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[What Makes an Agreement Between Spouses Unconscionable](#)

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Just because an agreement between spouses splits assets in an unequal or one-sided basis does not render the agreement unconscionable.

It has long to the policy of courts to hold parties to the terms of their agreements. An agreement between spouses, which is fair on its face, will be enforced even if one party received less than one half of the value of the marital assets unless there is proof of fraud, duress, overreaching, or unconscionability.

In the recently decided case of [Shultz v. Shultz](#), the Appellate Division detailed what makes an agreement unconscionable:

An unconscionable bargain is one which no person in his or her senses and not under delusion would make on the one hand, and no honest and fair person would accept on the other, the inequality being so strong and manifest as to shock the conscience and confound the judgment of any person of common sense. However, an agreement is not unconscionable "merely because, in retrospect, some of its provisions were improvident or one-sided" and simply alleging an unequal division of assets is not sufficient to establish unconscionability.

The reason for this strict standard is obvious-no agreement would be free from attack if it could, in retrospect, be reviewed for fairness

In Shultz, the Court cited two factors why it found the claims of unconscionability to be lacking. First, the defendant was represented by independent counsel during negotiations involving the parties' post nuptial agreement. Secondly, the agreement recited that the defendant entered into it "freely, voluntarily and with full knowledge of its consequences.