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FOOL ME ONCE, SHAME ON ME:
HOW CONSUMERS AND LAWYERS PERCEIVE THE FINE PRINT IN DECEPTION CASES

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FOOL ME ONCE, SHAME ON ME: HOW CONSUMERS AND LAWYERS PERCEIVE THE FINE PRINT IN DECEPTION CASES

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ABSTRACT

This Article investigates how lawyers and laypeople respond to consumer contracts that are formed as a result of fraud. Across four studies, we show that contrary to the prevailing wisdom in contract law scholarship, fine print is not simply white noise. Rather, it has a significant and detrimental effect on lay consumers. We demonstrate that clauses that consumers neglect to read ex ante, at the time of signing, have a significant psychological effect ex post, when consumers discover they were deceived about the terms of the transaction. Consumers who would otherwise complain about being cheated are demoralized by contractual fine print, and consequently decline to seek redress. This is because they erroneously assume that all contracts—even contracts induced by fraud—are binding. Our studies presented participants cases in which a seller induces a consumer to buy a product or service by making a false representation. The false representation is directly contradicted by the written terms of the contract, which the consumer signs without reading. Our findings reveal that laypeople, unlike legally trained individuals, strongly believe that such agreements are consented to, and will be enforced as written, despite the seller's material deception. Importantly, the presence of fine print discourages consumers from wanting to take legal action, initiate a complaint, or damage the firm's reputation by telling others what happened. At the same time, the fact that the seller lied makes little difference to laypeople's intuitions about whether the contract will be, or should be, enforced. Finally, we show that informing consumers about anti-deception consumer protection laws alters their perceptions about the legal and moral status of contracts induced by fraud, although such information does not completely counteract their formalistic intuition that whatever the contract says is the final word. The implications of our study, we argue, are that prevailing methods for addressing deceptive business practices are inadequate, because they fail to take account of consumer psychology.

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INTRODUCTION

A defining feature of modern-day contracts is that almost no one reads their terms before signing or clicking through.[1] Consumers are confronted with an impossible amount of fine print in their daily lives, and it is neither practical nor efficient for them to read all of their contracts thoroughly.[2]

This widespread non-readership leaves consumers open to exploitation by unscrupulous firms. Because consumers do not read their contracts, sellers can outright lie about material aspects of their products and services, while subsequently contradicting, qualifying, or disclaiming these assertions in the unread fine print.[3]

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[1] *See, e.g.*, Florencia M. Marotta-Wurgler, *Will Increased Disclosure Help? Evaluating the Recommendations of the ALI's "Principles of the Law of Software Contracts,"* 78 U. CHI. L. REV. 165 (2011) (analyzing the browsing behavior of 47,399 U.S. households, and finding that requiring online software buyers to click on an "I agree" box did not meaningfully increase readership); Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Law*, 66 STAN. L. REV. 545 (2014) (responding to the problem of search costs resulting from the overwhelming number of terms and disclosures by which consumers are deluged); Yannis Bakos, Florencia Marotta-Wurgler, & David R. Trossen, *Does anyone read the fine print? Consumer attention to standard-form contracts*, 43 J. LEGAL STUD. 1 (2014) (finding that only one or two out of every one thousand retail software buyers will examine the license agreement before making the purchase, and proposing that these results cast doubt on the relevance of the "informed minority" mechanism for preventing sellers from using one-sided terms in their standardized agreements); OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE (Princeton U. Press 2014) (surveying the multiple evidence that consumers do not read the fine print and arguing that regulation which focuses on increasing disclosure in contracts is useless).

[2] *See, e.g.*, Alleecia M. McDonald & Lorrie F. Cranor, *The Cost of Reading Privacy Policies*, 4 I/S: J.L. & POL'Y FOR INFO. SOC'Y 543, 563–64 (2008) (estimating that if people actually read privacy policies, it would take them 244 hours per year, on average, amounting to $781 billion in lost productivity); Jeff Sovern et al., *Whimsy Little Contracts" with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements*, 75 MD. L. REV. 1, 4 (2015) (reporting that most of the study's respondents did not know whether the contract they had just read included an arbitration clause, and that those who realized that it did contain such a clause failed to understand its legal implications); BEN-SHAHAR & SCHNEIDER, *supra* note **Error! Bookmark not defined.**, at 11 ("How many men with prostate cancer try to decipher their prospects of cure and of side effects with each of the principal treatments, much less learn and remember enough to use the data? Nearly nobody, since patients do not read, understand, and remember *much* simpler medical information.").

[3] *See, e.g.*, Debra Pogrund Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities*, 5 N.Y.U. J.L. & BUS. 617 (2009) (arguing against enforcement of no-reliance clauses conflicting with the seller's prior statements except when terms are negotiated by sophisticated parties in business-to-business transactions); Russell Korobkin, *The Borat Problem in Negotiation: Fraud, Assent, and the Behavioral Law and Economics of Standard Form Contracts*, 101 CALIF. L. REV. 51, 57 (2013) (discussing situations where the non-drafting party claims that the drafting party made oral promises

For instance, the marketing company Vertrue made millions by selling "buying club memberships" over the phone, promising consumers that there would be a "free trial period" or that the membership will be "risk-free."[4] Unbeknownst to consumers, their credit cards would be continually charged the full price of membership if they failed to contact Vertrue and cancel within a designated trial period. The details about these charges, as well as on how to cancel the membership, were buried in the fine print. Vertrue perpetuated this fraudulent scheme for over two decades before it was ordered to pay nearly $30 million in restitution to over 500,000 consumers, for billing their credit cards without their knowledge.[5]

"Fraud-and-fine-print" cases like Vertrue's are a relatively common type of deceptive business practice, and not every case ends in a prosecution or relief for consumers. Loan officers, for example, often lure consumers into signing floating rate loan agreements while promising them that the interest on their loan is fixed.[6] Scams like these are especially likely to target low-income, minority, and elderly adults.[7] Experts estimate that over 25 million Americans each year are victimized by fraud.[8]

While few consumers will notice at the time of signing that they have been misled about the terms of the transaction, many will notice after the fact, when they are hit with a nasty surprise. At this point, they may go back to the contract they had signed and discover a fine-print disclosure.

contrary to the written contract, and coining those situations "the Borat problem" after litigation presenting this fact pattern).

[4] *See* State of Iowa ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 (Iowa 2013) (ruling that the seller violated the Iowa Consumer Fraud Act when oral representations contradicted terms in the fine print); Matthew Sturdevant, *Connecticut Company Liable for 20 Years of Consumer Fraud in Iowa*, HARTFORD COURANT (Mar. 25, 2010), http://articles.courant.com/2010-03-25/business/hc-vertrue0325mar25_1_vertrue-memberships-iowa-attorney-general.

[5] *Id.*

[6] *E.g.*, Belleville Nat'l Bank v. Rose, 456 N.E. 2d 281 (Ill. App. Ct. 1983) (discussing a mortgage fraud case, in which the borrower was told that the loan would be at a fixed rate for a five-year term, but the legal documentation reflected different loan terms with floating interest rates).

[7] Edith Ramirez et al., *Combating Fraud in African-American & Latino Communities: The FTC's Comprehensive Strategic Plan*, FTC (June 15, 2016); Rolando Berrelez, *Fraud Against Seniors*, FTC (August 10, 2000).

[8] *See* Keith B. Anderson, *Consumer Fraud in the United States: An FTC Survey*, FTC (2004), available at https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-ftc-survey/040805confraudrpt.pdf; Keith B. Anderson, *Consumer Fraud in the United States: The Second FTC Survey*, FTC STAFF RPT. (2007), available at https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-second-federal-trade-commission-survey-staff-report-federal-trade/fraud.pdf.

Whereas previous commentary has assumed that people will complain at this point, because they were deceived about a material aspect of the transaction,[9] this Article challenges that prevailing wisdom. It shows, rather, that the inclusion of fine print leads lay consumers to assume that they are stuck with what they signed, and to blame *themselves* for failing to read.

Previous scholarship on how consumers engage with contracts ex post, after they discover a problem, has tended to make two main assumptions about consumer behavior. First, some commentators assume that fine print is "at worst harmless"[10]—that it is irrelevant white noise. Robert Hillman, for example, has argued that "consumers are as unlikely to read terms after a transaction as during one."[11] Other scholars, contra Hillman, have provided evidence that consumers do read their contracts ex post.[12] But these commentators make a second assumption: that the fine print *helps* consumers. Becher and Unger-Aviram, for instance, assert that "reading the contract ex post can prove highly beneficial."[13] Consumers who read ex post are able to "become familiar with their rights and obligations" and "respond accordingly."[14] Namely, consumers in this position can begin negotiating with sellers over the terms they already signed.[15] Sellers, in turn, will be willing to appease aggrieved buyers, because they will be motivated to preserve their reputations.[16]

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[9] *See, e.g.*, DOUGLAS G. BAIRD, RECONSTRUCTING CONTRACTS 123 (2013) ("A seller cannot promise the moon during the course of selling a product and then seek to escape legal liability by adding terms in forms. . . . The buyer can prevail without having to assert any rights under the contract.").

[10] BEN-SHAHAR & SCHNEIDER, *supra* note 1, at 169 (2014) (quoting Robert Hillman and Maureen O'Rourke, who are reporters of the ALI Principles of the Law of Software Contracts).

[11] Robert A. Hillman, *Online Boilerplate: Would Mandatory Website Disclosure of E-Standard Terms Backfire?*, 104 MICH. L. REV. 837, 844 (2006).

[12] *See, e.g.*, Shmuel I. Becher & Tal Z. Zarsky, *E-Contract Doctrine 2.0: Standard Form Contracting in the Age of Online User Participation*, 14 MICH. TELECOMM. & TECH. L. REV. 303, 315 (2008) (arguing that some consumers may be especially incentivized to read their contracts ex post if, for instance, "the product was not what the vendor represented it to be, it arrived late or damaged, it malfunctioned, [or] the like").

[13] Schmuel I. Becher & Esther Unger-Aviram, *The Law of Standard Form Contracts: Misguided Intuitions and Suggestions for Reconstruction*, 3 DEPAUL BUS. & COMMERCIAL L.J. 199, 206 (2010) (suggesting that consumers read contracts ex post in order to better understand their rights and remedies, and to thereafter comport with or seek to modify the terms accordingly).

[14] *Id.*

[15] *Id.* at 208 ("[W]hereas it is basically true that contracting parties do not negotiate SFCs ex ante, actual contracting around the SFC content is more likely to take place at the ex post stage.").

[16] *See* Lucian A. Bebchuk & Richard A. Posner, *One-Sided Contracts in Competitive Consumer Markets*, 104 MICH. L. REV. 827, 828 (2006) (suggesting that "reputational considerations" may

This Article provides evidence for the opposite conclusion. We argue that fine print might *harm* consumers who read their contracts ex post. This is because lay consumers are demoralized by contractual language and are unlikely to attempt to renegotiate with sellers. Moreover, we show that defrauded consumers are likely to blame *themselves* for failing to read their contracts, and as a result they express little inclination to complain or tell others what happened. Thus, sellers are not likely to suffer substantial reputational costs, let alone legal or financial costs, for their deceptive practices.

This insight carries legal ramifications. To Bebchuk and Posner, the possibility that consumers will engage in ex post negotiations suggests that "seemingly one-sided terms may not be one-sided after all" because they can be altered after the fact and "implemented in a balanced way."[17] Becher and Unger-Aviram similarly believe that the phenomenon of ex post negotiating, when "accompanied by sellers' reputational concerns, might deter sellers from drafting egregiously one-sided contracts" or from insisting that that consumers abide by such one-sided language.[18] "Generally speaking," these commentators assert, "this potential phenomenon also renders legal intervention less necessary."[19]

We argue, to the contrary, that deterrence through ex post negotiations is unlikely. This is because fine print causes consumers to refrain from complaining to management, telling others, posting reviews online, or otherwise taking action in response to being defrauded. Accordingly, we argue that legal intervention *is* warranted.

Specifically, this Article argues that public agencies are crucial actors in the fight against consumer fraud. "When market forces are insufficient and common law is ineffective, a public agency, such as the FTC [Federal Trade Commission], may supplement these other institutions to preserve competition and protect consumers,"[20] argues Timothy Muris, former chair of the FTC. We assert here that markets are insufficient to discipline deceptive sellers and that consumers are unlikely to take action themselves,

"induce the seller to treat the buyer fairly even when such treatment is not contractually required.").
[17] Bebchuk & Posner, *supra* note 16, at 828–30.
[18] Becher & Unger-Aviram, *supra* note 13, at 208.
[19] *Id.*
[20] J. Howard Beales III & Timothy J. Muris, *FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?*, 83 GEO. WASH. L. REV. 2157, 2160–61 (2015).

once they discover the fine print. Thus, we believe that public agencies will need to take on the lion's share of enforcement against fraud in consumer markets.

This Article proceeds as follows. In Part I, we describe the problem of fraud-and-fine-print in consumer markets, and the current regulatory efforts to enhance consumer protection by curbing such deceptive market practices. In Parts II-V, we report the findings of four original experimental studies. Our main finding is that consumers feel so bound by the fine print that the presence or absence of deception makes little difference to their intuitions about whether the contract will be, or should be, enforced as written. In Part VI, we argue that these findings cast doubts on the effectiveness of consumer protection regimes that put the onus on victims of fraud to challenge their consumer contracts. While many commentators have lamented the legal and financial barriers to consumers' pursuing litigation against unscrupulous businesses, our findings suggest that consumer psychology plays an independent, and underappreciated, role.

I. FRAUD-AND-FINE-PRINT IN CONSUMER MARKETS

A. The Problem: Unscrupulous Firms Use Deception to Trick Consumers and Fine Print to Trap Them

Since it is typical for consumers *not* to read all of the terms of the standardized agreements that they encounter in daily life,[21] sellers can exploit this pervasive non-readership by misleading consumers about a material aspect of the transaction, secure in the knowledge that few consumers will notice if the fine print contradicts what they were told.[22]

Indeed, in many consumer fraud cases, the consumer signs a contract that contains a statement qualifying, contradicting, or disclaiming the fraudulent representations made by the seller at the pre-contractual stage. For example, the fine print may include a "no-reliance" or "no-representation" clause, stipulating that the consumer acknowledges that the company and its salespeople have made no representations to the consumers other than what is contained in the contract.[23] In other cases, the fine print

[21] See citations in footnote 1.
[22] *See, e.g.*, Stark & Choplin, *supra* note 3; Korobkin, *supra* note 3.
[23] *See, e.g*., Rissman v. Rissman, 213 F.3d 381, 383 (7th Cir. 2000)); MBIA Ins. Corp. v. Royal Indemnity Co., 426 F.3d 204, 214, 218 (3d Cir. 2005); Danann Realty Corp v. Harris, 157

can directly contradict the seller's prior assertions.[24]

These "fraud-and-fine-print" cases (as we call them) are relatively common, and they have garnered recent attention from scholars,[25] enforcement agencies,[26] and consumer advocates.[27] The American Law Institute's ongoing restatement project on consumer contracting, for instance, singles out fraud-and-fine-print cases as a significant problem in consumer markets. The latest draft identifies "a pattern in which the business draws the consumer in with . . . an affirmation or promise that the business then attempts to undo or qualify in a less conspicuous manner."[28] It lists common examples such as "representing that a product is covered by an extensive warranty, when the standard contract terms include broad disclaimers of implied warranties."[29]

Fraud-and-fine-print situations present a problem not only for the individual victims of fraud, but also for the aggregate social welfare. From an economic perspective, efficient markets require that consumers enter only those transactions that make them better off. Consumers need accurate information in order to determine whether a prospective arrangement is beneficial. When sellers mislead consumers about material aspects of certain transactions, they may induce unwitting consumers to enter contracts that make them worse off. These agreements, in turn, may also decrease the aggregate social welfare, in cases where the deceived consumer's losses exceed the deceptive seller's gains.[30] Thus fraud in consumer contracts harms the functioning of the marketplace and reduces net social welfare.

Market competition is supposed to take care of these kinds of deceptive

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N.E.2d 597, 598 (N.Y. 1959).

[24] *See*, *e.g.*, William v. Spitzer Autoworld Canton, 913 N.E.2d 410, 417 (Ohio 2009) (adjudicating a car buyer's allegation that a dealer promised him a trade-in allowance $1000 greater than the amount specified in writing); Outside the consumer context, see: Evenson v. Quantum Indus., Inc., 687 N.W.2d 241 (N.D. 2004) (including writing that allegedly directly contradicted defendant's oral representation that he would not sell a product line); Ungerleider v. Gordon, 214 F.3d 1279, 1283 (11th Cir. 2000) (finding that a written agreement allegedly contradicted an oral promise to grant an investor additional shares of stock).

[25] *See, e.g.*, Korobkin, *supra* note 3.

[26] *See infra* note 59.

[27] *See, e.g.*, Stark & Choplin, *supra* note 3.

[28] Restatement of Consumer Contracts (Preliminary Draft No. 3, October 26, 2017), 77.

[29] *Id.*

[30] For a similar analysis, *see* Korobkin, *supra* note 3, at 60; *see also* RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 14–15 (5th ed. 1998).

business practices, by punishing firms that disappoint consumers. Indeed, firms typically have an incentive to meet consumer expectations, because markets usually shift sales away from dishonest firms and toward firms that meet consumer demands.[31] But market forces cannot discipline sellers whose products are purchased infrequently, or who are unconcerned about repeat business. Consequently, absent sufficient enforcement, these sellers are often incentivized to engage in fraud.

B. The Legal Framework

When competition alone cannot deter sellers from behaving dishonestly, legal intervention can correct these market failures.[32] Such intervention has historically consisted of providing consumers legal rights and protections through the common-law doctrines of tort and contracts. These interventions have generally been uncontroversial; even staunch libertarians see deliberate deception as an "easy case"[33] for legal intervention. As Richard Epstein explains, "as a general matter no social good can derive from the systematic production of misinformation."[34] He goes on to observe that fraud has always been an important limitation on the "freedom of contract" ideal: "The classical conception of contract at common law had as its first premise the belief that private agreements should be enforced in accordance with their terms. That premise of course was subject to important qualifications. Promises procured by fraud . . . were generally not enforced by the courts."[35]

The common-law doctrine of fraud empowers a contracting party to void a contract to the extent that he or she had been induced by fraud to enter it.[36] This doctrine is generally recognized as an exception to the parol evidence rule, which provides that a written agreement supersedes any

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[31] *See, e.g.*, Bebchuk & Posner, *supra* note 16, at 830 (suggesting that "the seller has little or no incentive to behave opportunistically because if he does, he will suffer a loss or reputation, which is a cost").
[32] For a similar argument, *see* Beales & Muris, *supra* note 20, at 2160 ("When competition alone cannot punish or deter seller dishonesty, private legal rights can mitigate these problems.").
[33] Richard A. Epstein, *Unconscionability: A Critical Reappraisal*, 18 J.L. & ECON. 293, 298 n.14 (1975).
[34] *Id.*
[35] *Id.* at 293.
[36] *See* RESTATEMENT (SECOND) OF CONTRACTS §§ 164, 1.04 (Am. Law Inst. 1981) (rendering a contract voidable if a contracting party justifiably relied on a fraudulent or a material representation by the other party); RESTATEMENT OF CONSUMER CONTRACTS, *supra* note 28, at § 6.

inconsistent or conflicting terms expressed in prior exchanges between the parties.[37] Put differently, the parol evidence rule does not bar extrinsic evidence when the signing party alleges that the other engaged in common-law fraud.[38]

Moreover, courts often find that contractual exculpatory clauses, or other types of clauses disclaiming or qualifying the seller's prior representations, generally do not bar consumers from bringing fraud claims, since "to reflexively disallow parol evidence on the basis of such disclaimer[s], is to reward the ingenuity of draftsmen at the expense of sound public policy, and to invite sale agents, armed with impenetrable contracts, to lie to their customers."[39] As one state supreme court explained, "A perpetrator of fraud cannot close the lips of his innocent victim by getting him blindly to agree in advance not to complain against it."[40]

Indeed, the use of "no reliance" clauses has long been a source of consternation in cases involving deception. In 1931, the Illinois Court of Appeals noted that if no-reliance clauses were enforced in cases of alleged fraud, it would "'break down every barrier which the law has erected against fraudulent dealing.'"[41] The court wrote: "It is difficult to conceive

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[37] *See* Restatement (Second) of Contracts, *supra* note 36, at § 213.

[38] *See, e.g.*, Pinnacle Peak Developers v. TRW Inv. Corp., 631 P.2d 540 (Ariz. Ct. App. 1980); Globe Steel Abrasive Co. v. Nat'l Metal Abrasive Co., 101 F.2d 489, 491 (6th Cir. 1939) (finding that the plaintiff had been "induced to conclude an agreement by fraudulent concealment of existing facts and by promises, implied if not expressed, made with no present intention of performing. In the allegations of inducement we find no challenge to the terms of the contract impermissible under the parol evidence rule"); 1726 Cherry St. P'ship v. Bell Atlantic Prop., 653 A.2d 663 (Pa. Super Ct. 1995); ISG State Operations, Inc. v. Nat'l Heritage Ins. Co., 234 S.W.3d 711, 719 m. 11 (Tex. App. 2007); Mother Earth Ltd. v. Strawberry Camel Ltd., 390 N. E. 2d 393 (Ill. App. Ct. 1979) (ruling that failure by the plaintiff to verify the truth of a statement (relating to the net income from a business) is not a bar to a fraud action); Riverisland Cold Storage, Inc. v. Fresno-Madera Prod. Credit Ass'n, 291 P.3d 316, 322 (Cal. 2013) (allowing evidence of promissory fraud that is at variance with the terms of the writing despite the parol evidence rule); Cirillo v. Slomin's Inc., 768 N.Y.S.2d 759, 768 (N.Y.Sup.Ct. 2003) (buyers of alarm system sued for fraud after a break-in, and the court allowed parol evidence to be introduced despite contractual disclaimers and waivers in the fine print). *See also* Restatement (Second) of Contracts, *supra* note 36, at § 214(d) ("Agreements and negotiations prior to or contemporaneous with the adoption of a writing are admissible in evidence to establish illegality, fraud . . . and other invalidating cause."); Draft Restatement of Consumer Contracts, *supra* note 28, at § 6.

[39] Cirillo v. Slomin's Inc., *supra* note 38, at 768.

[40] Snyder v. Lovercheck, 992 P.2d 1079, 1086 (Wyo. 1999). *See also* Webster v. Palm Beach Ocean Realty Co., 139 A. 457, 457 (Del. Ch. 1927) (holding defendant liable after repeated "material" fraudulent misrepresentations).

[41] Ginsburg v. Bartlett, 262 Ill. App. 14, 11 (Ill. App. Ct. 1931) (quoting Bridger v. Goldsmith, 38 N.E. 458, 459 (1894)).

that such a [no reliance] clause could ever be suggested by a party to a contract, unless there was in his own mind at least a lingering doubt as to the honesty and integrity of his conduct . . . . Public policy and morality are both ignored if such an agreement can be given effect in a court of justice."[42]

It seems, then, that consumers plausibly have legal remedies in fraud-and-fine-print cases. In addition, beyond contract and tort doctrines, all fifty states have enacted consumer protection statutes, known as Unfair or Deceptive Acts or Practices (UDAP) laws.[43] In general, federal and state UDAP laws have looser requirements than the common-law doctrine of fraud: many do not require consumers to prove the deception was intentional in order to prevail in court.[44] Both federal and state UDAP laws provide state Attorneys General (AGs) with sweeping authority to combat unfair or deceptive market practices, including fraud-and-fine-print cases.

The recently proposed Restatement of Consumer Contracts would offer additional safeguards for consumers. The proposed Restatement would treat any standard contract term that is inconsistent with a company's prior representation as "presumptively deceptive," and would deem such terms voidable, even if the consumer could not prove intentional deception or reasonable reliance.[45] According to the draft Restatement, this rule would incentivize businesses to "police representations made by its agents and verify that they are not inconsistent with the standard contract terms that it offers."[46] While acknowledging that the parol evidence rule generally "gives precedence to a written document when the parties intend for this document to be the only source of their contractual obligations," the Restatement asserts that "no such intent can be inferred when an affirmation of fact or promise is deceptively undermined by the standard contract terms that are only weakly scrutinized by consumers."[47]

Given this patchwork of legal frameworks, some have expressed optimism that consumers are sufficiently protected from fraud-and-fine-print cases such as Vertrue's. "Even if the consumer would not have any

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[42] *Id.* 262 Ill. App. 14, 11.
[43] Carolyn Carter, *Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes*, NAT'L CONSUMER L. CTR., http://www.nclc.org/images/pdf/udap/report_50_states.pdf.
[44] *Id*.
[45] Draft Restatement of Consumer Contracts, *supra* note 28, at 77.
[46] *Id*. at 83.
[47] *Id.*

cause of action based on breach of contract, sellers are still held in check," writes Douglas Baird, pointing to "[l]egal rules outside of contract law that constrain those who are tempted to play games with fine print."[48]

Thus to lawyers and legal scholars, it seems apparent that a victim of fraud is likely entitled to legal remedy, whatever the fine print says. Those who understand legal norms know that sellers "cannot promise the moon during the course of selling a product and then seek to escape legal liability by adding terms in forms."[49] But we propose that lay consumers may have different intuitions about how the law treats individuals who sign contracts that contradict what they were told. Laypeople may assume that whatever the written agreement says is enforceable and binding, and it does not matter that one party defrauded the other prior to signing.

C. Lay Formalistic Intuitions: A Problem to Consumer Protection Efforts?

In general, laypeople feel bound by the terms they sign.[50] They are *contract formalists*. They put excessive weight on written terms (compared to oral agreements), believe that contracts are formed primarily through formalities such as signature and payment (even though contract law does not require such formalities for a contract to be formed), and feel generally obligated to abide by terms that follow formalized assent processes.[51] This is true even when they did not read the contract, when they believe that the contract is unreasonably long, and when the terms are perceived as one-sided or unfair.[52] Laypeople believe they have a duty to read the fine print, even though in most cases they fail to do so.[53]

Consumers' sense of commitment to the written contract may, in turn, generate a certain paradox: even though they regularly ignore the terms of the fine print *ex ante*—before making the transaction—they may still believe that these terms are binding when they encounter them *ex post*,

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[48] BAIRD, *supra* note 9, at 123.
[49] *Id.*
[50] *See, e.g.*, Tess Wilkinson-Ryan, *A Psychological Account of Consent of Fine Print*, 99 IOWA L. REV. 1745 (2013) (finding that people maintained that it was fair to hold signees to fine print terms they had not read, even if the terms were buried in a contract that they believed to be unreasonably lengthy); Yuval Feldman & Doron Teichman, *Are All Contractual Obligations Created Equal?* 100 GEO. L. J. 5, 5 (2012) (arguing that laypeople feel they are bound to the signed contract due to "moral commitments, social norms, and motivated reasoning.").
[51] *See, e.g.*, Tess Wilkinson-Ryan & David A. Hoffman, *The Common Sense of Contract Formation*, 67 STAN. L. REV. 1269, 1281–98 (2015).
[52] *Id.*
[53] Wilkinson-Ryan, *supra* note 50, at 1745.

when a problem or question arises. In turn, consumers may fail to realize that these terms are potentially voidable or already void.[54]

Here, we investigate whether consumers' intuitive formalism discourages them from taking action against deceptive companies in fraud-and-fine-print cases. Given that laypeople are contract formalists, consumers may assume that they are stuck with what they signed, even if the terms conflict with the seller's pre-contractual representations. When they discover they were tricked, they may blame themselves for relying on the seller's representation while neglecting to read the written agreement. Consequently, they might refrain from filing a claim against the deceptive seller.[55] In fact, they might even fail to take non-legal actions, such as posting a bad review online or complaining to management.

While much has been written about fraud-and-fine-print cases, there has been little inquiry into how consumers perceive them. Do laypeople believe they are morally or legally obligated to abide by contractual provisions that contradict what the seller told them? Do they anticipate that courts will enforce such provisions as written? Do they regard it as morally legitimate to enforce such provisions as long as the consumer had a reasonable opportunity to read the contract, but neglected to do so? The following experimental studies address these questions.

The stakes of this question are high. Prevailing legal strategies for combatting consumer fraud have not taken account of the psychological reality of how people respond to being cheated. The standard approaches tend to assume that consumers who are defrauded react as lawyers do: with a sense of grievance and a zeal to hold the wrongdoer to account. But if consumers are neutered by the fine print, they might fail to take action in response to being defrauded. The cumulative result may be that fraud goes unpoliced in the marketplace and society suffers a net welfare loss.

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[54] *See, e.g.*, Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. LEGAL ANALYSIS 1, 3 (2017) (suggesting that the use of unenforceable terms is likely to adversely affect consumers, since they are likely to relinquish valid legal rights and claims due to their ignorance of the law).

[55] In a similar vein, Dennis P. Stolle & Andrew J. Slain, *Standard Form Contracts and Contract Schemas: A Preliminary Investigation of the Effects of Exculpatory Clauses on Consumers' Propensity to Sue*, 15 BEHAV. SCI. & L. 83 (1997) find that consumers are reluctant to file meritorious suits if their contracts include legally dubious disclaimers of tort liability.

II. STUDY 1: LAY VS. EXPERT VIEWS

A. Study Design

In this study, we examined lay attitudes toward a fraud-and-fine-print case, in which the seller lies about a material aspect of a consumer financial product while the contract's written terms disclose the truth. Building on previous findings showing that laypeople are contract formalists,[56] we hypothesized that laypeople would believe that the agreement is enforceable as written, even though the seller had engaged in material deception. We surmised that despite the reality that consumers almost never read contracts attentively, laypeople would nonetheless maintain that consumers *ought* to read these agreements and are responsible for whatever they sign.

As a comparison, we also measured attitudes among a sample of legally trained individuals: students and alumni of Harvard and Yale law schools.[57] We hypothesized that legally trained individuals—in light of their acquaintance with the law—would exhibit less formalistic attitudes than do laypeople. In other words, we predicted that legal professionals would be more likely to assume that consumers could void a contract that conflicts with a seller's prior deceptive statements, given the flaw in the contract's formation process.

We fielded our survey with 57 lay participants, who were recruited from Amazon Mechanical Turk, an online subject pool.[58] We excluded one

[56] *See, e.g.*, Wilkinson-Ryan & Hoffman, *supra* note 51, at 1289; Wilkinson-Ryan, *supra* note 50, at 1745.

[57] We recognize that alumni typically have more legal experience than law students, and that even within the alumni sub-sample, participants differed in their legal backgrounds. Nonetheless, we group all those who have legal background (even to a minimal degree) together and compare them to a group that lacks any legal training. We acknowledge that the depth of legal knowledge of contracts and consumer law vary within our "expert sample."

[58] MTurk is commonly used by researchers to recruit participants in exchange for small sums of money. Tess Wilkinson-Ryan explains: "[Mturk] has been studied extensively at this point. Its advantages are that populations recruited via Turk are more representative of the national population than convenience samples (*e.g.*, undergraduates) and that a variety of experimental findings have been replicated using MTurk. . . . There is also evidence, both systematic and anecdotal, that Turk subjects are particularly attentive, perhaps due to the formal mechanisms available for giving them feedback that affects reputation ratings. The disadvantage of MTurk as compared to the sample procured by a commercial survey firm is the young and leftward skew of the population. Turk respondents are "wealthier, younger, more educated, less racially diverse, and more Democratic" than national samples." Tess Wilkinson-Ryan, *The Perverse Behavioral Economics of Disclosing Standard Terms*, 103 CORNELL L. REV. 117, 150 n. 162 (2017) (internal citations omitted). *See also* Kristin Firth, David A. Hoffman, & Tess

participant who indicated she had attended law school. In addition, we administered our survey to 57 legally trained respondents, whom we recruited at Harvard and Yale law schools during their respective alumni reunions in 2017. Harvard affiliates made up 86% of the sample, reflecting their larger alumni base. Lawyers accounted for 39% of the sample, while law students accounted for 61%. We excluded two participants who were neither students nor alumni.

In the survey, participants were asked to evaluate a scenario based on a real fraud-and-fine-print case that was the subject of an FTC enforcement action in 2015.[59] The scenario describes a consumer who was deceived by written and oral representations about the terms of an auto loan repayment plan. The deception was material: The consumer would not have enrolled in the plan if he had known he would incur $2.99 in fees every time he made a payment toward the loan. The consumer failed to read the contract and consequently did not realize that the written terms of the agreement, which disclosed the fees, contradicted what he was told. Participants read the following text:

> William decides to buy a new car from an automobile dealership called Frank's Motors. On the day of his purchase, a salesperson from the dealership offers him a five-year payment plan to finance the car.
>
> The salesperson tells William that the program will "allow you to pay off your loan without incurring any fees." He shows William a flyer advertising the program, which is called "Frank's No Fee Financing."
>
> William enrolls in the program. Shortly after, he begins to notice that he is being charged $2.99 in fees every time he makes a payment. This will add up to several hundred dollars over the five years. He realizes that the plan actually ends up costing more than it saves.
>
> William contacts a Frank's Motors representative and asks about these

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Wilkinson-Ryan, *Law and Psychology Grows Up, Goes Online, and Replicates*, FAC. SCHOLARSHIP 1884 (2017) (concluding that MTurk samples are highly reliable and useful, Firth et al. partially replicate the results of three canonical studies in law and psychology and find that the results are similar across platforms, including in-person labs).

[59] *In re* National Payment Network, F.T.C. No. C-4521 (May 4, 2015). An auto loan company had marketed its payment program as saving money for borrowers, while charging significant fees that canceled out any actual savings. These fees were disclosed in the fine print of the enrollment form consumers signed to sign up for the payment plan. As part of its settlement order, the auto loan company issued $1.5 million in consumer refunds and waived an additional $1 million in consumer fees. It also agreed to refrain from misrepresenting the costs associated with its services.

> fees. The representative informs him that Frank's Motors charges a $2.99 fee every time he makes a payment.
>
> William checks the "Terms and Conditions" of the paperwork that he signed when he enrolled in the program. The contract states that Frank's Motors will charge a $2.99 fee every time consumers make a payment.
>
> William did not read the terms before he signed the paperwork. He would not have enrolled in the financing program if he had known that he would incur these fees.

After reading the scenario, participants rated their agreement with a series of statements, presented in random order, on a 7-point scale ranging from "strongly agree" to "strongly disagree." These statements were: (a) "A court would probably rule that William is legally required to pay the $2.99 fees."; (b) "William consented to paying the $2.99 fees."; and (c) "It is fair to require William to pay the $2.99 fees."

B. *Results*

Our results show that lay participants reacted to the scenario with excessive formalism. As Figure 1 illustrates, lay respondents strongly expected that a court would require William to pay the fees.[60] That is, they saw the contract's written terms as legally binding even though the agreement was signed as a result of clear and material deception, and they predicted that a court of law would refuse to void the contract in such cases. Lay participants also strongly believed that William had consented to pay the $2.99 fees.[61] At the same time, they felt that it would be unfair to require William to pay the fees.[62]

The mismatch between respondents' moral and legal intuitions suggests that although laypeople perceive the law governing fraud-and-fine-print situations as more formalistic than it currently is, they simultaneously believe that it is unfair to impose contractual obligations on deceived, non-reading consumers in fraud-and-fine-print cases.

Figure 1.

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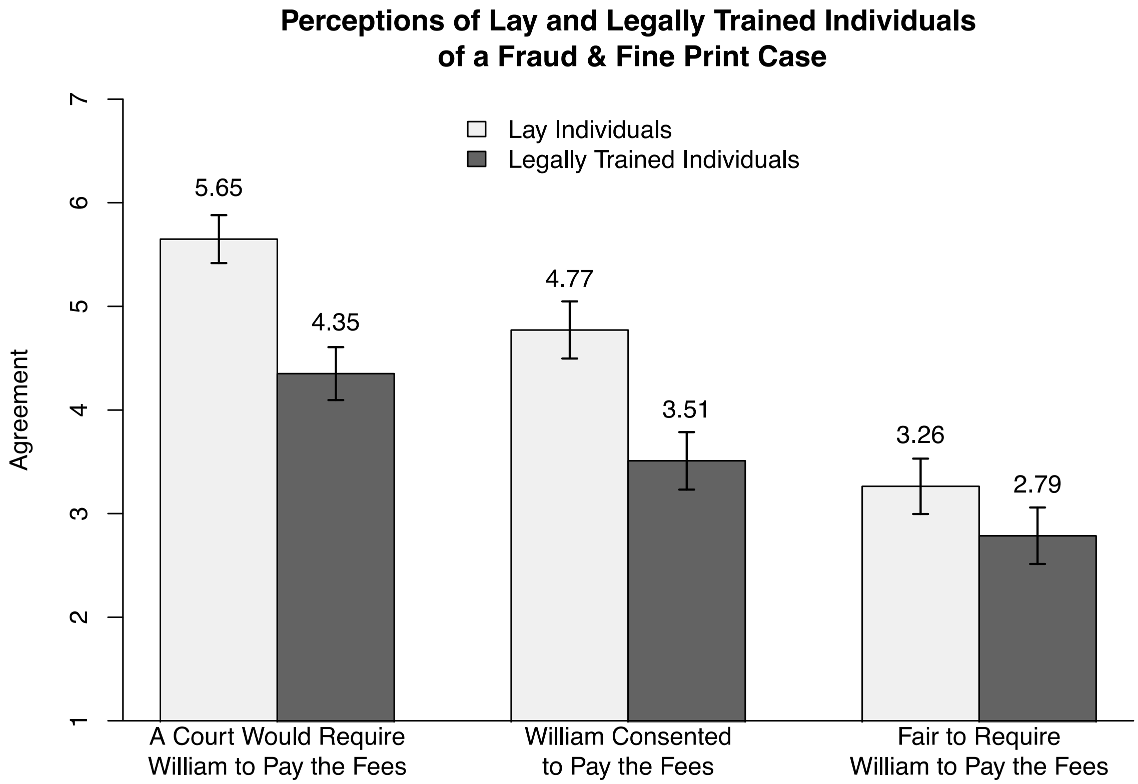
[60] *M* = 5.65, *SD* = 1.75. 84% of lay participants agreed somewhat or strongly that "A court would probably rule that William is legally required to pay the $2.99 fees."

[61] *M* = 4.77, *SD* = 2.08. 62% of lay participants agreed somewhat or strongly that "William consented to paying the $2.99 fees."

[62] *M* = 3.26, *SD* = 2.01. Only 32% of lay participants agreed somewhat or strongly that "It would be fair to require William to pay the $2.99 fees."



Next, we examined how lay participants' intuitions compared to those of legally trained individuals. Overall, as expected, legally trained respondents expressed less formalistic attitudes than did lay respondents. Legally, they were more likely to believe that a court would invalidate the contract.[63] They also saw the consumer's consent as more flawed.[64] At the same time, there was no significant difference between lawyers and laypeople in their judgments of fairness.[65] The legally trained participants felt, similarly to the lay subjects, that it would be unfair to require the consumer to pay the fees.[66]

[63] M = 4.35, SD = 1.92. Only 51% agreed strongly or somewhat that a court would require William to pay the fees. This was significantly different from the lay sample, $t(112) = 3.77$, $p < 0.001$.
[64] M = 3.51, SD = 2.10. Only 38% agreed strongly or somewhat that William had consented. This was significantly different from the lay sample, $t(112) = 3.23$, $p = 0.002$.
[65] $t(111) = 1.25$, $p = 0.21$.
[66] M = 2.79, SD = 2.04. Only 21% agreed strongly or somewhat that it would be fair to require William to pay the fees.

In sum, laypeople strongly expected that the consumer would be held to the contract that he or she had signed, even though the consumer had been deceived about a material aspect of the transaction. This finding suggests that laypeople's intuitive formalism extends even to lay legal predictions in cases involving outright fraud. Second, laypeople evidently believe that contract law, as they perceive it, is excessively harsh in fraud-and-fine-print situations.

By contrast, individuals with legal training do not show the same degree of formalism. They appear doubtful that the contract would be enforced by a court of law, and they generally perceive the consumer's consent to the hidden fee as flawed. Interestingly, laypeople and legal professionals do not differ in their moral judgments about whether it is fair to hold William to the fee. This suggests that lawyers' experience alters their legal intuitions, without significantly affecting their moral judgments.

To be sure, the participants who enroll in studies on MTurk and the students and alumni of Harvard and Yale law schools may differ in many ways other than their level of legal training. Nonetheless, comparing these two populations is instructive because it reveals how those in the legal elite—who disproportionately become judges and legislators—may hold intuitions about contract law that differ from those held by the larger population. Our claim is not that legal training is the sole cause of the observed differences between the MTurk and the lawyer samples; it is that laypeople's intuitions are far more formalistic than legal professionals' intuitions. This is important because the individuals who are responsible for making and interpreting consumer protection laws, including laws governing fraud-and-fine-print situations, are likely to share the intuitions of the legal elites, not the lay sample. Consequently, these powerful actors might fail to appreciate how regular consumers are likely to react to being deceived in fraud-and-fine-print cases.

This mismatch is reflected in the legal literature on consumer contracts. Scholars tend to treat fine print as if it does not matter; they assume that it has no effect on consumers because consumers rarely read their contracts.[67] Yet our results suggest that fine print can have a *perverse effect*: when laypeople do read, after something goes wrong, they feel bound by the fine print. This holds true even when they were lied to.

[67] See citations in footnote 1.

In the next study, we will examine the effect that unread fine print has on laypeople's responses to deception. We hypothesize that firms that engage in deception can get away with it if they include a fine-print disclosure (that no one reads) in the contract. This is because of the paradox of boilerplate: even though consumers regularly ignore the terms of contracts *ex ante* (before making a transaction), they believe that these terms are binding when they encounter them *ex post* (when a problem or question arises).

III. STUDY 2: THE EFFECT OF FINE PRINT ON COMPLAINTS

A. *Study Design*

In Study 2, we asked 100 lay participants[68] to judge a fraud-and-fine-print scenario similar to the one presented in Study 1, with a key difference: this time, participants were asked an open-ended question about what they would do if they were in the consumer's position. Participants wrote down what they imagined they would do if they had signed up for the auto loan described in the scenario.

We surmised that participants would be reluctant to take action against the deceptive company because of the chilling effect generated by the fine-print disclosure. Consequently, we hypothesized that after reading the fine print disclosure, few participants would spontaneously express an interest in suing the auto loan company or in pursuing some other kind of legal recourse. We also predicted that few participants would feel motivated to complain within the company, or to report the fraud to the Better Business Bureau or to a consumer protection group. Similarly, we predicted that few participants would describe other means of complaining, such as posting a negative review on social media, giving the dealership a low rating on crowd-sourced review sites such as Yelp or TripAdvisor, or telling their friends. This was because we thought that laypeople would feel that they are at blame for their misfortune. After all, they assumed the risk of

[68] The demographics of this sample were as follows: 43% female, ages 20-69 years, M_{age} = 35.37, SD_{age} = 11.32. Participants' education levels ranged from high school to professional degrees, with 81% having completed some college. Participants were moderately left-leaning ($M_{\text{political}}$ = 3.55, $SD_{political}$ = 1.74) on a 1 (extremely liberal) – 7 (extremely conservative) Likert scale, with 48% identifying as slightly to extremely left-of-center, 23% identifying as moderate, and 29% identifying as slightly to extremely right-of-center. Approximately one-third of participants reported an annual income of less than $30,000, while approximately one-third reported making over $75,000, and the remainder reported an income between $30,000 and $75,000.

encountering an unpleasant surprise when they neglected to read the fine print.

To provide a comparison, we tested a separate version of the scenario, in which the auto loan company equally lies about the terms of the loan. The key difference between the two versions of the scenario is that in the new version—the Fraud Only condition—the contract that the consumer signs contains no disclosure of the fees. That is, the company charges the consumer fees, even though the seller stated that there would be no fees and the written terms of the contract do not authorize the company to impose any fees.

Here, we hypothesized, participants would be highly inclined to pursue recourse: sue the company, file a complaint, post a bad review online, or take some other form of action. Even though the firm was equally deceptive, and the consumer did not read the contract in either case, the fact that the consumer had an *opportunity* to read in the Fraud & Fine Print version (and no opportunity to read in the Fraud Only version) would make a difference to participants' intuitive reactions to the situation. In short, we test the hypothesis that a fine-print disclosure that goes unread is *worse* than no disclosure at all, because the fine-print disclosure deters consumers from seeking recourse when they are treated unfairly.

Study 2 thus has two conditions: (1) Fraud & Fine Print and (2) Fraud Only. The full text of each condition and the full slate of dependent measures are reported in the Appendix. Here, we focus on how participants responded to the open-ended question asking what they would do if they faced the consumer's situation. A trio of independent coders—blind to the study purpose, hypothesis, and manipulation—coded participants' written responses.[69] We were primarily interested in whether participants were inclined to just pay the surprise fee and move on, or whether they would express intention to pursue some kind of recourse—such as hiring a lawyer, complaining within the company, or posting a negative review online. Our question was whether the presence of the fine print would deter participants not only from considering legal recourse, but also from telling others what happened. This question is important, because if laypeople are discouraged from complaining or alerting others, companies could use the fine print to get away with deceptive business practices, without risking their

[69] Whenever the three coders were not in unanimous agreement about the proper code to assign to a response, we dropped the minority vote and used the coding given by the two-person majority.

reputations.

B. Results

The presence of the fine-print disclosure made a substantial difference to participants' self-reported intentions (Table 1). Most people in the Fraud & Fine Print condition (73%) indicated that they would "lump it"—just pay the fee. Few described wanting to take any kind of action, including legal action, complaining within the company, or trying to influence other customers by tarnishing the company's reputation.[70] In the Fraud Only condition, by contrast, the vast majority of participants (85%) wanted to take some kind of action. Over half of the participants (57%) mentioned planning to take legal action. Very few (15%) were inclined to accept the situation and move on.

Table 1. Study 2 Participants' Responses to the Question "If you were [the consumer], what would you do in this situation?"

Category	Example of responses	Fraud & Fine Print Condition (*n* = 52)	Fraud Only Condition (*n* = 47)
Resignation	*I would just pay.* *Would acknowledge that I was tricked and carry on with the 5 year contract.*	73%	15%
Seek recourse through law	*I would talk to a lawyer* *I would sue them.*	10%	57%
Seek recourse through non-legal actions	*I would ask to talk to the manager of the company and complain* *I would contact their customer service or the HR department to complain about how their employee cheated her.*	8%	32%
Tarnish the company's reputation	*I would cancel and pay the termination fee. Then I'd leave bad reviews on the company to prevent others from being ripped off.* *I would pay the early termination fee, so the dealership gets the least amount of my*	10%	13%

[70] It is possible (perhaps even likely) that some participants overestimated, and consequently overstated, their propensity to take action, like complaining to the company's manager or writing a bad review online. It is therefore possible that in real life, even fewer consumers would actually pursue recourse against a deceptive seller.

	money. I would spam social media accounts about the dishonesty of the dealership and salesperson.		
Other/No response	*I am unsure*	4%	5%

As described earlier, deceptive business practices interfere with the proper functioning of markets, because they induce consumers to enter into transactions that make them worse off. For markets to function efficiently, unscrupulous firms must be punished for their deception. There are many ways this could happen: attorneys general or the Consumer Financial Protection Bureau could bring enforcement actions, customers could bring private suits, or word could get out that the company cheats people and the company could lose business as a result. Study 2's findings suggest, however, that defrauded consumers are disinclined to sue, complain, or tell their friends what happened, as long as their contract contains a term that contradicts, disclaims, or qualifies what they were told. Unscrupulous businesses may therefore be able to lie to consumers, while securing their silence by hiding the company's true policy in the unread fine print. As noted earlier, there is a general trend toward increasing consumer protection in fraud-and-fine-print cases. Yet, the findings suggest that many consumers are over-deterred by the presence of the fine print.

Even if consumers assume that the inclusion of fine print significantly reduces their chances of prevailing in court, they would nonetheless do well to warn their friends not to conduct business with the deceptive company. Put differently, even if consumers think they have no case—because they believe the law is harshly formalistic—they could still warn others. Yet, participants' responses reveal that those who express no intention to sue the deceptive company are also reluctant to take extra-legal action; they indicate little intention to complain or tell others what happened. This, in turn, raises substantial doubts as to the effectiveness of the reputation mechanism to discipline sellers from misbehaving.

IV. STUDY 3: INVESTIGATING THE ROLES OF FRAUD AND FINE PRINT

Study 1 showed that laypeople generally assume that they will not be able to void a contractual term even if it conflicts with a seller's prior, deceptive representation. Study 2 showed that inserting conflicting information into a contract has an adverse effect on consumers' reactions to being deceived. Consumers express less interest in pursuing recourse, and more willingness to just take their lumps, when they are tricked into signing a contract containing a conflicting term.

Study 3 aims to explore laypeople's formalistic attitudes further by experimentally manipulating key features of the scenario. Our first question pertains to the role of the contradictory fine print in fraud-and-fine-print situations. Namely, we wonder: If the contract was silent about certain fees, would laypeople conclude that the consumer did not have to pay them? Or would they believe that as long as the company's policy was to impose these fees, the consumer was obliged to pay them notwithstanding the fact that the written agreement was silent? Our second question was how much difference deception in the formation process makes. If the seller falsely promised the consumer that no fees would be incurred, would laypeople feel that the consumer was less obligated to pay them, compared to a situation where the seller did not make any representation about the fees, and the consumer merely *presumed* that no fees would be charged?

Our hypothesis was that both features would matter, but we sought to discover which feature—the presence of fraud, or the presence of fine print—would affect lay intuitions more. If laypeople are extreme contract formalists, they would care much less about what was said and understood at the time of formation, and much more about the written terms of the finalized document. Consequently, they would feel bound to the contract terms, whether the seller misinformed them about these terms prior to signing or not.

A. Study Design

We recruited 151 participants[71] and randomly assigned them to one of three conditions: (a) Fraud & Fine Print; (b) Fraud Only; or (c) Fine Print Only. Each participant read three scenarios presented in random order—an auto loan scenario,[72] a telecommunications scenario,[73] and a mortgage

---

[71] The demographics of the sample were as follows: 41% female, ages 18–68 years, M_{age} = 32.74, *SD* = 9.53. Participants' education levels ranged from high school to doctoral degrees, with 83% having completed some college. Participants were left-leaning overall (*M* = 3.07, *SD* = 1.68) on a 1 (extremely liberal) – 7 (extremely conservative) Likert scale, with 60% identifying as slightly to extremely left-of-center, 21% identifying as moderate, and 20% identifying as slightly to extremely right-of-center. Approximately 30% reported an annual income of less than $30,000, 15% reported making over $75,000, and the remaining 54% reported making between $30,000 and $75,000.

[72] The auto loan scenario is based on a real FTC enforcement action from 2015 (National Payment Network, *supra* note 59). An auto loan company called National Payment Network (NPN) marketed its payment program as saving money for borrowers, but the company failed to disclose that it would charge significant fees that would cancel out any actual savings. The FTC

scenario[74]—that aligned with their condition. All scenarios described a consumer who entered into a contract without reading and was later surprised by a fee. In all conditions, the consumers would not have chosen to enter the transaction had they known about the fee.

To illustrate, here we provide the three versions of the telecommunications scenario. The full texts of all three scenarios and all three conditions are reproduced in the Appendix.

Fraud & Fine Print	Fraud Only (no fine print)	Fine Print Only (no seller fraud)
Melissa purchases an international calling plan from ACME, a telecommunications company. The plan is advertised as "Unlimited World," and is described in promotional ads as "allowing unlimited phone calls to multiple destinations." In fact, the plan comes with a "Fair Usage Policy," which states: "The plan is limited	Melissa purchases an international calling plan from ACME, a telecommunications company. The plan is advertised as "Unlimited World," and is described in promotional ads as "allowing unlimited phone calls to multiple destinations." In fact, the plan ~~**comes with a "Fair Usage Policy," which states: "The plan**~~ is limited	Melissa purchases an international calling plan from ACME, a telecommunications company. The ~~**plan is advertised as "Unlimited World," and is described in promotional ads as "allowing unlimited phone calls to multiple destinations." In fact, the**~~ plan comes with a "Fair Usage Policy," which states: "The plan is limited

brought enforcement action against NPN for deceptive marketing in violation of the Federal Trade Commission Act. As part of its settlement order, NPN issued $1.5 million in consumer refunds and waived an additional $1 million in consumer fees. NPN also agreed to refrain from misrepresenting the fees or costs associated with the loan repayment program or with its add-on services.

[73] The telecommunications scenario is based on Chapman v. Skype Inc., 220 Cal.App.4th 217 (2013). In this case, *Skype* advertised its calling plan as unlimited but stipulated in the fine print that calls were, in fact, limited to a certain number of minutes. The California Court of Appeals sided with the consumer (and against the trial court), finding that she had adequately alleged fraudulent misrepresentation. We altered the facts of *Chapman* slightly to make the case more egregious, by reducing the number of minutes allowed under the plan from 10,000 to 1,000 minutes.

[74] The mortgage scenario is based on Davis v. G. N. Mortgage Corporation 396 F.3d 869 (7th Cir. 2005). In this case, a loan officer portrayed a mortgage as having a two-year prepayment penalty, when under the contract it was a five-year prepayment penalty. The court decided against the mortgagors, holding that they had a duty to read the mortgage agreement and therefore could not have reasonably relied on the (false) representations of the loan officer. The court explained that the consumers "had an opportunity and obvious obligation to read the documents before they signed them . . .[T]hey were not justified in relying on the verbal statements alone." *Id*.

to 1,000 minutes per month. Calls in excess of this limit will incur the normal rates and connection fees." Melissa would not have bought the plan if she had known that it was limited to 1,000 minutes per month. A few months after purchasing the plan, she notices that her credit card was charged "overage fees" for exceeding her monthly limit. She contacts ACME and asks a representative about the fees on her credit card statement. The representative informs her that the "Unlimited World" plan is limited to 1,000 minutes per month. He refers her to ACME's "Fair Usage Policy," which she clicked through months ago when she completed the purchase, without reading.	to 1,000 minutes per month. Calls in excess of this limit incur the normal rates and connection fees. Melissa would not have bought the plan if she had known that it was limited to 1,000 minutes per month. A few months after purchasing the plan, she notices that her credit card was charged "overage fees" for exceeding her monthly limit. She contacts ACME and asks a representative about the fees on her credit card statement. The representative informs her that the "Unlimited World" plan is limited to 1,000 minutes per month. **Melissa finds ACME's "Fair Usage Policy,"** which she clicked through months ago when she completed the purchase, without reading. **The Fair Use Policy says nothing about how many minutes customers can use per month**.	to 1,000 minutes per month. Calls in excess of this limit will incur the normal rates and connection fees." Melissa would not have bought the plan if she had known that it was limited to 1,000 minutes per month. A few months after purchasing the plan, she notices that her credit card was charged "overage fees" for exceeding her monthly limit. She contacts ACME and asks a representative about the fees on her credit card statement. The representative informs her that the **~~"Unlimited World"~~** plan is limited to 1,000 minutes per month. He refers her to ACME's "Fair Usage Policy," which she clicked through months ago when she completed the purchase, without reading.

After each scenario, participants rated, in randomized order, the degree to which:

(a) A court would probably rule that the consumer is legally required to pay the fee;
(b) The consumer consented to pay the fee;
(c) It is fair to require the consumer to pay the fee;
(d) The consumer had fair notice about the fee;
(e) The consumer was reasonable in assuming he or she would not have to pay the fee.

These items create a coherent scale.[75] Therefore, we averaged them together to create a composite measure of overall beliefs that the consumer is bound to pay the fee.[76]

To confirm that participants had understood the key aspects of the scenario, we asked them, upon completion of the study, whether "The agreement that the consumer signed with the seller stated that there would be a fee." We conducted the statistical analyses with and without the participants who failed this manipulation check ($n = 11$), and the findings were not significantly different. Here we report the findings with these participants excluded.

B. Results

As before, the findings show that laypeople are rigid formalists: they think fraud-and-fine-print cases are binding. As Figure 2 illustrates, in all three scenarios, participants felt that the consumer is significantly less bound to comply with the company's policy in the Fraud Only condition than in the other two conditions.[77]

Moreover, in all three scenarios, there was *no significant difference* between participants' beliefs in the Fraud & Fine Print condition and the Fine Print Only condition. Participants felt that the consumer was similarly bound to the written terms, whether there was a prior misrepresentation or not.[78]

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[75] $\alpha = 0.93$.

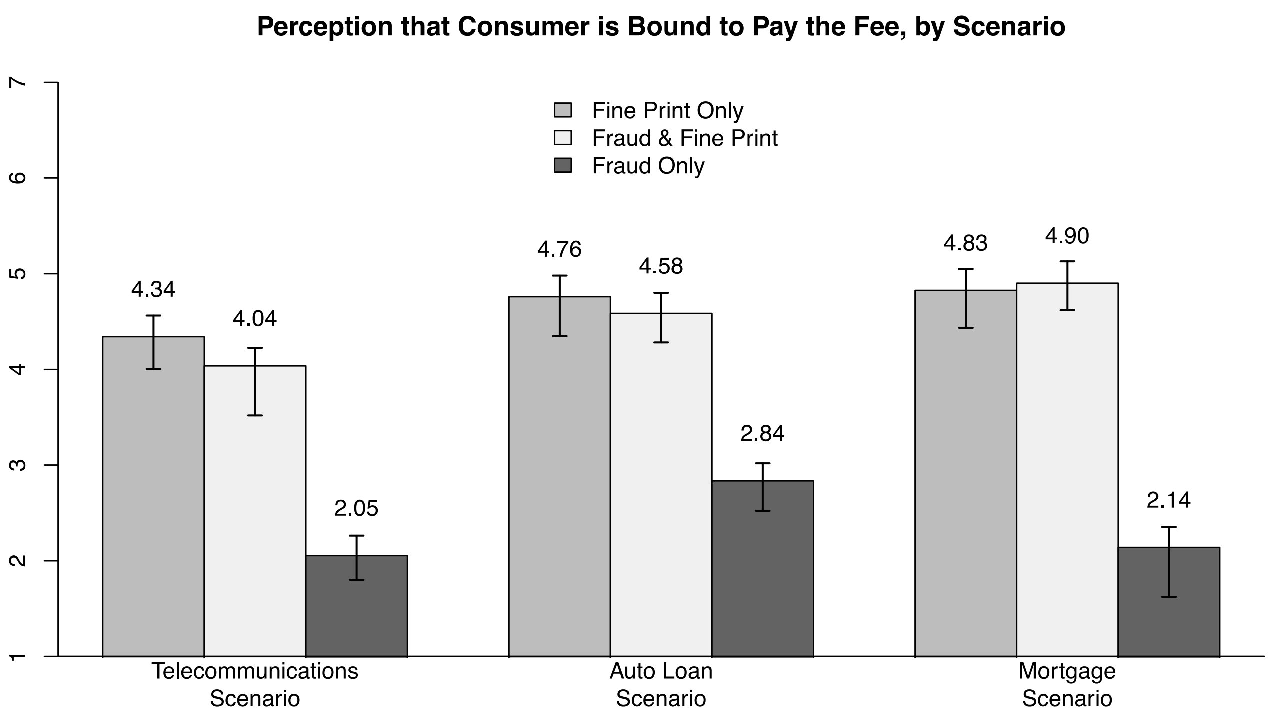
[76] We reverse-scored the reasonableness item, so that higher numbers on the scale indicate greater belief that the consumer was not reasonable in relying on the assumption that she would incur no fee.

[77] *Id.*

[78] In order to control for the effect of the order of the scenarios that participants read on their responses' in each scenario, we simulated a between-subjects design by comparing participants' responses to just the scenario they saw *first*. For the telecommunications scenario, the Fine Print Only condition ($M = 4.83$, $SD = 1.56$) did not differ from the Fraud & Fine Print condition ($M = 4.90$, $SD = 1.43$), $t(49) = 0.16$, $p_{\text{Holm-adjusted}} = 0.88$. Both differed from the Fraud Only condition ($M = 2.14$, $SD = 1.64$), $ps_{\text{Holm-adjusted}} < 0.001$. Similarly, for the auto loan scenario, the Fine Print Only condition ($M = 4.34$, $SD = 1.39$) did not differ from the Fraud & Fine Print condition ($M = 4.04$, $SD = 1.72$), $t(40) = 0.58$, $p_{\text{Holm-adjusted}} = 0.57$. Both differed from the Fraud Only condition ($M = 2.05$, $SD = 0.98$), $ps_{\text{Holm-adjusted}} < 0.002$. For the mortgage scenario, the same pattern was obtained: The Fine Print Only condition ($M = 4.76$, $SD = 1.60$) did not differ from the Fraud & Fine Print condition ($M = 4.58$, $SD = 1.09$), $t(42) = .34$, $p_{\text{Holm-adjusted}} = 0.73$. Both differed from the Fraud Only condition ($M = 2.84$, $SD = 1.29$), $ps_{\text{Holm-adjusted}} < 0.003$.

Importantly, this pattern holds true whether the fraud was oral or written, suggesting that evidentiary concerns—that is, whether the fraudulent representation would be provable in court if the seller denied it—cannot fully explain the effect of the conflicting fine print.

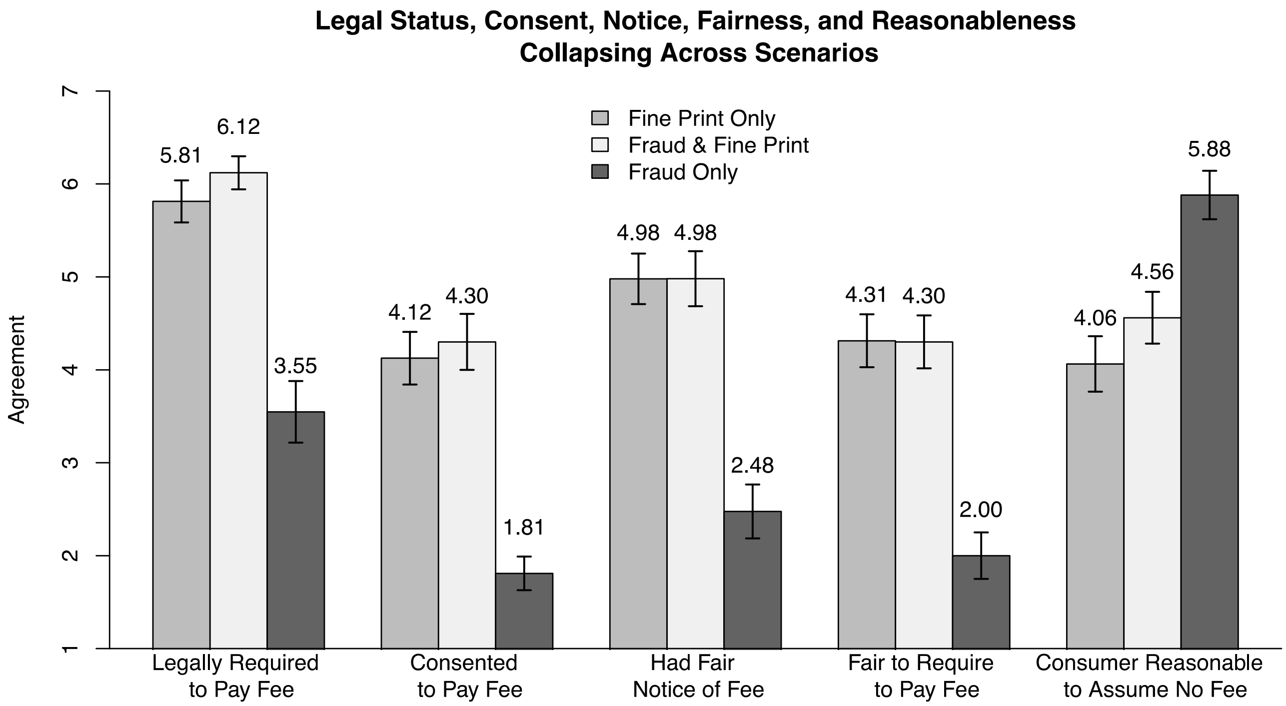
Figure 2.



These findings suggest that it does not much matter to participants whether the seller deceived the consumer: as long as the fee-imposing term is contained in the written contract, participants will hold the consumer to it. Relatedly, when the contract is silent on the matter, as in the Fraud Only condition, participants believe that the consumer should not be obliged to pay the fee.

We also examined each of the five individual measures separately: judgments of legal status, consent, notice, fairness, and reasonable reliance. Figure 3 shows how judgments of the five items differed by condition (collapsing across scenarios).

Figure 3.



As Figure 3 illustrates, participants drew no significant distinction between Fine Print Only and Fraud & Fine Print when it came to judgments regarding the legal status of the contract, consent, notice, or fairness.[79] This indicates, again, that laypeople perceive the fine print as binding, regardless of whether the seller misrepresented the terms. On the other hand, participants' reactions to the Fraud Only condition were starkly different.[80] When the written contract did not mention the fee, people more strongly believed that the consumer does not, and should not, have to pay the fee.

Interestingly, the judgments of reasonableness show a different pattern from the other four items. Here, the seller's deception made a difference: it increased participants' sense that the consumer was reasonable in assuming that there will be no fees, compared to a condition in which the contract disclosed the fee and there was no prior deception, even though in both cases participants were told that the consumer did not read the contract. This finding suggests that laypeople believe it is reasonable to rely on a seller's representation, although they blame themselves for failing to read

[79] Legal judgments: $t(96) = 1.07$, $p = 0.29$; consent judgments: $t(96) = 0.001$, $p = 0.99$; notice judgments: $t(96) = 0.03$, $p = 0.98$; fairness judgments: $t(96) = 0.42$, $p = 0.67$.
[80] All ps < 0.001.

the fine print when the representation turns out to be false.

We also asked participants what they would do if they were in the consumer's shoes. As before, three independent coders, blind to the study's hypotheses and manipulation, coded participants' responses. The purpose of this analysis was to learn whether participants were inclined to take some kind of action, such as complaining or pursuing legal recourse, or whether they felt resigned to just lumping it.

As Table 2 shows, most participants in the Fraud Only condition expressed interest in taking some kind of action to dispute the fee, including legal action. By contrast, few participants in the Fraud & Fine Print and Fine Print Only conditions expressed interest in taking action; most were resigned to just paying the fee and moving on. These findings are consistent with the quantitative data from the previous studies, showing that laypeople view the consumer as bound by the fine print in fraud-and-fine-print cases. They are also consistent with the qualitative results of Study 2, showing that few people express interest in taking action in these situations.

Table 2. Study 3: Participants' Responses to the Question, "If you were [the consumer], what would you do in this situation?"

Condition	N	Take Action	Legal Action	Resignation
Fraud Only				
Auto Loan Scenario	52	65%	42%	21%
Telecommunications Scenario	52	69%	58%	17%
Mortgage Scenario	52	63%	29%	21%
Fraud + Fine Print				
Auto Loan Scenario	50	38%	6%	56%
Telecommunications Scenario	50	52%	32%	44%
Mortgage Scenario	50	26%	8%	66%
Fine Print Only				
Auto Loan Scenario	48	35%	13%	63%
Telecommunications Scenario	48	25%	10%	63%
Mortgage Scenario	48	23%	2%	67%

The comparison between participants' reactions in the Fraud Only condition and in the Fraud & Fine Print condition shows the power of the fine print. It seems that written terms—even terms that directly contradict the seller's assurances—deter consumers from pursuing grievances or taking action against the deceptive seller.

V. STUDY 4: CAN WE EDUCATE CONSUMERS?

Study 3 showed that consumer attitudes track the contract's written terms and appear to take little to no account of the seller's fraud in the presence of contradictory fine print. This finding suggests that laypeople are extreme contract formalists. They seem to focus intensely on the terms within four corners of the document and to ignore the process of formation almost entirely.

In Study 4, we asked whether educating participants about the law could mitigate the adverse effect of the fine print. We hypothesized that participants' responses were driven, to a large extent, by their misperceptions of the law governing fraud-and-fine-print situations. Put differently, we suspected that participants severely underestimated the defrauded consumer's chances of prevailing in court in fraud-and-fine-print situations. We therefore predicted that if we informed participants that the law may allow a consumer to avoid a contractual term that contradicts a seller's pre-contractual representation, they would be significantly more inclined to take the deceptive company to court than they otherwise would.

A. Study Design

We recruited 300 respondents from Prolific Academic, an online participant pool.[81] All participants read the auto loan scenario from the

[81] Prolific Academic is a participant recruitment platform for researchers. Participants recruited through Prolific Academic tend to be more diverse than those recruited from Mechanical Turk. Eyal Peer et al., *Beyond the Turk: Alternative Platforms for Crowdsourcing Behavioral Research*, 70 J. EXPERIMENTAL SOC. PSYCHOL. 153 (2017). Previous research has shown that Prolific Academic produces higher quality data: Participants are more honest and less experienced with taking surveys. *Id.* Well-known psychological findings have been replicated in samples drawn from both Prolific Academic and MTurk, suggesting that crowdsourcing is a legitimate alternative to lab-based research. The demographics of this sample are as follows: 44% female, aged 18–54 years, $M_{age} = 24.46$, $SD = 5.25$. The sample was restricted to adult U.S. citizens currently living in the United States. Participants' education levels ranged from grammar school to doctoral degrees, with 82% having completed some college. Participants were quite left-leaning overall ($M = 2.97$, $SD = 1.55$ on a 1 (extremely liberal) – 7 (extremely conservative) Likert scale, with 65% identifying as slightly to extremely left-of-center, 18% identifying as moderate, and 17% identifying as slightly to extremely right-of-center. Approximately 31% reported an annual income of less than $30,000, 40% reported making over $75,000, and the remaining 29% reported making between $30,000 and $75,000.

previous studies, in which an auto dealer falsely tells a consumer named William that a payment plan will save him money over time and that he would incur no fees, even though the dealership charges fees each time the account is debited, and the plan ends up costing the consumer more than it saves. This time, participants were randomly assigned to one of three experimental conditions:

(a) Fraud & Fine Print;
(b) Fraud Only;
(c) Information (Fraud & Fine Print + Information about the law).

In the Information condition, the scenario is identical to the Fraud & Fine Print condition, with one key difference: after participants read the facts of William's case (including the fact that the contract he signed discloses the fees), they are provided with information about the law in William's state. Participants in this condition read as follows:

> Now we'd like to tell you about the consumer protection laws in the state where William lives. In William's state, a person may be able to get out of a contract if a court finds that the person relied on a deceptive statement made by the seller before the consumer signed the contract. This could happen even if the seller's deceptive statement is contradicted by what is written in the contract.

The purpose of including this manipulation was to ascertain whether learning that William *may* be able to get out of his contract would affect participants' judgments and self-reported intentions to seek recourse. This might happen, for instance, if participants were otherwise inclined to assume that William had no chance of getting out of his contract.

After reading the scenario, participants indicated what they would do if they were in William's shoes. Next, they rated how likely they would be to take the matter to court (on a 7-item scale, ranging from 1 = extremely unlikely to 7 = extremely likely). Subsequently, participants reported their legal, consent, and fairness judgments as before. They completed a demographic questionnaire and manipulation checks.[82] Participants who

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[82] One such check asked whether the contract William signed stated that consumer would be charged per-debit fees of $2.99 ("Yes"/"No"). The second manipulation check asked whether, according to the laws in William's state, "a person might be able to get out of a contract if that

failed the manipulation checks were excluded from the analysis (findings with these participants included are reported in the Appendix).[83]

B. Results

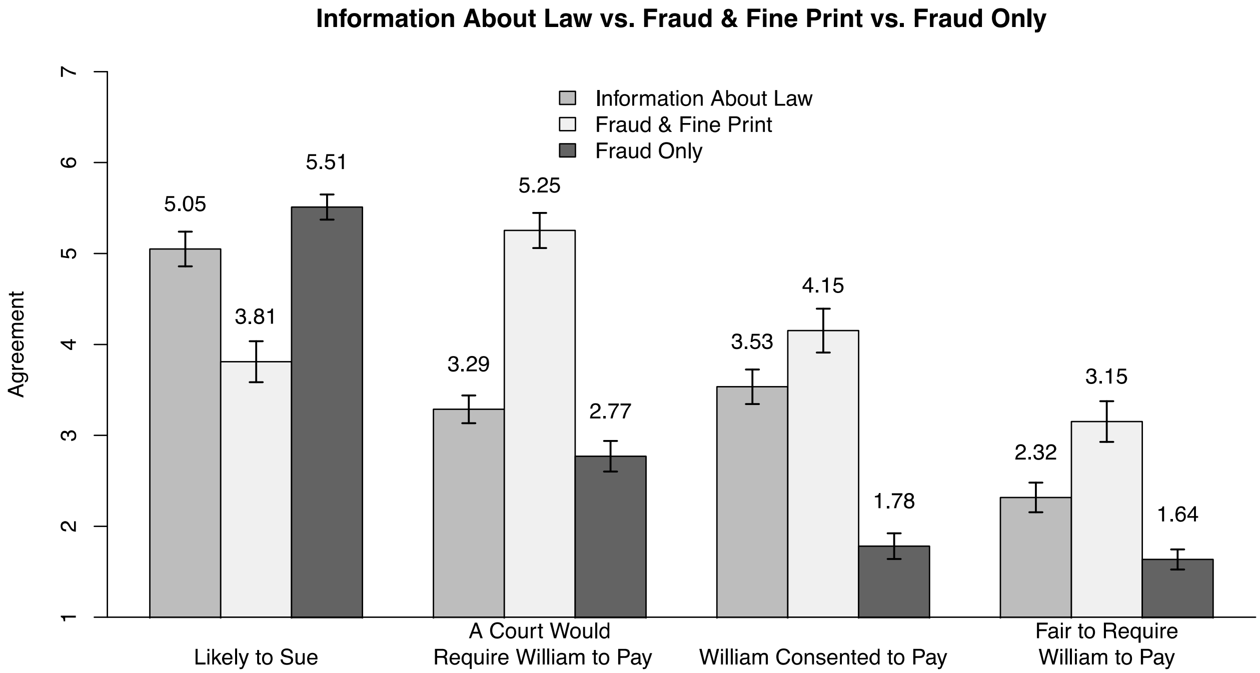
The results indicate that information made a difference to participants' judgments. The comparison between the Fraud & Fine Print and Information conditions reveals that information about the applicable consumer protection laws in William's state significantly affected participants' responses in all four items: self-reported intentions to sue, expectations about the likely outcome of a legal challenge of the fees, perceptions of consent, and fairness judgments.[84] Figure 4 illustrates these results.

Figure 4.

person relied on a deceptive statement made by the seller before he or she signed the contract, even though the written contract terms contradict the seller's statement" ("Probably true"/"Probably false"). Our manipulation check shows that the legal instruction in the Information condition succeeded in altering participants' legal predictions: Most participants (98%) in this condition believed that a consumer in William's state may be able to void a contract which conflicts with a seller's prior, deceptive, statement, compared to only 62% of participants in the Fraud & Fine Print condition; $\chi^2(1) = 39.51$, $p < 0.001$, $\phi = 0.47$.

[83] Here, we report the findings excluding participants who (1) incorrectly stated that the written contract disclosed the fees, when the scenario specified that it did not; (2) incorrectly stated that the written contract did not disclose the fees, when the scenario specified that it did; and (3) the 2% of participants in the Information condition who did not believe that the law might allow William to rescind the contract, when the scenario specified that it might.

[84] Intentions to sue: $t(178) = 4.12$, $p < 0.001$; legal Predictions: $t(178) = 8.09$, $p < 0.001$; consent judgments: $t(178) = 2.04$, $p = 0.043$; fairness judgments: $t(178) = 3.09$, $p = 0.002$.



We can also compare the Information condition to the Fraud Only condition to see whether information about the law counteracts the psychological effect of the conflicting fine print, such that participants—after receiving information about the law—respond as if there were no fine print in the first place.

For the first item—intention to sue—there was no significant difference between the Information condition and the Fraud Only condition (although the difference was in the expected direction and approached significance).[85] This suggests that the informational intervention succeeded in substantially reducing the effect of the fine print. In other words, participants who were instructed to assume that they incurred fees even though the seller promised that they would not incur any fees were not significantly more likely to report intentions to sue when their contract was silent on this issue than when the contract mentioned the fees but information about the law was also provided.

At the same time, the informational intervention did not completely

[85] $t_{Welch}(180.06) = 1.95$, $p = 0.052$. We used Welch's two-sample *t*-test here because an *F*-test comparing the two variances showed that they were not equal.

counteract the effect of the fine print for the other three items—expectations of the legal outcome[86] and perceptions of consent[87] and fairness.[88] Participants felt significantly more bound to pay the fee, both legally and morally, in the Information condition than they did in the Fraud Only condition across all three dimensions.

As such, it appears that disclosure of legal information significantly changes attitudes and reported intentions when compared to no information, but does not completely counteract the psychological effect of the fine print.

Recall that participants were asked, "If you were William, what would you do in this situation?" Participants wrote their answers before they had the opportunity to see the survey questions or the manipulation checks. Table 3 shows how frequently participants in the different conditions mentioned taking action in general, taking *legal* action specifically, or expressing resignation. As before, participants' responses were coded by independent research assistants blind to the study's conditions, hypotheses, and objectives.

Table 3. Study 4: Participants' Responses to the Question, "If you were William, what would you do in this situation?"

Condition	Total *N*	Take Action	Legal Action	Resignation
Information About Law	114	68%	52%	26%
Fraud + Fine Print	89	38%	15%	65%
Fraud Only	116	74%	45%	30%

As Table 3 shows, most participants in the Fraud & Fine Print condition expressed resignation and little intention to take action—legal or otherwise. By contrast, participants in the other two conditions showed significantly greater interest in taking action, including legal action. Consistent with the quantitative findings, both manipulations—removing the fee-imposing term from the contract and educating consumers about consumer protection laws in their state—increased self-reported intentions to seek legal recourse (compared to the Fraud & Fine Print condition).

86 $t(195) = 2.28$, $p = 0.024$.
87 t_{Welch} $(182.69) = 7.41$, $p < 0.001$.
88 t_{Welch} $(174.74) = 3.46$, $p < 0.001$.

VI. IMPLICATIONS

A. A New Understanding of Consumer Psychology: Laypeople are Formalists, despite Non-readership, even in Cases of Fraud

Across four studies, we found that laypeople are deeply affected by the content of unread standard form contracts. Study 1 shows that laypeople, unlike legally trained individuals, strongly believe that such contracts are consented to, and will be enforced as written, despite the seller's material deception. Study 2 reveals that the presence of fine print discourages consumers from wanting to take legal action, file a complaint, or damage the firm's reputation by telling others what happened.

Study 3 further shows that laypeople focus exclusively on the written terms of the finalized contract and ignore defects in the contract formation process. Indeed, we find that the presence or absence of deception makes little difference to laypeople's intuitions about whether the contract will be, or should be, enforced. This finding holds true whether the seller's misrepresentation is oral or written in an advertisement, and regardless of whether the consumer contract is an auto loan agreement, a phone plan, or a residential mortgage agreement. In general, it seems that consumers believe that the written terms are what matters—and the fact that the seller misrepresents a material fact (or doesn't) makes little difference to lay legal predictions.

Finally, Study 4 shows that informing laypeople about anti-deception consumer protection laws alters their perceptions about the legal and moral status of contracts induced by fraud, although such information does not completely eliminate their formalistic intuition that whatever the contract says is the final word.

This fact is striking, given that most consumers do not read their contracts before signing. Indeed, in today's environment, reading every word of every contract, receipt, and click-through agreement one encounters would be nearly impossible. Yet, our study findings demonstrate that consumers believe that courts endorse the duty-to-read principle even in cases of clear and material deception.

Previous research has assumed that in cases of outright fraud, consumers will take steps to punish the seller and recover their money,[89] or else that the reasons they fail to are all due to formal barriers: litigation costs, small-dollar claims, the complexity of the remedy processes, or class action waivers.[90]

But this research shows that consumer psychology is an independent reason why victims of fraud do not take action. Laypeople assume that contracts are binding as written, and are discouraged by fine print. They seem not to have the intuition that fraud undermines their consent or mitigates their blameworthiness for failing to read. This aspect of consumer psychology leads them to take their lumps rather than challenge deceptive practices.

B. Implications for Consumer Welfare and Policing Fraud in the Marketplace

The findings presented in this Article indicate that laypeople are over-deterred by conflicting fine print, in light of their formalistic intuitions. As a result, defrauded consumers are often reluctant to take the deceptive company to court. Moreover, the results suggest that lay consumers are similarly disinclined to take *non-legal* measures, such as complaining online or telling their friends, once they read their contracts. These results raise the concern that companies will be incentivized to induce consumers into entering certain transactions through deceptive means, while immunizing themselves from both judicial scrutiny and reputational costs through the fine print.

What can be done? Our findings reveal that if we educate consumers about consumer protection statutes that allow for rescission on the basis of fraud, participants adjust their perceptions. They express more intention to pursue legal and non-legal recourse, and they no longer believe that a court would enforce the written provision. Indeed, they even alter their fairness judgments and consent evaluations, believing the surprising term to be less consensual and more unfair.

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[89] *See, e.g.*, BAIRD, *supra* note **Error! Bookmark not defined.**.

[90] *See, e.g.*, David Trubek et al., *The Costs of Ordinary Litigation*, 31 UCLA L. REV. 72, 74 (1983) (observing that rising litigation costs are "a barrier to some and a problem to all litigants"); Keith N. Hylton, *Litigation Costs and the Economic Theory of Tort Law*, 46 U. MIAMI L. REV. 111, 112 (1991) ("The simple fact that litigation is a costly enterprise provides a rich source of inefficiencies with which the tort system must grapple.").

Yet, we should be cautious about inferring that public education will have as great an effect in the real world, outside the lab. This is because our experimental setting may have rendered the information about applicable law more salient to consumers than it would be if it were communicated through real-life channels, such as the media or a governmental campaign. In real life, as opposed to the lab, consumers are confronted with myriad disclosures and educational campaigns. They may have difficulty processing and incorporating relevant information into their decision-making processes when they encounter fraud-and-fine-print situations in real time.

Moreover, our findings indicate that even with successful education efforts, some consumers remain deterred by surprising fine print. We found that even when people are convinced that the law allows for rescission, the presence of the fine print still colors their perceptions of whether there was consent and whether it would be fair to enforce the written agreement. Thus, even though information about the law succeeded in altering participants' expectations of the legal ramifications of the contract, it did not completely counteract the enormous weight of the fine print.

These findings carry implications for consumer protection efforts. In particular, approaches that rely on victims of fraud to bring private claims are likely to under-police deceptive business practices. Class actions may surmount this issue, but sellers often insert class action waivers, arbitration agreements, or choice-of-law clauses, into their boilerplates.[91] Therefore, public enforcement by attorneys general and regulatory agencies like the FTC will be necessary to police fraudulent business practices.

Admittedly, public enforcement measures often rely on consumers' complaints, and consumers might be dissuaded from complaining about deceptive business practices when they blame themselves for failing to read the fine print.[92] Therefore, these enforcement efforts may need to be paired with informational campaigns aimed to educate consumers about their legal rights and remedies.

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[91] Courts rule inconsistently on whether to enforce class action waivers in consumer fraud cases. *See, e.g.*, Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 MICH. L. REV. 373, 402–404 (2005).

[92] *See* Katherine Porter, *The Complaint Conundrum: Thoughts on the CFPB's Complaint Mechanism*, 7 BROOK. J. CORP. FIN. & COM. L. 57, 80 (2012) ("Relying on complaints to gauge enforcement needs could lead to substantial underenforcement or inactivity. Just as lack of awareness of their legal rights is a hindrance to litigation, so too does it limit consumers' belief that their experiences form the basis of valid complaints.").

C. Implications for the Field of Consumer Contracts

Many commentators have pointed to pervasive non-readership of contracts and concluded that fine print is essentially white noise. Because no one reads, boilerplate does not matter.[93] Yet our findings unsettle this conventional wisdom. We show that fine print *does* matter: it exerts a significant effect on consumers thanks to their commonsense intuitions about the law. They believe that contracts are likely to be enforced as written—even in cases where the contract was induced by fraud—and thus, they feel deterred by fine print.

This insight challenges the prevailing view that fraud will be deterred and bad-faith actors will be sorted out of the marketplace. We show that legal professionals' assumptions about how laypeople react to fraud are misguided. Most laypeople feel trapped by contracts secured by fraud. Consequently, policymakers, scholars, and courts, might similarly harbor the wrong intuitions about the likelihood that fraud will proliferate unpunished.

VII. CONCLUSION

Across four studies, we find that the fine print plays a crucial role in shaping consumers' perceptions: when the fine print contradicts prior, fraudulent misrepresentations, many consumers feel bound by the surprising terms notwithstanding the seller's prior assertions.

These findings demonstrate that laypeople are rigid contract formalists. They focus on the written terms of a contract and downplay important defects in the formation process. In short, consumers put enormous weight on written contracts when they scrutinize the terms *ex post*, and largely do not believe that deception outweighs their duty to read the fine print.

As a result of these formalistic intuitions, consumers might give up their right to challenge the contract and end up bearing the costs that the seller deceptively imposed on them. This state-of-affairs is harmful to consumers, who might stick to a bad deal, not realizing that it could be invalidated by a court of law. It is also harmful to society and the proper functioning of markets.

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[93] *See, e.g.,* Hillman, *supra* note 11, at 844.

Consumer protection statutes in most states provide a private right of action, meaning that consumers can initiate lawsuits challenging deceptive business practices. Our results suggest, however, that these legal avenues are likely to be underutilized, thanks to consumer psychology. Consumers' formalistic intuitions might discourage them from seeking both legal and non-legal modes of recourse, even though they recognize the injustice of the deception.

Accordingly, we argue that strong public enforcement mechanisms are needed to police the market for deceptive practices. Agencies such as the Federal Trade Commission and the Consumer Financial Protection Bureau must be prepared to take on the lion's share of enforcement, as consumers—due to their intuitions about contracts and the law—seem unlikely to protect themselves.

APPENDIX

A. Materials for Study 1

1. Stimuli

William decides to buy a new car from an automobile dealership called Frank's Motors. On the day of his purchase, a salesperson from the dealership offers him a five-year payment plan to finance the car.

The salesperson tells William that the program will "allow you to pay off your loan without incurring any fees." He shows William a flyer advertising the program, which is called "Frank's No Fee Financing."

William enrolls in the program. Shortly after, he begins to notice that he is being charged $2.99 in fees every time he makes a payment. This will add up to several hundred dollars over the five years. He realizes that the plan actually ends up costing more than it saves.

William contacts a Frank's Motors representative and asks about these fees. The representative informs him that Frank's Motors charges a $2.99 fee every time he makes a payment.

William checks the "Terms and Conditions" of the paperwork that he signed when he enrolled in the program.

Fraud & Fine Print condition: The contract states that Frank's Motors will charge a $2.99 fee every time consumers make a payment.

Fraud Only condition: The contract is silent on whether Frank's Motors will charge a $2.99 fee every time consumers make a payment.

William did not read the terms before he signed the paperwork. He would not have enrolled in the financing program if he had known that he would incur these fees.

2. Dependent Measures

After reading the vignette, participants rated their agreement with a series of statements, presented in random order, on a 7-item Likert scale (1

= strongly disagree; 7 = strongly agree):

(a) A court would probably rule that William is legally required to pay the $2.99 fees.
(b) William consented to paying the $2.99 fees.
(c) It is fair to require William to pay the $2.99 fees.

3. Supplemental Analyses

Study 1 manipulated whether the contract William signed contained a fine-print term contradicting the misrepresentation. The presence of the fine print made a significant difference to judgments of legal enforcement, $F(1,220) = 23.28$, $p < .001$; to judgments of consent, $F(1, 220) = 16.98$, $p < .001$; and to fairness, $F(1, 22) = 6.43$, $p = .012$. Laypeople saw higher levels of legally enforceability, consent, and fairness overall, whereas legally trained people viewed the contracts as more suspect. There was no significant interaction between the presence of fine print and the level of legal training for any of the three measures, ps > .30.

B. Materials for Study 2

1. Stimuli

Jennifer has been in the market for a new car for many months. She decides to buy a Honda Civic from the NFP Automobile Dealership. On the day of her purchase, a salesperson from FNP offers her various "add-on" products and services. One of the add-on services is a financing contract called "FNP Saves" that would change the way she pays off her car loan.

Normally, Jennifer would make one loan payment each month, but under the "FNP Saves" program she would make one payment every two weeks. This schedule, according to the FNP salesperson, would enable her to pay off the loan approximately six months earlier. The FNP salesperson tells her that enrolling in the "FNP Saves" program saves money on auto loans over time, because paying the loan faster reduces the interest on the loan.

Jennifer decides to enroll. She signs a five-year financing contract with FNP, enrolling in the "FNP Saves" program. She drives her new car off the lot that day.

A few months later, Jennifer notices that FNP has been deducting small amounts here and there from her checking account. It seems like every two weeks they deducted $2.99. She calls FNP to ask why she is seeing these deductions. The FNP account manager on the phone explains that FNP charges a "per-debit" fee every time it makes a debit from customers' bank accounts.

Jennifer pulls up the contract she signed.

Fraud & Fine Print condition: *The contract states that FNP will charge a "per-debit" fee of $2.99 every time it debits the account. It also mentions a termination fee of $200 if she cancels the contract before the end of five years.*

Fraud Only condition: *The contract says nothing about a "per-debit" fee. It only mentions a termination fee of $200 if she cancels the contract before the end of five years.*

Jennifer quickly does the math: she realizes that she will pay at least an extra $350 over the five-year program due to the $2.99 per-debit fees. Despite what the salesperson had told her at the dealership, she realizes that the "FNP Saves" program does not save money over the long run once these fees are taken into account.

Jennifer asks to quit the contract, but the account manager on the phone says that the contract is binding over the five-year period, and that if she wants to cancel early, she will have to pay a $200 termination fee.

2. Dependent Measures

After reading the vignette, participants rated their agreement with a series of statements, presented in random order, on a 7-item Likert scale (1 – strongly disagree; 4 – neither agree nor disagree; 7 – strongly agree):

(d) Jennifer **consented** to pay the $2.99 per-debit fees.
(e) Jennifer is **legally required** to either continue paying the $2.99 per-debit fees, or else pay the $200 termination fee.
(f) It is **fair** to require Jennifer to either continue paying the $2.99 per-debit fees, or else pay the $200 termination fee.

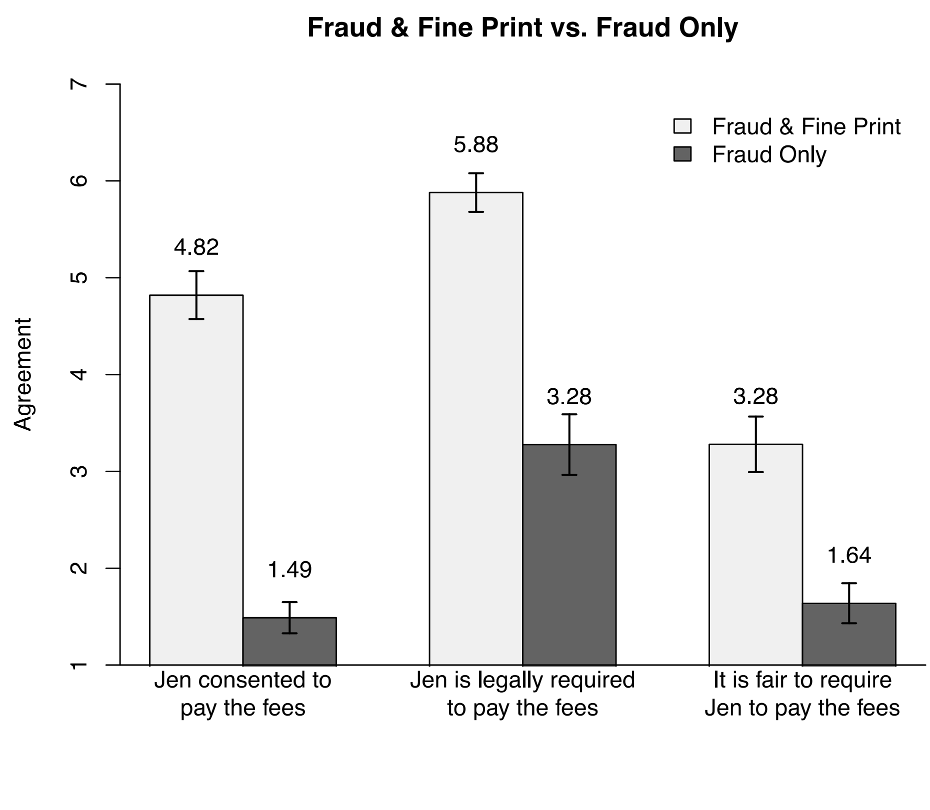
Finally, participants answered an open-ended question asking, "If you were Jennifer, what would you do in this situation?"

3. Supplemental Analyses

Study 2 manipulated whether the contract Jennifer signed as a result of the seller's misrepresentation contained a fine-print term contradicting the misrepresentation. As Figure 5 shows, the presence vs. absence of the fine-print disclosure makes a significant difference across all three dependent variables.

Participants more strongly felt that Jennifer consented to pay the fees when the written agreement contained a provision allowing the company to charge the per-debit fees (M = 4.81, SD = 1.72) than when it did not (M = 1.56, SD = 1.20), t(91.54) = 11.03, p < .001, d = 2.18. Legally, they more strongly believed that Jennifer was required to pay the fees in the Fine-Print Disclosure condition than in the No Fine-Print Disclosure condition, (M = 5.87, SD = 1.39) vs. (M = 3.31, SD = 2.14), t(79.60) = 7.03, p < .001, d = 1.43. Morally, they felt that it was more legitimate and fair to require her to pay the fees when she received the disclosure (M = 3.27, SD = 1.99) than when she did not (M = 1.73, SD = 1.54), t(98) = 4.30, p < .001, d = .86.

Figure 5.



C. Materials for Study 3

1. Stimuli

a. *Chapman v. Skype* Case

<u>Conflict (Fraud & Fine Print Together)</u>

Melissa purchases an international calling plan from ACME, a telecommunications company. The plan is advertised as "Unlimited World," and is described in promotional ads as "allowing unlimited phone calls to multiple destinations." In fact, the plan comes with a "Fair Usage Policy," which states: "The plan is limited to 1,000 minutes per month. Calls in excess of this limit will incur the normal rates and connection fees."

Melissa would not have bought the plan if she had known that it was limited to 1,000 minutes per month. A few months after purchasing the plan, she notices that her credit card was charged "overage fees" for exceeding her monthly limit. She contacts ACME and asks a representative about the fees on her credit card statement.

The representative informs her that the "Unlimited World" plan is limited to 1,000 minutes per month. He refers her to ACME's "Fair Usage Policy," which she clicked through months ago when she completed the purchase, without reading.

<u>Fine Print Only</u>

Melissa purchases an international calling plan from ACME, a telecommunications company. The plan comes with a "Fair Usage Policy," which states: "The plan is limited to 1,000 minutes per month. Calls in excess of this limit will incur the normal rates and connection fees."

Melissa would not have bought the plan if she had known that it was limited to 1,000 minutes per month. A few months after purchasing the plan, she notices that her credit card was charged "overage fees" for exceeding her monthly limit. She contacts ACME and asks a representative about the fees on her credit card statement.

The representative informs her that the plan is limited to 1,000 minutes per month. He refers her to ACME's "Fair Usage Policy," which she clicked through months ago when she completed the purchase, without reading.

Fraud Only

Melissa purchases an international calling plan from ACME, a telecommunications company. The plan is advertised as "Unlimited World," and is described in promotional ads as "allowing unlimited phone calls to multiple destinations." In fact, the plan is limited to 1,000 minutes per month. Calls in excess of this limit incur the normal rates and connection fees.

Melissa would not have bought the plan if she had known that it was limited to 1,000 minutes per month. A few months after purchasing the plan, she notices that her credit card was charged "overage fees" for exceeding her monthly limit. She contacts ACME and asks a representative about the fees on her credit card statement.

The representative informs her that the "Unlimited World" plan is limited to 1,000 minutes per month. Melissa finds ACME's "Fair Usage Policy," which she clicked through months ago when she completed the purchase, without reading. The Fair Use Policy says nothing about how many minutes customers can use per month.

Questions for participants (presented in random order):

1. A court would probably rule that Melissa is legally required to pay the overage fee.
2. Melissa consented to pay the overage fee.
3. Melissa had fair notice about the overage fee.
4. It is fair to require Melissa to pay the overage fee.
5. Melissa was reasonable in assuming that she would not have to pay overage fees for placing over 1,000 minutes of calls.
6. Manipulation check: The agreement with ACME that Melissa clicked through before completing her purchase stated that calls would be limited to 1,000 minutes per month.

b. *Davis v. G.N. Mortgage Corporation* Case

Conflict (Fraud & Fine Print Together)

Cathy and Thomas take out a loan from GNMC to finance their new home, with the help of a GNMC loan officer. The loan officer describes the GNMC mortgage as having "lenient prepayment penalties." The loan officer tells them: "You only have to pay a prepayment penalty if you refinance your loan within 3 years." In fact, the mortgage agreement that Cathy and Thomas signed states that GNMC's borrowers incur a prepayment penalty of $12,000 if they refinance their loan within 5 years. Cathy and Thomas would not have taken out the GNMC mortgage if they had known that they would have to pay a prepayment penalty for refinancing within 5 years. This is because they knew there was a chance they would need to move to another city before the end of 5 years.

Four years later, they need to repay the balance on their mortgage so that they can move to another city. They are assessed a $12,000 prepayment penalty by GNMC.

When they contact GNMC to ask about the penalty, the representative on the phone informs them that the penalty is triggered for any refinancing within 5 years. He refers them to the GNMC mortgage they signed years ago, without reading.

<u>Fine Print Only</u>

Cathy and Thomas take out a loan from GNMC to finance their new home, with the help of a GNMC loan officer. The mortgage agreement that Cathy and Thomas signed states that GNMC's borrowers incur a prepayment penalty of $12,000 if they refinance their loan within 5 years. Cathy and Thomas would not have taken out the GNMC mortgage if they had known that they would have to pay a prepayment penalty for refinancing within 5 years. This is because they knew there was a chance they would need to move to another city before the end of 5 years.

Four years later, they need to repay the balance on their mortgage so that they can move to another city. They are assessed a $12,000 prepayment penalty by GNMC.

When they contact GNMC to ask about the penalty, the representative on the phone informs them that the penalty is triggered for any refinancing within 5 years. He refers them to the GNMC mortgage they signed years ago, without reading.

<u>Fraud Only</u>

Cathy and Thomas take out a loan from GNMC to finance their new home, with the help of a GNMC loan officer. The loan officer describes the GNMC mortgage as having "lenient prepayment penalties." The loan officer tells them: "You only have to pay a prepayment penalty if you refinance your loan within 3 years." In fact, GNMC's borrowers incur a prepayment penalty of $12,000 if they refinance their loan within 5 years. Cathy and Thomas would not have taken out the GNMC mortgage if they had known that they would have to pay a prepayment penalty for refinancing within 5 years. This is because they knew there was a chance they would need to move to another city before the end of 5 years.

Four years later, they need to repay the balance on their mortgage so that they can move to another city. They are assessed a $12,000 prepayment penalty by GNMC.

When they contact GNMC to ask about the penalty, the representative on the phone informs them that the penalty is triggered for any refinancing within 5 years. Cathy and Thomas examine the GNMC mortgage signed years ago, without reading. It says nothing about how long before the prepayment penalty period expires.

Questions for participants (presented in random order):

1. A court would probably rule that Cathy and Thomas are legally required to pay the prepayment penalty.
2. Cathy and Thomas consented to pay the prepayment penalty.
3. Cathy and Thomas had fair notice about the prepayment penalty.
4. It is fair to require Cathy and Thomas to pay the prepayment penalty.
5. Cathy and Thomas were reasonable in assuming that they would not have to pay a prepayment penalty for refinancing after four years.
6. Manipulation check: The mortgage agreement that Cathy and Thomas signed with GNMC stated that the prepayment penalty would be triggered for any refinancing within 5 years.

c. *In the Matter of National Payment Network, Inc.* Case

<u>Conflict (Fraud & Fine Print Together)</u>

William decides to buy a new car from the FNP Automobile Dealership. On the day of his purchase, a salesperson from NFP offers him various add-on products and services. One of the add-on services is a five-year payment program that is supposed to help customers finance their cars, by making biweekly debits from their bank accounts. The program charges a $200 early-termination penalty if a customer decides to quit the program before the end of five years.

The sales person tells William that the program, called "FNP SAVES," will "allow you to pay off your loan without incurring any fees." In fact, the contract William signs to enroll in the program states in the "Terms and Conditions" that FNP will charge a "per-debit fee" of $2.99 every time it debits his bank account. William would not have enrolled in the FNP SAVES program if he had known that he would incur per-debit fees.

After enrolling in the program, he begins to notice that he is being charged $2.99 every two weeks, each time FNP debits his account, which will add up to several hundred dollars over the years. Therefore, the plan actually ends up costing more than it saves.

He contacts an FNP representative and asks her about these fees. The representative informs him that FNP charges a per-debit fee of $2.99 every time it debits his account. The representative refers him to the FNP's "Terms and Conditions" in the paperwork that he signed, without reading, when he enrolled in the program. William asks to quit the program, but the representative says that if he wants to quit before the end of five years, he will have to pay the $200 early-termination penalty.

<u>Fine Print Only</u>

William decides to buy a new car from the FNP Automobile Dealership. On the day of his purchase, a salesperson from NFP offers him various add-on products and services. One of the add-on services is a five-year payment program that is supposed to help customers finance their cars, by making biweekly debits from their bank accounts. The program charges a $200 early-termination penalty if a customer decides to quit the program before the end of five years.

The contract William signs to enroll in the program states in the "Terms and Conditions" that FNP will charge a "per-debit fee" of $2.99 every time it debits his bank account. William would not have enrolled in the program if he had known that he would incur per-debit fees.

After enrolling in the program, he begins to notice that he is being charged $2.99 every two weeks, each time FNP debits his account, which will add up to several hundred dollars over the years. Therefore, the plan actually ends up costing more than it saves.

He contacts an FNP representative and asks her about these fees. The representative informs him that FNP charges a per-debit fee of $2.99 every time it debits his account. The representative refers him to the FNP's "Terms and Conditions" in the paperwork that he signed, without reading, when he enrolled in the program. William asks to quit the program, but the representative says that if he wants to quit before the end of five years, he will have to pay the $200 early-termination penalty.

Fraud Only

William decides to buy a new car from the FNP Automobile Dealership. On the day of his purchase, a salesperson from NFP offers him various add-on products and services. One of the add-on services is a five-year payment program that is supposed to help customers finance their cars, by making biweekly debits from their bank accounts. The program charges a $200 early-termination penalty if a customer decides to quit the program before the end of five years.

The salesperson tells William that the program, called "FNP SAVES," will "allow you to pay off your loan without incurring any fees." In fact, FNP charges a "per-debit fee" of $2.99 every time it debits his bank account. William would not have enrolled in the FNP SAVES program if he had known that he would incur per-debit fees.

After enrolling in the program, he begins to notice that he is being charged $2.99 every two weeks, each time FNP debits his account, which will add up to several hundred dollars over the years. Therefore, the plan actually ends up costing more than it saves.

He contacts an FNP representative and asks her about these fees. The representative informs him that FNP charges a per-debit fee of $2.99 every time it debits his account. William looks at the paperwork that he signed, without reading, when he enrolled in the program. The paperwork says nothing about whether there will be fees. William asks to quit the program, but the representative says that if he wants to quit before the end of five years, he will have to pay the $200 early-termination penalty.

Questions for participants (presented in random order):

1. A court would probably rule that William is legally required to pay the per-debit fees (or else pay the $200 early termination penalty).
2. William consented to paying the per-debit fees.
3. William had fair notice about the per-debit fees.
4. It is fair to require William to pay the per-debit fees (or else pay the $200 early termination penalty).
5. William was reasonable in assuming that he would not have to pay per-debit fees.
6. Manipulation check: The contract that William signed with FNP before enrolling in the program stated that he would be charged per-debit fees of $2.99.

D. Materials for Study 4

1. Stimuli

a. Fraud Only Condition

William decides to buy a new car from the SVP Automobile Dealership. On the day of his purchase, a salesperson from SVP offers him various add-on products and services. One of the add-on services is a five-year payment program that is supposed to help customers finance their cars, by making biweekly debits from their bank accounts. The program charges a $200 early-termination penalty if a customer decides to quit the program before the end of five years.

The salesperson tells William that the program, called "SVP SAVES," will "allow you to pay off your loan without incurring any fees." **In fact, SVP charges a "per-debit fee" of $2.99 every time it debits his bank account.** William would not have enrolled in the SVP SAVES program if he had known that he would incur per-debit fees.

After enrolling in the program, he begins to notice that he is being charged $2.99 every two weeks, each time SVP debits his account, which will add up to several hundred dollars over the years. Therefore, the plan actually ends up costing more than it saves.

He contacts an SVP representative and asks her about these fees. The representative informs him that SVP charges a per-debit fee of $2.99 every time it debits his account. **William looks at the paperwork that he signed, without reading, when he enrolled in the program. The**

paperwork says nothing about whether there will be fees. William asks to quit the program, but the representative says that if he wants to quit before the end of five years, he will have to pay the $200 early-termination penalty.

b. Fraud & Fine Print Condition

> William decides to buy a new car from the SVP Automobile Dealership. On the day of his purchase, a salesperson from SVP offers him various add-on products and services. One of the add-on services is a five-year payment program that is supposed to help customers finance their cars, by making biweekly debits from their bank accounts. The program charges a $200 early-termination penalty if a customer decides to quit the program before the end of five years.

The sales person tells William that the program, called "SVP SAVES," will "allow you to pay off your loan without incurring any fees." **In fact, the contract William signs to enroll in the program states in the "Terms and Conditions" that SVP will charge a "per-debit fee" of $2.99 every time it debits his bank account.** William would not have enrolled in the SVP SAVES program if he had known that he would incur per-debit fees.

After enrolling in the program, he begins to notice that he is being charged $2.99 every two weeks, each time SVP debits his account, which will add up to several hundred dollars over the years. Therefore, the plan actually ends up costing more than it saves.

He contacts an SVP representative and asks her about these fees. The representative informs him that SVP charges a per-debit fee of $2.99 every time it debits his account**. The representative refers him to the SVP's "Terms and Conditions" in the paperwork that he signed, without reading, when he enrolled in the program.** William asks to quit the program, but the representative says that if he wants to quit before the end of five years, he will have to pay the $200 early-termination penalty.

c. Information About Law Condition

William decides to buy a new car from the SVP Automobile Dealership. On the day of his purchase, a salesperson from SVP offers him various add-on products and services. One of the add-on services is a five-year payment program that is supposed to help customers finance their cars, by making biweekly debits from their bank accounts. The program charges a $200 early-termination penalty if a customer decides to quit the program before the end of five years.

The sales person tells William that the program, called "SVP SAVES," will "allow you to pay off your loan without incurring any fees." In fact, the contract William signs to enroll in the program states in the "Terms and Conditions" that SVP will charge a "per-debit fee" of $2.99 every time it debits his bank account. William would not have enrolled in the SVP SAVES program if he had known that he would incur per-debit fees.

After enrolling in the program, he begins to notice that he is being charged $2.99 every two weeks, each time SVP debits his account, which will add up to several hundred dollars over the years. Therefore, the plan actually ends up costing more than it saves.

He contacts an SVP representative and asks her about these fees. The representative informs him that SVP charges a per-debit fee of $2.99 every time it debits his account. The representative refers him to the SVP's "Terms and Conditions" in the paperwork that he signed, without reading, when he enrolled in the program. William asks to quit the program, but the representative says that if he wants to quit before the end of five years, he will have to pay the $200 early-termination penalty.

Now we'd like to tell you about the consumer protection laws in the state where William lives. In William's state, a person may be able to get out of a contract if a court finds that the person relied on a deceptive statement made by the seller before the consumer signed the contract. This could happen even if the seller's deceptive statement is contradicted by what is written in the contract.

2. Dependent Measures

1. If you were William, what would you do in this situation?

The following four questions were presented in random order:

2. A court would probably rule that William is legally required to pay the per-debit fees (or else pay the $200 early termination penalty).
3. It is fair to require William to pay the per-debit fees (or else pay the $200 early termination penalty).
4. William consented to paying the per-debit fees.
5. If you were William, how likely would you be to take this matter to court?

Manipulation checks:

6. The contract that William signed with FNP before enrolling in the program stated that he would be charged per-debit fees of $2.99.
7. According to the law in William's state, a person might be able to get out of a contract if they relied on a deceptive statement made by the seller before they signed the contract, even though the written contract terms contradict the seller's statement.

3. Supplemental Analyses

In the main text, we analyzed only those 276 participants who passed the manipulation check. Here we report the findings with all participants included (n = 300).

	All participants included (n = 300)		Excluding participants who failed the manipulation check (n = 276)	
	M	(SD)	M	(SD)
If you were William, how likely would you be to take this matter to court?				
Information About Law	5.04 [a]	(1.95)	5.05 [a]	(1.92)
Fraud & Fine Print	3.89 [b]	(2.02)	3.81 [b]	(2.01)
Fraud Only	5.36 [a]	(1.44)	5.51 [a]	(1.35)
A court would probably rule that William is legally required to pay the per-debit fees.				
Information About Law	3.27 [a]	(1.52)	3.29 [a]	(1.53)
Fraud & Fine Print	5.22 [b]	(1.71)	5.25 [b]	(1.72)
Fraud Only	3.02 [a]	(1.77)	2.77 [c]	(1.65)
William consented to paying the per-debit fees.				
Information About Law	3.51 [a]	(1.87)	3.53 [a]	(1.91)
Fraud & Fine Print	4.11 [b]	(2.13)	4.15 [b]	(2.14)
Fraud Only	2.11 [c]	(1.67)	1.78 [c]	(1.39)
It is fair to require William to pay the per-debit fees.				
Information About Law	2.31 [a]	(1.63)	2.32 [a]	(1.64)
Fraud & Fine Print	3.13 [b]	(1.99)	3.15 [b]	(1.99)
Fraud Only	1.81 [c]	(1.25)	1.64 [c]	(1.09)

E. Demographic Differences

We asked lay participants to report their gender, age, race, income level, education level, and political orientation. Here we report demographic variation in responses. Unfortunately, we were not able to record demographic information for the sample of lawyers and law students, given the time constraints of surveying attendees during alumni reunion events.

Study 1 found that gender made a difference to MTurkers' overall views that the contract is binding. Men saw the consumer less bound than did women. The average rating among male participants was 3.93 (SD = 1.30) whereas the average rating among female participants was 5.06 (SD = 1.16), a significant difference, $t(54) = 3.44$, $p = .001$, $d = 93$.

Study 2 found that age made a difference to overall views that the contract is binding. Older participants were inclined to see the consumer as significantly less bound ($r = .28$). The effect of age did not vary by condition, however, meaning that older participants were inclined to see the consumer as less required to pay the per-debit fees, whether or not the agreements contained the written term disclosing the fee.

Study 3 found that race made a difference to overall views that the contract is binding, collapsing across scenario. Nonwhite participants were inclined to see the consumer as more bound, $t(149) = 1.98$, p = .050. The effect of race did not vary by condition, however, meaning that white participants were inclined to see the consumer as less required to pay the hidden fees than were nonwhite participants, regardless of whether or not there was fraud, and regardless of whether or not the agreements contained the written term disclosing the fee.

Study 4 found that political orientation (measured on a 1-7 scale varying from "extremely liberal" to "extremely conservative") made a difference to overall views that the contract is binding. Conservative participants were inclined to see the consumer as significantly more bound ($r = .14$). The effect of political orientation did not vary by condition, however, meaning that conservative participants were inclined to see the consumer as more required to pay the per-debit fees, whether or not the agreements contained the written term disclosing the fee, and whether or not they were told about the consumer protection laws in William's state.