
    • Application of chosen state law would not violate a fundamental policy of the law of the state that would otherwise apply under traditional conflicts principles

• **Cross-Border Commerce**

• **EU – Rome Convention – Article 5** consumer protections mean that
  • “an Internet retailer in the European Union cannot by contract avoid its responsibility to comply with mandatory rules in the jurisdictions from which it receives orders.”

- **Forum selection**
  - Tricome, as a seller on eBay, sued a customer over “negative feedback” (based on input from eBay), and then eBay terminated Tricome’s eBay account
  - Tricome’s eBay account, in conjunction with its web site, was important; losing the eBay account resulted in substantial reduction in Tricome’s business such that it sold the company at a fraction of its former value, but then sued eBay for this loss in Federal Dist. Ct. in Pennsylvania
- **Procedural unconscionability** – contract of adhesion (form contract? not negotiated?) – did Tricome have meaningful choice to accept or not?
- **Substantive unconscionability** – overly harsh or one-sided results; shock the conscience
- **Transfer to California?**
  - Dismiss versus transfer; transfer: private interests; public interests; but forum selection clause is very important factor/interest

Comb v. PayPal, Inc. (N.D. Cal. 2002)

- **Potential class action plaintiff; alleging various operational problems for three persons (two are users)**
- **Inquiry**
  - whether under California law (1) a valid agreement to arbitrate exists and, if so, (2) whether the agreement encompasses the dispute at issue
- **Arbitration clause**
  - [a]ny controversy or claim arising out of or relating to this Agreement or the provision of Services . . .
- **Unconscionability and sliding scale between procedural and substantive components**
  - Substantive component: mutuality; consolidation of claims; costs to arbitrate; venue
Assignment Two Problems

• 2.1
• 2.2
• 2.3
• 2.4
• Camford Books