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ARTICLE

Consumer Psychology and the Problem of Fine-Print Fraud

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Abstract. This Article investigates consumers' beliefs about contracts that are formed as a result of fraud. Across four studies, we asked lay survey respondents to judge scenarios in which sellers use false representations to induce consumers to buy products or services. In each case, the false representations are directly contradicted by the written terms of the contract, which the consumers sign without reading. Our findings reveal that lay respondents, unlike legally trained respondents, believe that such agreements are consented to and will be enforced as written, despite the seller's material deception. Importantly, fine print discourages consumers from wanting to take legal action, initiate complaints, or damage the deceptive firm's reputation by telling others what happened. We find that the presence of deception during the contract formation process has little effect on consumers' beliefs about whether the contract will be or should be enforced as written. While informing consumers about antideception consumer protection laws can alter their perceptions of fine-print fraud, we find that such information does not completely counteract the psychological effect of the fine print.

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Taken together, these findings suggest that consumers who would otherwise complain about being cheated become demoralized when they discover they have signed a contract whose terms contradict what they were promised. We posit that this occurs because many people are intuitive contract formalists: They assume that all contracts—even those induced by fraud—are binding. The implications, we argue, are that prevailing methods of addressing deceptive business practices, which often put the onus on victims of fraud to complain, 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 the 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]

Widespread non-readership leaves consumers open to exploitation by underhanded firms. When consumers do not read their contracts, unscrupulous sellers can exaggerate or lie outright about their products and services while contradicting, qualifying, or disclaiming these assertions in the fine print.[3] For

1. *See, e.g.*, OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE 79-93 (2014) (surveying evidence that consumers are often unable to read fine print carefully and arguing against regulation focused on increasing disclosure in contracts); Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 STAN. L. REV. 545, 546-48, 566, 582 (2014) (responding to the overwhelming number of terms and disclosures consumers encounter); Yannis Bakos et al., *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1, 3-5 (2014) (finding that only one or two out of every thousand retail software buyers examine the license agreement at all before making the purchase and proposing that an "informed minority" is unlikely to prevent sellers from inserting one-sided terms into standardized agreements); Florencia 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, 168 (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 of license agreements).

2. *See, e.g.*, BEN-SHAHAR & SCHNEIDER, *supra* note 1, at 10-11 ("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."); Richard A. Epstein, *Contract, Not Regulation: UCITA and High-Tech Consumers Meet Their Consumer Protection Critics*, *in* CONSUMER PROTECTION IN THE AGE OF THE "INFORMATION ECONOMY" 205, 227 (Jane K. Winn ed., 2006) ("[I]t seems clear that most consumers—of whom I am proudly one—never bother to read these terms anyhow: we . . . adopt a strategy of 'rational ignorance' to economize on the use of our time."); Aleecia M. McDonald & Lorrie Faith 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, on average, 244 hours per year, 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 less than half of survey respondents knew whether the contract they had just read included an arbitration clause, and that most of those who did know failed to understand the legal implications of the clause).

3. *See, e.g.*, Russell Korobkin, *The* Borat *Problem in Negotiation: Fraud, Assent, and the Behavioral Law and Economics of Standard Form Contracts*, 101 CALIF. L. REV. 51, 55, 57 (2013) (discussing situations in which the nondrafting party claims that the drafting party made oral promises contrary to the written contract, and coining the term "*Borat* problem" to describe such situations after litigation presenting this fact pattern); Debra Pogrund Stark & Jessica M. Choplin, *A License to Deceive: Enforcing Contractual Myths*

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instance, the marketing company Vertrue enrolled consumers in "buying club memberships" over the phone, offering to send enrollees a $25 gift card in the mail as part of a "free trial" and promising that membership would be "risk-free."[4] Unbeknownst to consumers, their credit cards or bank accounts would be perpetually charged monthly membership fees if they failed to contact Vertrue to cancel within a designated trial period.[5] The details about these charges, as well as instructions for how to cancel the membership, were buried in the fine print.[6] Vertrue perpetuated this fraudulent scheme (among others) for over two decades before it was ordered to pay over $30 million in restitution to over 500,000 consumers for billing them without their knowledge.[7]

Cases involving "fraud and fine print" schemes like Vertrue's have recently garnered attention from scholars,[8] enforcement agencies,[9] and consumer advocates.[10] Experts estimate that over 25 million Americans each year are victimized by fraud.[11] Deceptive business practices are especially likely to target low-income, minority, and elderly adults.[12]

Despite Consumer Psychological Realities, 5 N.Y.U. J.L. & BUS. 617, 624-25 (2009) (arguing against enforcement of no-reliance clauses when the contract conflicts with the seller's prior statements, except when terms are negotiated by sophisticated parties in business-to-business transactions).

4. *See* State v. Vertrue, Inc., 834 N.W.2d 12, 18-19, 21, 34-40 (Iowa 2013) (holding that a seller violated the Iowa Consumer Fraud Act when oral representations contradicted fine-print terms); *see also* Matthew Sturdevant, *Connecticut Company Liable for 20 Years of Consumer Fraud in Iowa*, HARTFORD COURANT (Mar. 25, 2010), https://perma.cc/Y9BD-FP2G.

5. Sturdevant, *supra* note 4.

6. *Vertrue*, 834 N.W.2d at 42.

7. *See id.* at 33; Sturdevant, *supra* note 4.

8. *See, e.g.*, Korobkin, *supra* note 3, at 54-55; Stark & Choplin, *supra* note 3, at 617-21.

9. *See, e.g.*, *infra* note 71 and accompanying text.

10. *See, e.g.*, Press Release, Better Bus. Bureau, Consumer Fraud Task Force Warns Consumers to Be Careful When Shopping Online (Aug. 4, 2017), https://perma.cc/KAQ5-QSFK (advising consumers to read the fine print to avoid falling prey to fraudulent or unfair business practices); Bob Sullivan, *It Pays to Read the Fine Print in Contracts*, AARP (Sept. 9, 2019), https://perma.cc/5G7V-Y3QW (educating AARP constituents about how the fine print of contracts may contradict certain advertised aspects of transactions or reveal they are too good to be true).

11. *See* KEITH B. ANDERSON, FTC, CONSUMER FRAUD IN THE UNITED STATES, 2011: THE THIRD FTC SURVEY, at i (2013), https://perma.cc/RNA9-79SP.

12. *See Protecting Seniors from Fraud: Hearing Before the S. Spec. Comm. on Aging*, 106th Cong. 29 (2000) (statement of Rolando Berrelez, Rep. on Consumer Protection, FTC); FTC, COMBATING FRAUD IN AFRICAN AMERICAN AND LATINO COMMUNITIES: THE FTC'S COMPREHENSIVE STRATEGIC PLAN 1-2, 1 n.6 (2016), https://perma.cc/A4J4-S4PD.

Few consumers will notice at the time of signing that they have been misled about the terms of a transaction; many will realize this only after the fact when they are hit with a nasty surprise. At that point, they may revisit the contract and discover a fine-print clause that contradicts what they were told. Previous commentary has assumed that consumers will complain at this point because they were deceived about a material aspect of the transaction.[13] This Article challenges that prevailing wisdom. It shows, on the contrary, that the inclusion of fraudulent fine print leads laypeople to assume that they are stuck with what they signed.

Across four studies, we presented lay respondents with fraud-and-fine-print 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. Using this experimental paradigm, Study 1 shows that laypeople, unlike legally trained individuals, strongly believe that fraudulent fine print is consented to and will be enforced against the deceived party.[14] Study 2 shows, moreover, that the presence of fraudulent fine print discourages consumers from wanting to take legal action, complaining to the company, or posting a bad review online.[15] Remarkably, Study 3 finds that the presence or absence of seller deception has little effect on laypeople's intuitions about whether fine-print terms will be, or should be, enforced: Consumers seem to focus on what the contract says, not on whether the formation process was marred by fraud.[16] Finally, Study 4 shows that providing respondents with information about antideception consumer protection laws leads them to question the legal status

13. *See, e.g.*, Wayne R. Barnes, *Social Media and the Rise in Consumer Bargaining Power*, 14 U. PA. J. BUS. L. 661 (2012) (noting the rise in consumer self-help remedies using social media); Franklin G. Snyder & Ann M. Mirabito, *The Death of Contracts*, 52 DUQ. L. REV. 345, 395 (2014) ("Today, ubiquitous ratings systems on popular web sites, sometimes with free and open (and often virulent) commentary, allow individual consumers to extract a measure of vengeance on the businesses that they believe have wronged them."); Eric H. Steele, *Fraud, Dispute, and the Consumer: Responding to Consumer Complaints*, 123 U. PA. L. REV. 1107, 1108-10 (1975) (noting that consumers faced with unfair or fraudulent business practices may feel they are treated unfairly and therefore demand action be taken to rectify the situation). *See generally* Susan S. Silbey, Review Essay, *Who Speaks for the Consumer? Nader's* No Access to Law *and Best's* When Consumers Complain, 1984 AM. B. FOUND. RES. J. 429, 434 (1984) (reviewing NO ACCESS TO LAW: ALTERNATIVES TO THE AMERICAN JUDICIAL SYSTEM (Laura Nader ed., 1980); and ARTHUR BEST, WHEN CONSUMERS COMPLAIN (1981)) ("Agencies are often passive, relying on consumer initiative to combat systematic product and service failures, as well as organized fraud and deception.").

14. *See infra* Part II.

15. *See infra* Part III.

16. *See infra* Part IV.

of fine-print fraud, although such information does not completely counteract their formalistic intuition that whatever the contract says is enforceable.[17]

These findings unsettle conventional wisdom about how consumers react to fraudulently induced contracts. Previous scholarship has tended to assume that fine print is "at worst, harmless."[18] Robert Hillman, for example, has argued that "consumers are as unlikely to read terms after a transaction as during one."[19] Other scholars have countered that consumers *do* read their contracts, often once they discover problems and must decide what to do.[20] But these commentators make a second assumption: that fine print *empowers* consumers. Shmuel Becher and Esther Unger-Aviram, for instance, assert that "reading the contract ex post can prove highly beneficial," because consumers "become familiar with their rights and obligations and . . . respond accordingly."[21] Namely, they expect that consumers who read the fine print ex post will begin negotiating with sellers over the terms they have already signed.[22] Commentators expect that sellers, in turn, will be willing to appease aggrieved buyers because they will be motivated to preserve their reputations.[23]

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17. *See infra* Part V.

18. *See* Robert A. Hillman & Maureen O'Rourke, *Defending Disclosure in Software Licensing*, 78 U. CHI. L. REV. 95, 107 (2011).

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

20. *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, [or] it malfunctioned").

21. Shmuel I. Becher & Esther Unger-Aviram, *The Law of Standard Form Contracts: Misguided Intuitions and Suggestions for Reconstruction*, 3 DEPAUL BUS. & COM. 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).

22. *See id.* at 208 ("[W]hereas it is basically true that contracting parties do not negotiate [standard form contracts] ex ante, actual contracting around the [standard form contract] content is more likely to take place at the ex post stage."); Jason Scott Johnston, *The Return of Bargain: An Economic Theory of How Standard-Form Contracts Enable Cooperative Negotiation Between Businesses and Consumers*, 104 MICH. L. REV. 857, 866 (2006) (noting that "there is systematic survey evidence . . . of widespread negotiation around standard-form payment terms" involving hospital bills).

23. *See, e.g.*, Lucian A. Bebchuk & Richard A. Posner, *One-Sided Contracts in Competitive Consumer Markets*, 104 MICH. L. REV. 827, 830 (2006) (suggesting that "reputational considerations" may "induce the seller to treat the buyer fairly even when such treatment is not contractually required"); Clayton P. Gillette, *Pre-Approved Contracts for Internet Commerce*, 42 HOUS. L. REV. 975, 977 (2005) ("On the seller side, sellers who attempt to capture the marginal buyer, who face reputational constraints, or who cannot distinguish readers from nonreaders, will face competitive pressures inconsistent with efforts to exploit nonreaders."); Johnston, *supra* note 22, at 858 ("In practice, acting

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This Article provides evidence for the opposite conclusion. We argue that fine print may *disempower* consumers who read their contracts ex post. This is because consumers may become demoralized by contractual language and are likely to blame *themselves* for failing to read at the time of signing. We provide evidence that ordinary consumers are disinclined to renegotiate with sellers, and indeed express little appetite for complaining or even telling others what happened.[24] Thus, consumers' formalistic intuitions about contracts may lead them to "lump it"—that is, absorb the loss—rather than take action against deceptive sellers.

This insight carries legal ramifications. To Lucian Bebchuk and Richard Posner, the possibility that consumers will engage in ex post negotiations diminishes the need to intervene in lopsided bargains. "[S]eemingly one-sided terms may not be one-sided after all," they explain, because such terms can be altered after the fact and "implemented in a balanced way."[25] 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 consumers abide by such one-sided language.[26] "Generally speaking," these commentators assert, "this potential phenomenon also renders legal intervention less necessary."[27]

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through its agents, a firm will often provide benefits to consumers who complain beyond those that its standard form obligates it to provide . . . .").

24. *See infra* Part III.B (showing that the inclusion of fine-print terms causes consumers to refrain from complaining, telling others what happened, posting reviews online, or otherwise taking action in response to being defrauded). For similar findings in the context of unenforceable contract terms, see Meirav Furth-Matzkin, *The Harmful Effects of Unenforceable Contract Terms: Experimental Evidence*, 70 ALA. L. REV. 1031 (2019) [hereinafter Furth-Matzkin, *The Harmful Effects of Unenforceable Contract Terms*] (providing original experimental evidence showing that tenants are significantly less likely to complain, search for online information, or take action against a defiant landlord after reading a contract containing unenforceable contract terms); and Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. LEGAL ANALYSIS 1, 38-40 (2017) [hereinafter Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms*] (providing survey evidence showing that tenants consult their leases when a rental problem arises, and often refrain from taking action or complaining even though these contracts frequently contain unenforceable clauses).

25. Bebchuk & Posner, *supra* note 23, at 828-30; *see also* Clayton P. Gillette, *Rolling Contracts as an Agency Problem*, 2004 WIS. L. REV. 679, 706 ("[O]stensibly 'unfair' contract terms might actually constitute efficient risk allocation mechanisms for policing the behavior of contractual parties who are not easily disciplined by markets or whose opportunistic behavior cannot easily be detected.").

26. Becher & Unger-Aviram, *supra* note 21, at 208.

27. *Id. But see* Bebchuk & Posner, *supra* note 23, at 834 (suggesting that courts "would do well to take a hard line in enforcing the terms of one-sided consumer contracts in the absence of evidence of fraud").

We argue, to the contrary, that deterrence through consumer-initiated ex post negotiations is unlikely when the fine print contradicts what consumers were told. Accordingly, sellers may be unlikely to suffer the hypothesized reputational costs—let alone legal or financial costs—for their deception. Thus, legal intervention may be warranted to protect consumers from deceptive business practices. Moreover, the findings raise questions about the effectiveness of legal interventions and consumer protection regimes that put the onus on victims of fraud to challenge the enforceability of their standard form contracts.

This Article proceeds as follows. In Part I, we describe the problem of fine-print fraud in consumer markets and survey the current regulatory efforts to curb such practices. In Parts II through V, we report the findings of four experimental studies that explore consumers' reactions to fine-print fraud. In Part VI, we evaluate various legal approaches to addressing the problem of fine-print fraud in light of our findings. We note that while many commentators have lamented the legal and financial barriers to consumers' pursuit of litigation against unscrupulous businesses, our findings suggest that consumer psychology may play an independent, and underappreciated, role.

I. Fine-Print Fraud in Consumer Markets

The fraud-and-fine-print scheme is a common form of deceptive business practice. In this scenario, a consumer is tricked into signing a contract that contains a statement qualifying or disclaiming promises made by the seller. 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.[28] In other cases, the fine print can directly contradict the seller's prior assertions.[29]

28. *See, e.g.*, MBIA Ins. Corp. v. Royal Indem. Co., 426 F.3d 204, 213, 218 (3d Cir. 2005) (anticipating that antireliance statements would be enforced in Delaware courts in order "to bar a subsequent fraud claim"); Rissman v. Rissman, 213 F.3d 381, 383 (7th Cir. 2000) (noting that a plaintiff assured a seller that he had not relied on prior oral statements, but subsequently sued with allegations that "rest[ed] on [the defendant's] oral statements"); Danann Realty Corp. v. Harris, 157 N.E.2d 597, 598 (N.Y. 1959) (discussing a no-representation clause in the context of a misrepresentation case).

29. *See, e.g.*, Williams v. Spitzer Autoworld Canton, L.L.C., 913 N.E.2d 410, 417 (Ohio 2009) (discussing a car buyer's allegation that a dealer promised him a trade-in allowance $1,000 greater than the amount specified in writing). Outside the consumer context, see *Evenson v. Quantum Industries, Inc.*, 687 N.W.2d 241, 245 (N.D. 2004), which involved a writing that allegedly directly contradicted the defendant's oral representation that he would not sell a product line; and *Ungerleider v. Gordon*, 214 F.3d 1279, 1283 (11th Cir. 2000), noting an "obvious inconsistency" between a written agreement and an alleged oral promise to grant an investor additional shares of stock.

The American Law Institute's in-progress Restatement of Consumer Contracts 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 a false or misleading affirmation of fact or promise, which the business then attempts to undo or qualify in a less noticeable manner."[30] It lists examples such as "represent[ing] that a service is covered by an extensive warranty when the standard contract terms include broad disclaimers of implied warranties."[31] Unlike cases in which sellers hide one-sided terms in the fine print that goes unread, fraud-and-fine-print cases involve an active misrepresentation on the part of the seller before the transaction is consummated.

Fraud-and-fine-print situations present a problem not only for the individual victims of fraud but also for aggregate social welfare. From an economic perspective, efficient markets require that consumers enter only those transactions that make them better off—or at least no worse off.[32] Consumers need accurate information in order to determine whether a prospective arrangement is beneficial. When consumers are materially misled, they may unwittingly enter contracts that make them worse off. The resulting agreements may decrease social welfare in the aggregate as well, as when the deceived consumer's losses exceed the deceptive seller's gains.[33] Thus, fraud in consumer contracts may harm the functioning of the marketplace and reduce net social welfare.[34]

Market competition is supposed to take care of these kinds of deceptive business practices by punishing firms that disappoint consumers. Indeed, firms typically have an incentive to meet consumer expectations, because competitive forces usually shift sales away from dishonest firms and toward firms that meet consumer demands.[35] But market forces generally cannot discipline sellers whose products are purchased infrequently or who are otherwise

30. RESTATEMENT OF CONSUMER CONTRACTS § 6 cmt. 2 (AM. LAW INST., Tentative Draft 2019).

31. *Id.*

32. For a similar analysis, see Korobkin, *supra* note 3, at 60 ("[C]ontracts should satisfy the Pareto efficiency criteria, which provide that at least one party is made better off by the agreement, and no party is made worse off.").

33. *See* RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW § 1.2 (9th ed. 2014); STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW 329-30 (2004).

34. Of course, even if fraud reduces net welfare, a separate question is what amount of resources should be devoted to deterring it. The optimal level of deterrence will depend on weighing the benefits of preventing fraud against the costs of enforcement, a subject that this Article does not address.

35. *See* Bebchuk & Posner, *supra* note 23, at 830 (suggesting that when markets provide this control, "[a] seller has little or no incentive to behave opportunistically because if he does, he will suffer a loss of reputation, which is a cost").

unconcerned about repeat business. Consequently, absent sufficient enforcement, underhanded sellers may be incentivized to engage in fraud.

A. Legal Responses

When competition alone cannot deter sellers from behaving dishonestly, legal intervention can serve as an important corrective measure.[36] Such measures have generally been uncontroversial; even staunch libertarians see deliberate deception as an "easy case" for legal intervention.[37] As Richard Epstein explains, "as a general matter, no social good can derive from the systematic production of misinformation."[38] He observes 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 not generally enforced by the courts . . . .[39]

The common law doctrine of fraud empowers a contracting party to void an agreement to the extent that he or she had been induced by fraud to enter into it.[40] This doctrine is generally recognized as an exception to the parol evidence rule, which provides that a written agreement supersedes any inconsistent or conflicting terms expressed in prior exchanges between the parties.[41] Put differently, the parol evidence rule does not bar extrinsic evidence when the signing party alleges that the other engaged in common law fraud.[42] Moreover, courts often find that contractual exculpatory clauses, or

36. For a similar argument, see 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 (2015) ("When competition alone cannot punish or deter seller dishonesty, private legal rights can mitigate these problems . . . .").

37. *See, e.g.*, Richard A. Epstein, *Unconscionability: A Critical Reappraisal*, 18 J.L. & ECON. 293, 298 n.14 (1975).

38. *Id.* at 298.

39. *Id.* at 293.

40. 1 RESTATEMENT (SECOND) OF CONTRACTS § 164 (AM. LAW INST. 1979) (rendering a contract voidable if a contracting party justifiably relied on "a fraudulent or a material representation by the other party"); *accord* RESTATEMENT OF CONSUMER CONTRACTS § 6 (AM. LAW INST., Tentative Draft 2019).

41. *See* 1 RESTATEMENT (SECOND) OF CONTRACTS § 213(1).

42. *Id.* § 214 ("Agreements and negotiations prior to or contemporaneous with the adoption of a writing are admissible in evidence to establish . . . illegality, fraud, . . . or other invalidating cause."); *accord* RESTATEMENT OF CONSUMER CONTRACTS § 6 cmt. 8(c); *see also* Globe Steel Abrasive Co. v. Nat'l Metal Abrasive Co., 101 F.2d 489, 491 (6th Cir. 1939) (finding that the plaintiff had sufficiently pleaded it 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," and concluding that "[i]n the allegations of inducement we find no challenge to the terms of

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other types of clauses disclaiming or qualifying a seller's prior representations, generally do not bar consumers from bringing fraud claims, because "[t]o 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."[43] As the Delaware Court of Chancery has 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."[44]

Indeed, the use of no-reliance clauses has long been a source of consternation in cases involving deception. As far back as 1894, the New York 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."[45] The court wrote:

> It is difficult to conceive that such a 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.[46]

It seems, then, that consumers plausibly have legal remedies in fraud-and-fine-print cases.[47] In addition, beyond contract and tort common law doctrines, all fifty states have enacted consumer protection statutes, known as Unfair and

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the contract impermissible under the parol evidence rule"); Riverisland Cold Storage, Inc. v. Fresno-Madera Prod. Credit Ass'n, 291 P.3d 316, 323-25 (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, 763-69 (Sup. Ct. 2003) (allowing some parol evidence to be introduced in a fraud case despite contractual disclaimers and waivers in the fine print); ISG State Operations, Inc. v. Nat'l Heritage Ins. Co., 234 S.W.3d 711, 719 n.11 (Tex. App. 2007) (noting that, despite the parol evidence rule, "[e]xtrinsic evidence is admissible to show (1) the execution of a written agreement was procured by fraud, (2) an agreement was to become effective only upon certain contingencies, or (3) the parties' true intentions if the writing is ambiguous").

43. *See, e.g.*, *Cirillo*, 768 N.Y.S.2d at 768.

44. Webster v. Palm Beach Ocean Realty Co., 139 A. 457, 460 (Del. Ch. 1927) (holding the defendant liable after "material" fraudulent misrepresentations).

45. Bridger v. Goldsmith, 38 N.E. 458, 459 (N.Y. 1894).

46. *Id.*

47. *See, e.g.*, *Riverisland Cold Storage*, 291 P.3d at 323-25; Bauer v. Giannis, 834 N.E.2d 952, 960 (Ill. App. Ct. 2005) (holding that an "as is" clause in a real estate contract was "not a defense to the fraud claims"); Wiegand v. Walser Auto. Grps., Inc., 683 N.W.2d 807, 812-13 (Minn. 2004); *Cirillo*, 768 N.Y.S.2d at 768; Winston Realty Co. v. G.H.G., Inc., 320 S.E.2d 286, 291 (N.C. Ct. App. 1984), *aff'd*, 331 S.E.2d 677 (N.C. 1985); Smith v. Scott Lewis Chevrolet, Inc., 843 S.W.2d 9, 11 (Tenn. Ct. App. 1992). *See also generally* Stark & Choplin, *supra* note 3 (collecting cases on both sides of the question). *But see, e.g.*, Tirapelli v. Advanced Equities, Inc., 813 N.E.2d 1138, 1144 (Ill. App. Ct. 2004) (determining that a no-reliance clause precluded an argument for fraud in a transaction between "sophisticated business people").

Deceptive Acts and Practices (UDAP) laws.[48] UDAP laws provide state attorneys general with authority to combat unfair or deceptive market practices, including fraud-and-fine-print schemes.[49] Moreover, both federal and state antideception laws impose looser requirements than does the common law doctrine of fraud: Many do not require proof that the deception was intentional in order to prevail in court.[50]

The recently proposed Restatement of Consumer Contracts would offer additional safeguards for consumers.[51] 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.[52] According to the reporters of the draft Restatement, this rule would incentivize businesses to "police representations made by [their] agents and verify that they are not inconsistent with the standard contract terms that [they] offer[]."[53] While acknowledging that the parol evidence rule generally "gives precedence to a written document when the parties intend for that document to be the only source of their contractual obligations," the draft 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."[54]

Given this patchwork of legal frameworks, some have expressed optimism that consumers are sufficiently protected from fine-print fraud.[55] "Even if the consumer would not have any 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."[56]

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48. *See* CAROLYN CARTER, NAT'L CONSUMER LAW CTR., CONSUMER PROTECTION IN THE STATES: A 50-STATE EVALUATION OF UNFAIR AND DECEPTIVE PRACTICES LAWS 9, 33 (2018), https://perma.cc/WTH6-R46L ("All state UDAP statutes now allow consumers to take a fraudulent business to court for at least some violations of the state UDAP statute, and all allow the consumer to recover at least compensatory damages, such as a refund.").

49. *See id.* at 11; Cary Silverman & Jonathan L. Wilson, *State Attorney General Enforcement of Unfair or Deceptive Acts and Practices Laws: Emerging Concerns and Solutions*, 65 U. KAN. L. REV. 209, 209-13 (2016).

50. *See* 15 U.S.C. § 45 (2018); CARTER, *supra* note 48, at 5-8, 14.

51. *See* RESTATEMENT OF CONSUMER CONTRACTS § 1 cmt. 10, at 12 (AM. LAW INST., Tentative Draft 2019).

52. *Id.* § 6 reporters' notes.

53. *Id.*

54. *Id.* § 6 cmt. 8(c).

55. *See, e.g.*, DOUGLAS G. BAIRD, RECONSTRUCTING CONTRACTS 123 (2013).

56. *Id.*

To legal scholars, it seems plausible that a victim of fraud is entitled to a legal remedy, regardless of what 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."[57] 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 that it does not matter if one party defrauded the other prior to signing. Even if they suspect that the term is voidable or question its enforceability, they might be discouraged from taking action in light of its *in terrorem* effect.

B. Lay Formalistic Intuitions: A Problem for Consumer Protection Efforts?

Previous work in the field of psychology documents that laypeople are *contract formalists*.[58] Tess Wilkinson-Ryan and David Hoffman, for instance, have shown that consumers put excessive weight on written terms (as 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), and feel generally obligated to abide by terms that are imposed through formalized assent processes.[59] This holds true even when the contract terms go unread, when the contract is unreasonably lengthy, or when the terms are perceived as one-sided or unfair.[60] Laypeople

57. *See id.*

58. For examples of this scholarship over time, see Dennis P. Stolle & Andrew J. Slain, Research Report, *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, 91-92 (1997) (noting that consumers are more reluctant to file meritorious suits or otherwise seek compensation if their contracts include legally dubious disclaimers of tort liability); Yuval Feldman & Doron Teichman, *Are All Contractual Obligations Created Equal?*, 100 GEO. L.J. 5, 9, 11-15 (2011) (describing views that laypeople feel they are bound to the signed contract due to "moral duty . . . , motivated reasoning, and social norms"); Tess Wilkinson-Ryan, Essay, *A Psychological Account of Consent to Fine Print*, 99 IOWA L. REV. 1745, 1760-61, 1764-66 (2014) (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); Tess Wilkinson-Ryan & David A. Hoffman, *The Common Sense of Contract Formation*, 67 STAN. L. REV. 1269, 1296-97 (2015) (exploring how consumers understand contract formation and finding that many laypersons are contract formalists); Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms*, *supra* note 24, at 41-42 (suggesting that tenants typically assume that their lease agreements accurately represent the law); and Furth-Matzkin, *The Harmful Effects of Unenforceable Contract Terms*, *supra* note 24, at 1058 (finding that tenants feel bound by unenforceable lease provisions).

59. *See* Wilkinson-Ryan & Hoffman, *supra* note 58, at 1296-98.

60. *See* Wilkinson-Ryan, *supra* note 58, at 1761, 1764-65.

believe they have a duty to read the fine print, even though in most cases they fail to do so.[61]

As previous commentary has noted, consumers' lay formalism creates a certain irony: Even though consumers regularly ignore fine print ex ante—before making the transaction—they still regard terms buried in that fine print as binding when they encounter them ex post—when a problem or question arises.[62] Indeed, our prior work suggests that consumers may fail to realize that these terms are potentially voidable or already void,[63] and that the presence of fraud may do little to alter their perception that the transaction was consented to.[64]

In this Article, we investigate whether consumers' intuitive formalism discourages them from taking action against fraudulent fine print. While much has been written about fraud-and-fine-print cases,[65] little is known about how ordinary 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

61. *See id.* at 1765.

62. *See* Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms*, *supra* note 24, at 6 ("[E]ven if consumers . . . do not read or pay attention to the contract terms *ex ante*, they are still likely to read their contracts (or substantial portions of them) *ex post*, when a problem occurs or when a question arises concerning their rights and obligations as buyers. And at this point in time, they are likely to rely on their contracts in determining their rights and obligations, presuming that their terms are enforceable and binding."); Tess Wilkinson-Ryan, *The Perverse Consequences of Disclosing Standard Terms*, 103 CORNELL L. REV. 117, 164, 172-73 (2017) (noting that contract terms, "afforded so little attention *ex ante*, have too much weight *ex post*").

63. *See* Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms*, *supra* note 24 (providing survey evidence showing that residential tenants fail to contemplate the possibility that their leases contain unenforceable terms, even though such terms are prevalent in residential rental agreements); *see also* Furth-Matzkin, *The Harmful Effects of Unenforceable Contract Terms*, *supra* note 24, at 1066-67 (finding, based on a series of randomized experiments, that the use of unenforceable terms harms consumers, since such terms misinform them about their rights and remedies under the law—causing consumers to unwittingly give up valid legal rights and claims in their post-contract interactions with sellers).

64. Roseanna Sommers, *Commonsense Consent*, 129 YALE L.J. (forthcoming 2020) (showing that many laypeople perceive consent as compatible with intentional fraud).

65. *See, e.g.*, Stark & Choplin, *supra* note 3, at 618-20, 624-25 (exploring how sellers enforce fine print terms against non-contract-reading consumers that may contradict oral assertions the seller made, and arguing against enforcement of no-reliance clauses against unsophisticated, unrepresented consumers); *see also* Korobkin, *supra* note 3, at 63-70 (detailing how courts have adopted various unsatisfactory doctrinal strategies for addressing the issue).

contract, even if she neglected to do so? The following experimental studies address these questions.

The stakes of these questions are high. Prevailing legal strategies for combating 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.[66] But if consumers are demoralized by the fine print, they may 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.

II. Study 1: Impressions of Contract Enforceability—Laypeople vs. Experts

In this study, we asked participants to judge 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.

A. Study Design

Study 1 sought to compare how lay consumers and legal experts would respond to a fraud-and-fine-print case involving a payment plan for an auto loan. Building on previous findings showing that laypeople are contract formalists,[67] we hypothesized that laypeople would believe that the agreement was 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: current and former law students from Harvard and Yale.[68]

66. *See, e.g.*, Steele, *supra* note 13, at 1109 (noting that consumers faced with unfair or fraudulent business practices may feel they are treated unfairly and therefore demand action be taken to rectify the situation).

67. *See, e.g.*, Furth-Matzkin, *The Harmful Effects of Unenforceable Contract Terms*, *supra* note 24, at 1066-67; Wilkinson-Ryan & Hoffman, *supra* note 58, at 1281-90, 1289 fig.4, 1297; Wilkinson-Ryan, *supra* note 58, at 1784.

68. We recognize that alumni typically have more legal experience than law students, and that even within the alumni subsample, participants differed in their legal backgrounds. Nonetheless, we group all those who have legal background (even to a limited 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 varies within our "expert sample." In addition, we acknowledge that affiliates of these two

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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 fifty-seven lay participants who were recruited from Amazon Mechanical Turk (MTurk), an online subject pool.[69] We excluded one participant who indicated she had attended law school. In addition, we administered our survey to fifty-seven legally trained respondents, whom we recruited at Harvard and Yale during their respective alumni reunions in 2017.[70] Harvard affiliates made up 86% of the sample, reflecting the school's 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 a Federal Trade Commission (FTC) enforcement action in 2015.[71] The scenario described a consumer who

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law schools may differ from other legally trained individuals in background, training, and other unobserved characteristics. See Part II.B below for a discussion.

69. *See* AMAZON MECHANICAL TURK, https://perma.cc/3EXG-7FQM (archived Mar. 28, 2020). Well-known psychological findings have been replicated in samples drawn from MTurk, suggesting that crowdsourcing is a legitimate alternative to lab-based research. *See* Krin Irvine et al., *Law and Psychology Grows Up, Goes Online, and Replicates*, 15 J. EMPIRICAL LEGAL STUD. 320, 322, 330, 344 (2018). The demographics of our sample were as follows: 57% female; ages 19-71 years, $M_{age} = 37.36$ (mean), $SD_{age} = 12.50$ (standard deviation); 77% white, 4% black/African-American, 16% Asian/Asian-American, 2% Hispanic/Latinx, and 2% other. Participants' education levels ranged from high school to professional degrees, with 87% having completed some college. Participants were moderately left leaning (on a seven-point Likert scale ranging from 1 being "extremely liberal" to 7 being "extremely conservative," $M_{political} = 3.20$, $SD_{political} = 1.73$), with 64% identifying as slightly to extremely left of center, 16% identifying as moderate, and 20% identifying as slightly to extremely right of center. Approximately 38% of participants reported an annual income of less than $30,000, approximately 20% reported making over $75,000, and the remainder reported an income between those values. Part E of the Appendix details the extent to which demographic characteristics predict responses.

70. Given the time constraints of surveying attendees during a reunion event, we did not obtain demographic information for the legally trained sample.

71. *See* Nat'l Payment Network, Inc., 159 F.T.C. 1718, 1746-57 (2015), https://perma.cc/6RXK-5X87. In the National Payment Network case, an auto loan company had marketed its payment program as saving money for borrowers, while charging significant fees that canceled out any actual savings. *Id.* at 1719. These fees were disclosed in the fine print of the enrollment form consumers signed to enroll in the payment plan. *See id.* at 1745 (disclosing the fees and stipulating that "in some cases the fees charged to borrower may exceed the interest reduction"). As part of its consent agreement with the FTC, the auto loan company issued over $1.5 million in consumer

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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 biweekly 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 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 three statements, presented in random order, on a seven-point scale ranging from 1 being "strongly disagree" to 7 being "strongly agree." These statements were:

- A court would probably rule that William is legally required to pay the $2.99 fees.
- William consented to paying the $2.99 fees.
- It is fair to require William to pay the $2.99 fees.

B. Results

Our results suggest that laypeople are contract formalists. As Figure 1 illustrates, lay respondents strongly expected that a court would require the

refunds and waived nearly an additional $1 million in consumer fees. *Id.* at 1752. It also agreed to refrain from misrepresenting the costs associated with its services. *Id.* at 1749-51.

consumer to pay the fees.[72] 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 the consumer had consented to pay the $2.99 fees.[73] At the same time, they felt that it would be unfair to require him to pay the fees.[74]

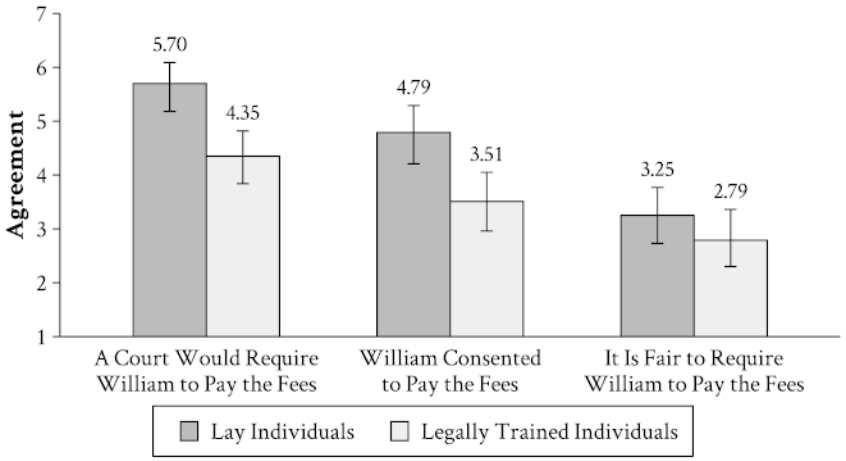
The mismatch between respondents' moral and legal intuitions suggests that although laypeople perceive the law governing fraud-and-fine-print situations as overly formalistic, they simultaneously believe that it is unfair to impose contractual obligations on consumers in fraud-and-fine-print cases. Thus their beliefs about what the law is and what would be fair are misaligned.

72. Mean (*M*) = 5.70, standard deviation (*SD*) = 1.73. 66% of lay participants agreed or strongly agreed that "A court would probably rule that William is legally required to pay the $2.99 fees." We constructed confidence intervals using a resampling method known as "bootstrapping." *See generally* JOHN MAINDONALD & W. JOHN BRAUN, DATA ANALYSIS AND GRAPHICS USING R: AN EXAMPLE-BASED APPROACH 131 (3d ed. 2010) (noting that "[t]he usual approach to constructing confidence intervals is based on a statistical theory that relies, in part, on the assumption of normally distributed observations" and that using bootstrapping does not require such an assumption); CHRISTOPHER Z. MOONEY & ROBERT D. DUVAL, BOOTSTRAPPING: A NONPARAMETRIC APPROACH TO STATISTICAL INFERENCE 1 (1993) ("Bootstrapping differs from the traditional parametric approach to inference in that it employs large numbers of repetitive computations to estimate the shape of a statistic's sampling distribution, rather than strong distributional assumptions and analytic formulas.").

73. *M* = 4.79, *SD* = 2.10. 48% of lay participants agreed or strongly agreed that "William consented to paying the $2.99 fees."

74. *M* = 3.25, *SD* = 2.03. Only 18% of lay participants agreed or strongly agreed that "It is fair to require William to pay the $2.99 fees."

Figure 1
Perceptions of a Fraud-and-Fine-Print Case Among Lay and Legally Trained Individuals



Lay and expert perceptions of whether a contract induced by fraud was legally binding, consented to, and fair to enforce against the deceived party. Lay respondents regarded the fine print as more legally enforceable and consented-to than did legally trained participants. The groups did not differ in their judgments of how fair it would be to enforce the fine print against the defrauded consumer. Error bars represent 95% bootstrapped confidence intervals.

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; they were more likely to believe that a court would invalidate the contract.[75] They also were more inclined to view the consumer's consent as suspect.[76] At the same time, there was no significant difference between lawyers and laypeople in their

75. $M = 4.35$, $SD = 1.92$. Only 37% agreed or strongly agreed that a court would require William to pay the fees. This was significantly different from the lay sample, $t(111) = 3.92$, $p < 0.001$. For an overview of the independent samples t-test, see GUSTAV LEVINE, INTRODUCTORY STATISTICS FOR PSYCHOLOGY: THE LOGIC AND THE METHODS 212-18 (1981). One might wonder why the percentage among the legally trained sample was above 0%. While the survey cannot answer this question definitively, we can note that the lawyers and law students were not necessarily specialists in consumer law. More importantly, even consumer law experts seem to disagree about what a court might do: Some think it would be shocking for a court to enforce a contractual term induced by fraud, while others think enforcement is a plausible legal outcome. We thank the participants of the Consumer Law Scholars Conference for their helpful feedback on this point.

76. $M = 3.51$, $SD = 2.10$. Only 21% agreed or strongly agreed that William had consented. This was significantly different from the lay sample, $t(111) = 3.24$, $p = 0.002$.

judgments of fairness.[77] The legally trained participants, like the lay subjects, felt that it would be unfair to require the consumer to pay the fees.[78]

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 to their legal predictions even in cases involving outright fraud. Additionally, 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 did not show the same degree of formalism. They appeared more doubtful that the contract would be enforced by a court of law, and they generally perceived the signer's consent to the hidden fee to be compromised. Interestingly, laypeople and legal professionals did not differ in their moral judgments about whether it would be 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 current and former law students from Harvard and Yale 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 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 those of the lay population. 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.[79] Yet our results suggest that the fine print can have a *perverse effect*: When laypeople do read the terms after something goes wrong, they feel bound by the contract they signed.[80] This holds true even when they were lied to before signing.

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77. $t(110) = 1.21$, $p = 0.23$.

78. $M = 2.79$, $SD = 2.04$. Only 16% agreed or strongly agreed that it would be fair to require William to pay the fees.

79. *See* sources cited *supra* note 1.

80. This finding is in line with prior research. *See supra* notes 58-61 and accompanying text.

III. Study 2: The Effect of Fine Print on Consumers' Willingness to Complain

In Study 2, we examined the effect of fraudulent fine print on laypeople's responses to deception. Participants judged a fraud-and-fine-print scenario similar to the one presented in Study 1: A consumer is specifically informed that there would be no fees associated with an auto loan payment plan, yet is charged $2.99 biweekly fees. The consumer later realizes that these fees are laid out in the fine print of a contract he signed without reading.

We hypothesized that even though consumers regularly ignore the terms of contracts ex ante, they would believe that these terms were binding when they encountered them ex post. Consequently, they would see little point in taking action against the deceptive company. We took no position on whether it would be rational for consumers to pursue litigation to redress a $2.99 hidden fee, even if the sum amounted to several hundred dollars over the course of the five-year repayment period. Rather, we were interested in learning whether participants' sense of grievance—their self-reported intention to take action, legal or otherwise—was altered by the presence or absence of a hidden term.

A. Study Design

In Study 2, we asked 100 lay participants[81] to judge the auto loan scenario 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 in the standard "Fraud & Fine Print" condition would be reluctant to take action against the deceptive company because of the chilling effect generated by the fine print. Consequently, we hypothesized that few participants in the Fraud & Fine Print condition would spontaneously express an interest in suing the auto loan company. 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 other

81. As in Study 1, participants were recruited from MTurk. The demographics of this sample were as follows: 43% female; ages 20-69 years, $M_{age} = 35.37$, $SD_{age} = 11.32$; 72% white, 12% black/African-American, 10% Asian/Asian-American, 4% Hispanic/Latinx, and 2% other. Participants' education levels ranged from high school to professional degrees, with 81% having completed some college. Participants were moderately left leaning (on a seven-point Likert scale ranging from 1 being "extremely liberal" to 7 being "extremely conservative," $M_{political} = 3.55$, $SD_{political} = 1.74$), 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 33% of participants reported an annual income of less than $30,000, approximately 20% reported making over $75,000, and the remainder reported an income between those values.

consumer protection groups. 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 crowdsourced review sites such as Yelp, or telling their friends. This was because we thought that consumers would feel that they were to blame for their misfortune. After all, they assumed the risk of 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 lied 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 signed contained no disclosure of the fees. That is, the company charged the consumer fees, even though the seller had stated that there would be no fees and the written terms of the contract did not authorize the company to impose any fees.

Here, we hypothesized, participants would feel highly aggrieved. They would report strong intentions 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 it in the Fraud & Fine Print version (and no opportunity to read it in the Fraud Only version) would make a difference to participants' intuitive reactions to the situation. In short, we tested the hypothesis that a fine-print term that goes unread is *worse* than no term at all, because the fine print deters consumers from seeking recourse when they are deceived.

Study 2 thus had 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 focused 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—unaware of the study's purpose, hypothesis, and manipulation—coded participants' written responses.[82] 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

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

others, companies can use fine print to get away with deceptive business practices without risking their reputations.

B. Results

The presence of the fine-print term made a substantial difference to participants' self-reported intentions, as shown in 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 to someone within the company, or trying to influence other customers by tarnishing the company's reputation.[83] In the Fraud Only condition, by contrast, a large majority of participants (81%) wanted to take some kind of action. Over half of the participants (57%) contemplated taking legal action. Relatively few (15%) were inclined to accept the situation and move on.

83. Furthermore, it is possible (perhaps even likely) that some participants overestimated, and consequently overstated, their propensity to take action such as complaining to the company's manager or writing a bad review online; indeed, in practice, many customers may not follow through on pursuing recourse against a deceptive seller.

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

Category	Examples of Responses	Fraud & Fine Print Condition (n = 52)	Fraud Only Condition (n = 48)
Resignation	• I would just pay. • I 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 Nonlegal 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 me.	12%	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 money. I would spam social media accounts about the dishonesty of the dealership and salesperson.	10%	13%
Other or No Response	• I am unsure.	4%	4%

To be sure, participants' self-reported responses to a hypothetical scenario may be inaccurate predictions of their actual behavior. Nonetheless, this experimental design allowed us to observe how the presence of fine print affects consumers' feelings of grievance in response to fraud. Because many more participants indicated intentions to sue in one condition versus the other, we can see that fine print had a demoralizing effect on their willingness to take action in response to fraud.

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: State attorneys general or the Consumer Financial Protection Bureau (CFPB) could bring enforcement actions,[84] customers could bring private suits,[85] word could get out that the company cheats people and the company could lose business as a result, and so on. Study 2's findings suggest, however, that defrauded consumers are disinclined to sue or complain, 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 consumers' silence by hiding the company's true policies in the unread fine print.

One might wonder whether, even if consumers are deterred from pursuing legal action, they might nonetheless warn their friends about the hazards of conducting business with the deceptive company. Yet participants' responses reveal that those who express no intention to sue the deceptive company are also reluctant to take extralegal action: They indicate little intention to complain or tell others what happened. This, in turn, raises substantial doubts as to whether the reputation mechanism can effectively discipline sellers from misbehaving. If consumers blame themselves for failing to catch fine-print fraud, they may feel resigned to the unfair outcome instead of feeling outraged and aggrieved at the deception.

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84. *See, e.g.*, Dee Pridgen, *The Dynamic Duo of Consumer Protection: State and Private Enforcement of Unfair and Deceptive Trade Practices Laws*, 81 ANTITRUST L.J. 911, 920, 927 (2017) (noting that the FTC and CFPB continue to partner with state attorneys general on "enforcement 'sweeps'" and that the CFPB and state attorneys general both actively enforce consumer protection laws); Chris D'Angelo, *How We Keep You Safe in the Consumer Financial Marketplace*, CONSUMER FIN. PROTECTION BUREAU: BLOG (June 2, 2017), https://perma.cc/9U3E-ZQVR (describing enforcement actions against fraudulent companies and explaining that Congress "gave the Bureau the ability to hold companies accountable for committing unfair, deceptive, or abusive acts or practices," authority that helps the CFPB "ensure that bad actors cannot use deceit and fraud"). *See generally* Prentiss Cox et al., *Strategies of Public UDAP Enforcement*, 55 HARV. J. ON LEGIS. 37, 57-59 (2018) (discussing public UDAP enforcement strategies and methods).

85. See Michael Flynn, *This Is the End . . . My Friend: Disgorgement, Dissolution and Sequestration as Remedies Under State UDAP Statutes*, 21 LOY. CONSUMER L. REV. 181, 183 (2008) (noting that most state UDAP statutes provide for a private right of action); Jeff Sovern, *Private Actions Under the Deceptive Trade Practices Acts: Reconsidering the FTC Act as Rule Model*, 52 OHIO ST. L.J. 437, 437 (1991) ("[M]ost states—in an effort further to discourage inappropriate trade practices and to compensate injured consumers—have extended to private consumers the right to sue for deceptive and, in some states, unfair trade practices."). *See generally* CARTER, *supra* note 48 (examining state UDAP laws and private rights of action); Silverman & Wilson, *supra* note 49 (exploring consumers' private rights of action as well as enforcement by state attorneys general of consumer fraud and deception laws).

IV. Study 3: Fraud vs. Fine Print

Study 1 showed that laypeople generally assume 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 a demoralizing 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 aimed to explore laypeople's formalistic attitudes further by experimentally manipulating key features of the scenario. Our first question pertained to the role of the contradictory fine print in fraud-and-fine-print situations. Specifically, we wondered: 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 despite the fine-print disclosure of the fees?

Our hypothesis was that both features would matter, but we sought to discover which feature—the presence of fraud, or the presence of a fine-print term disclosing the fees—would affect lay intuitions more. If laypeople are extreme contract formalists, we would expect them to 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[86] and randomly assigned them to one of three conditions: (1) Fine Print Only, (2) Fraud & Fine Print, or (3) Fraud Only.

86. As in Studies 1 and 2, the sample was recruited from MTurk. The demographics of the sample were as follows: 41% female; ages 18-68 years, $M_{age} = 32.74$, $SD = 9.53$; 64% white, 18% black/African-American, 11% Asian/Asian-American, and 7% Hispanic/Latinx. Participants' education levels ranged from high school to doctoral degrees, with 83% having completed some college. Participants were left leaning overall (on a seven-point Likert scale ranging from 1 being "extremely liberal" to 7 being "extremely conservative," $M = 3.07$, $SD = 1.68$), with 60% identifying as slightly to extremely left of

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Each participant read three scenarios presented in random order—an auto loan scenario,[87] a telecommunications scenario,[88] and a mortgage scenario[89]—that aligned with their condition. The reason for administering multiple scenarios was to examine whether attitudes toward fine-print fraud would generalize beyond the $2.99 auto loan fees. We wondered, for instance, whether participants would feel the same about a surprise term that led to a $12,000 penalty.

All scenarios described a consumer who entered into a contract without reading the terms 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, in which a consumer was charged a fee for exceeding a phone plan's allotted minutes. The full text of all three scenarios and all three conditions is reproduced in the Appendix.

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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 those values.

87. The auto loan scenario is based on the same 2015 FTC enforcement action on which Study 1 was modeled. *See supra* note 71.

88. The telecommunications scenario is based on *Chapman v. Skype Inc.*, 162 Cal. Rptr. 3d 864 (Ct. App. 2013). In that case, Skype advertised its calling plan as "[u]nlimited" but stipulated in the fine print that calls were, in fact, limited to a certain number of minutes due to a "fair usage policy." *Id.* at 869. The California Court of Appeal sided with the consumer (reversing the trial court), finding that she had adequately alleged fraudulent misrepresentation. *Id.* at 875-76, 878. 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.

89. The mortgage scenario is based on *Davis v. G.N. Mortgage Corp.*, 396 F.3d 869 (7th Cir. 2005). In that 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. *Id.* at 873-75. The court decided against the borrowers, 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. *Id.* at 882-83. It explained that the consumers "had an opportunity and obvious obligation to read the documents before they signed them" and that "they were not justified in relying on the alleged verbal statements alone." *Id.* at 882.

<table>
<tr><th>Fine Print Only
(No Seller Fraud)</th><th>Fraud & Fine Print</th><th>Fraud Only
(No Fine Print)</th></tr>
<tr><td colspan="3">Melissa purchases an international calling plan from ACME,
a telecommunications company.</td></tr>
<tr><td>—</td><td colspan="2">The plan is advertised as “Unlimited World,” and is described in promotional ads as “allowing unlimited phone calls to multiple destinations.”</td></tr>
<tr><td>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.”</td><td>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.”</td><td>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.</td></tr>
<tr><td colspan="3">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.</td></tr>
<tr><td colspan="2">He refers her to ACME’s “Fair Usage Policy,” which she clicked through months ago when she completed the purchase, without reading.</td><td>Melissa finds ACME’s “Fair Usage Policy,” which she clicked through months ago when she completed the purchase, without reading.</td></tr>
<tr><td colspan="2">—</td><td>The Fair Use Policy says nothing about how many minutes customers can use per month.</td></tr>
</table>

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

- A court would probably rule that the consumer is legally required to pay the fee.
- The consumer consented to pay the fee.
- It is fair to require the consumer to pay the fee.
- The consumer had fair notice about the fee.
- The consumer was reasonable in assuming he or she would not have to pay the fee.

These items create a coherent scale.[90] Therefore, we averaged them together to create a composite measure of overall beliefs on whether the consumer is bound to pay the fee.[91]

To confirm that participants had understood the key aspects of the scenario, we asked them, upon completion of the study, whether "[t]he 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. We also excluded four participants who self-reported any background or training in law.

B. Results

As before, the findings show that laypeople are contract formalists. On the composite measure that combines the five items, participants reported that the consumer was significantly less bound to comply with the company's policy in the Fraud Only condition than in the other two conditions. This pattern held true in all three scenarios, as Figure 2 illustrates.

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.[92]

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90. $\alpha = 0.93$. We use Cronbach's alpha to measure the association among the five questions. *See generally* TIMOTHY C. URDAN, STATISTICS IN PLAIN ENGLISH 222 (4th ed. 2017) ("Cronbach's alpha . . . uses the associations among a set of items to indicate how well the items, as a group, hold together. Conceptually, the idea is that all of the survey items that are supposed to measure a single underlying construct should be answered in a similar way by respondents.").

91. For the purpose of this averaging, we inverted the scoring on 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 he or she would incur no fee.

92. 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

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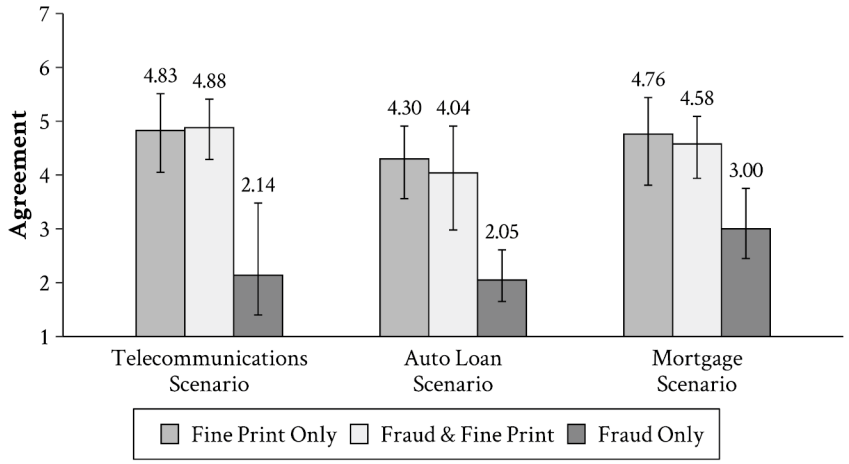
Importantly, this pattern was observed regardless of whether the fraudulent representation was oral or written, suggesting that evidentiary concerns—that is, whether the representation would be provable in court if the seller denied it—cannot fully explain the effect of the conflicting fine print.

Figure 2

Perceptions That Consumer Is Bound to Pay the Fees, by Scenario



Perceptions of three kinds of consumer contracts—a phone plan, a car loan, and a mortgage—when the consumer was not deceived about the terms (Fine Print Only), was deceived about a condition that was stated in the fine print (Fraud & Fine Print), or was deceived about a condition that was not stated in the fine print (Fraud Only). Across all three kinds of contracts, participants perceived the Fraud Only scenario to be less binding than either the Fine Print Only or the Fraud & Fine Print scenarios, suggesting that the lack of written terms makes a large difference to consumer attitudes. Judgments of the two fine-print scenarios did not differ significantly, despite the presence of seller deception in Fraud & Fine Print and the absence of seller deception in Fine Print Only. Error bars represent bootstrapped 95% confidence intervals.

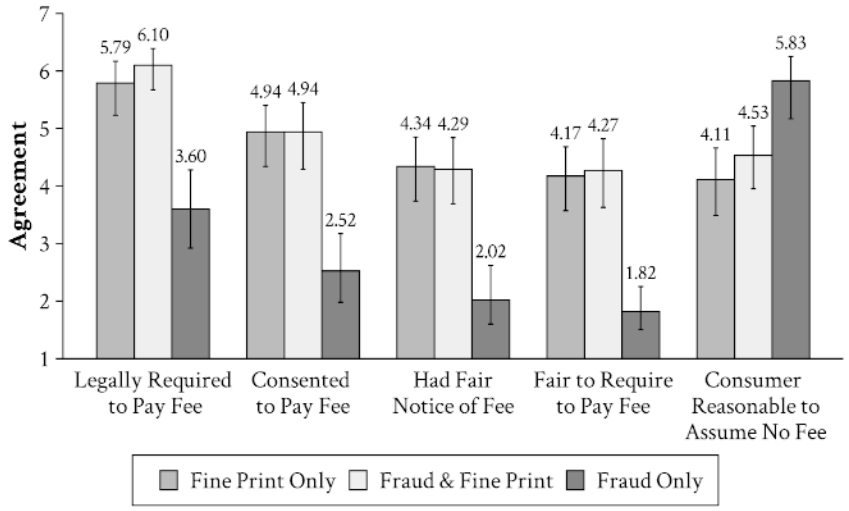
& Fine Print condition ($M = 4.88$, $SD = 1.46$), $t(48) = 0.11$, $p_{Holm\text{-}adjusted} = 0.91$. Each differed from the Fraud Only condition ($M = 2.14$, $SD = 1.64$), $p_{Holm\text{-}adjusted} < 0.001$. Similarly, for the auto loan scenario, the Fine Print Only condition ($M = 4.30$, $SD = 1.43$) did not differ from the Fraud & Fine Print condition ($M = 4.04$, $SD = 1.72$), $t(39) = 0.49$, $p_{Holm\text{-}adjusted} = 0.63$. Each differed from the Fraud Only condition ($M = 2.05$, $SD = 0.98$), $p_{Holm\text{-}adjusted} < 0.002$. 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 ($M = 4.58$, $SD = 1.09$), $t(40) = 0.34$, $p_{Holm\text{-}adjusted} = 0.73$. Each differed from the Fraud Only condition ($M = 3.00$, $SD = 1.26$), $p_{Holm\text{-}adjusted} < 0.007$. For an overview of the Holm procedure for adjusting p-values to account for multiple comparisons, see MULTIPLE TESTING PROBLEMS IN PHARMACEUTICAL STATISTICS 67-70 (Alex Dmitrienko et al. eds., 2009).

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 expect the consumer to be held to it. Relatedly, when the contract is silent on the matter, as in the Fraud Only condition, participants believe that the consumer is not and 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 the reasonableness of the consumer's assumption that there would be no fees. Figure 3 shows how judgments of the five items differed by condition (combined across subject matter scenarios).

Figure 3

Legal Status, Consent, Notice, Fairness, and Reasonableness
Combined Across Subject Matter Scenarios



Perceptions of the legal status of a fee—as well as whether the consumer consented, had fair notice, could be fairly required to pay, and was reasonable in believing no fee would be charged—when the consumer was not deceived about the fee (Fine Print Only); was deceived about the fee, which was provided for in the fine print (Fraud & Fine Print); or was deceived about the fee, which was not provided for in the fine print (Fraud Only). Because no significant differences were observed based on the kind of contract at issue (phone plan, auto loan, or mortgage), the three kinds of contracts are averaged together here. Error bars represent bootstrapped 95% confidence intervals.

As Figure 3 illustrates, participants drew no significant distinction between Fine Print Only and Fraud & Fine Print when it came to any of these five individual measures.[93] 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.[94] When the written contract did not mention the fee, people more strongly believe that the consumer does not, and should not, have to pay the fee.

We also asked participants: "If you were [the consumer], what would you do in this situation?" As before, three independent coders, unaware of 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.

93. Legal judgments: $t(94) = 1.08$, $p = 0.28$; consent judgments: $t(94) = 0.006$, $p = 0.99$; notice judgments: $t(94) = 0.13$, $p = 0.89$; fairness judgments: $t(94) = 0.23$, $p = 0.82$; reasonableness judgments: $t(94) = 1.03$, $p = 0.31$.

94. All $p < 0.005$.

Table 2
Study 3: How Participants Would Respond to Unanticipated Fees

Condition and Scenario	Take Some Kind of Action	Take Legal Action	Pay and Move On
Fine Print Only ($n = 47$)			
Auto Loan Scenario	36%	13%	47%
Telecommunications Scenario	24%	2%	60%
Mortgage Scenario	26%	11%	48%
Fraud Only ($n = 40$)			
Auto Loan Scenario	78%	50%	12%
Telecommunications Scenario	75%	32%	18%
Mortgage Scenario	82%	70%	20%
Fraud & Fine Print ($n = 49$)			
Auto Loan Scenario	39%	6%	41%
Telecommunications Scenario	27%	8%	59%
Mortgage Scenario	51%	31%	43%

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 by taking action (using the law or otherwise) against the deceptive seller.

V. Study 4: How Knowledge About the Law Affects Attitudes

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 contract formalists: They seem to focus mainly on the terms contained within the four corners of the document and to overlook important flaws in the process of formation.

In Study 4, we examined the role that participants' beliefs about the law play in determining their attitudes toward fine-print fraud. We hypothesized that participants' demoralized reactions to fine-print fraud were driven, at least in part, by their perception that such terms are legally binding. We suspected if that we could alter participants' beliefs about the legal status of such terms, we would see a shift in their responses—including an increase in their self-reported willingness to take action to challenge fine-print fraud.

A. Study Design

We recruited 300 respondents from Prolific, an online participant pool.[95] All participants read the auto loan scenario from the previous studies, in which an auto dealer falsely told a consumer named William that a payment plan would save him money over time and that he would incur no fees, even though the dealership actually 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: (1) Information, (2) Fraud & Fine Print, or (3) Fraud Only.

In the Information condition, the scenario was 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 were provided with information about the law in William's state. Participants in this condition read the following:

> 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.

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95. In order to rule out the possibility that the results from Studies 1-3 are specific to the MTurk subject pool, we obtained our sample from Prolific (formerly Prolific Academic), a participant recruitment platform for researchers. *See* PROLIFIC, https://perma.cc/793H-YTT7 (archived Feb. 2, 2020). Participants recruited through Prolific tend to be more diverse along certain demographic dimensions than those recruited from MTurk. Eyal Peer et al., *Beyond the Turk: Alternative Platforms for Crowdsourcing Behavioral Research*, 70 J. EXPERIMENTAL SOC. PSYCHOL. 153, 159 (2017). Previous research has shown that Prolific produces higher quality data in some respects: Participants are more honest and less experienced with taking surveys. *See id.* at 157. The demographics of this sample are as follows: 44% female; ages 18-54 years, $M_{age} = 24.46$, $SD = 5.25$; 69% white, 5% black/African-American, 19% Asian/Asian-American, 5% Hispanic/Latinx, and 1% other. 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 (on a seven-point Likert scale ranging from 1 being "extremely liberal" to 7 being "extremely conservative," $M = 2.97$, $SD = 1.55$), 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, 29% reported making over $75,000, and the remaining 40% reported making between between those values.

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 seven-point scale, ranging from 1 being "extremely unlikely" to 7 being "extremely likely"). Subsequently, participants reported their legal, consent, and fairness judgments as before. They also completed a demographic questionnaire and manipulation checks.[96] Participants who failed the manipulation checks were excluded from the analysis (findings with these participants included are reported in the Appendix).[97]

B. Results

Providing information about the legal status of fine-print fraud made a significant difference to participants' judgments. First, participants in the Information condition were more likely to expect that the consumer would prevail in court. As Figure 4 shows, those in the Information condition were significantly less likely than those in the standard Fraud & Fine Print condition to believe that the court would require the consumer to pay the fees. This suggests that the information provided to participants altered their perceptions of the legal status of fine-print fraud.

Second, providing information about the law also affected participants' self-reported intentions to sue, their perceptions of whether the consumer had consented to the fees, and even their judgments of whether it would be fair to require the consumer to pay the fees.[98] Thus, participants' factual beliefs

96. 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 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" ("Probably true"/"Probably false"). Our manipulation check shows that the legal instruction in the Information condition succeeded in altering participants' legal predictions: A vast majority of 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. A chi-square test reveals that this difference is statistically significant, $\chi^2(1) = 39.51$, $p < 0.001$, $\phi = 0.47$, indicating that the manipulation succeeded in altering participants' background beliefs about the law. For an overview of the chi-square test of independence, see LEVINE, *supra* note 75, at 374-95.

97. Here, we report the findings excluding (1) participants who incorrectly stated that the written contract disclosed the fees, when the scenario specified that it did not; (2) participants who 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.

98. Intentions to sue: $t(171) = 4.26$, $p < 0.001$; legal predictions: $t(171) = 8.03$, $p < 0.001$; consent judgments: $t(171) = 2.14$, $p = 0.034$; fairness judgments: $t_{Welch}(145.95) = 3.18$, $p = 0.002$. We use Welch's two-sample *t*-test for fairness judgments because an *F*-test comparing the

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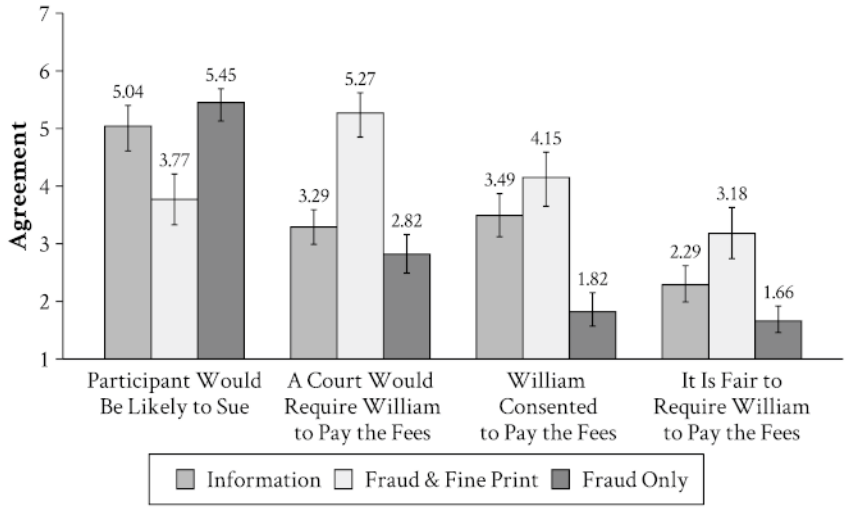
about the legal status of fine-print fraud seem to play an important role in shaping their judgments.

Figure 4

Information vs. Fraud & Fine Print vs. Fraud Only



How information about consumer rights affects perceptions of a fraudulently induced contract. When told that the law may provide for remedy in cases of fraud (Information), respondents were more likely to express an intention to sue, more optimistic that a court would invalidate the fraudulently induced term, and less inclined to say the consumer consented or that it would be fair to require the consumer to pay the fee; as compared to when respondents are given no information about the law (Fraud & Fine Print). Yet when it came to judgments of consent and fairness, the informational intervention did not completely counteract the presence of the fine print, as compared to a case in which no fine print existed at all (Fraud Only). Error bars represent bootstrapped 95% confidence intervals.

We can also compare the Information condition to the Fraud Only condition to determine 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.

two variances showed that they were not equal. A standard *t*-test assumes that the variances in the two samples are roughly equal (which is here measured by an *F*-test). Welch's test, which makes fewer assumptions, is more appropriate when equal variances cannot be assumed. *See, e.g.*, Jessica R. Hoag & Chia-Ling Kuo, *Normal and Non-Normal Data Simulations for the Evaluation of Two-Sample Location Tests*, *in* MONTE-CARLO SIMULATION-BASED STATISTICAL MODELING 41, 42 (Ding-Geng (Din) Chen & John Dean Chen eds., 2017).

For the first item—intention to sue—the results revealed no significant difference between the Information condition and the Fraud Only condition.[99] This suggests that the informational intervention succeeded in counteracting the effect of the fine print. In other words, those who were told that the law might provide for a remedy expressed no less inclination to sue than did those who were told that the contract had never provided for the hidden fees in the first place.

At the same time, the informational intervention did not completely counteract the effect of the fine print for the other three items—expectations of the legal outcome,[100] perceptions of consent,[101] and fairness.[102] That is, participants in the Fraud Only condition were still more likely than those in the Information condition to believe that a court would require William to pay the hidden fee. Similarly, they were still less inclined to think that William had consented to the fee, and that it would be legitimate to require him to pay the fee, when the contract was silent than when it provided for the fee and they were told that the law might provide for remedy. Thus, providing legal information appears to change attitudes and reported intentions, but does not completely counteract the effects generated by the presence of the fine print.

Finally, Study 4 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 reports 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 who were unaware of the study's conditions, hypotheses, and objectives.

99. $t_{Welch}(169.27) = 1.67$, $p = 0.096$. Note, however, that the observed difference is statistically significant at the $\alpha = 0.10$ level. This means that under a less stringent test, we would conclude that participants were more interested in suing in the Fraud Only than in the Information condition, suggesting that the informational intervention did not completely counteract the presence of the fine print as compared to a case where no fine print existed at all.

100. $t(184) = 2.03$, $p = 0.044$.

101. $t_{Welch}(173.77) = 6.85$, $p < 0.001$.

102. $t_{Welch}(168.25) = 3.17$, $p < 0.002$.

Table 3
Study 4: How Participants Would Respond to Unanticipated Fees

Condition	*n*	Take Some Kind of Action	Take Legal Action	Pay and Move On
Information	94	74%	56%	29%
Fraud & Fine Print	79	41%	15%	71%
Fraud Only	92	82%	48%	28%

As Table 3 shows, most participants in the standard Fraud & Fine Print condition expressed resignation and little intention to take action—through the legal system or otherwise. As before, participants in the Fraud Only condition expressed greater interest in taking action, including legal action. Crucially, those in the Information condition also showed greater inclination to take action, suggesting that beliefs about the law contribute to feelings of grievance. Participants' written responses are consistent with their quantitative answers: Both manipulations—removing the fee-imposing term from the contract (as in the Fraud Only condition) and educating consumers about consumer protection laws (as in the Information condition)—increased self-reported intentions to seek legal recourse compared to the Fraud & Fine Print condition.

VI. Implications

Across four studies, we find that laypeople are deeply affected by fine-print fraud. Study 1 shows that laypeople, unlike those with training in the law, strongly believe that such contracts are consented to and will be enforced, despite the seller's material deception.[103] Study 2 reveals that the presence of conflicting fine print discourages consumers from wanting to take legal action, file a complaint, or damage the firm's reputation by telling others what happened.[104]

Study 3 suggests that laypeople seem to focus predominantly on the written terms of the finalized contract and discount defects in the contract formation process. Indeed, we found that the presence or absence of deception makes little difference to laypeople's intuitions about whether the contract will be, or should be, enforced as written. This finding holds true whether the seller's misrepresentation is made orally or printed in an advertisement, and regardless of whether the consumer contract is an auto loan agreement, a phone

103. *See supra* Part II.B.

104. *See supra* Part III.B.

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 makes little difference to lay legal predictions.[105]

Finally, Study 4 suggests that informing laypeople about antideception 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.[106]

As we turn to assessing the implications of these empirical findings, we acknowledge that our studies have several limitations. First, our lay samples are drawn from online labor pools; they are not randomly selected from the U.S. population. Thus, our samples may differ in systematic and unidentified ways from the general population of consumers. Future research should examine whether the findings hold true with a nationally representative sample. With that said, the labor pools we used have been validated by previous research and have been shown to yield results that mirror those of other methods, such as in-person studies and nationally representative samples.[107]

Second, some may worry that the survey experiment methodology we used cannot fully capture how consumers behave in the "real world." For instance, survey respondents may misstate their propensity to act when encountering fraudulent behavior. While we cannot rule out this possibility, we note that our findings are consistent with data from the FTC showing that consumers underreport fraud.[108] Future work should examine actual consumer behavior in addition to consumer behavioral intentions, to complement the survey evidence presented here.

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105. *See supra* Part IV.B.

106. *See supra* Part V.B.

107. *See* Alexander Coppock, *Generalizing from Survey Experiments Conducted on Mechanical Turk: A Replication Approach*, 7 POL. SCI. RES. & METHODS 613, 613-14 (2019) (finding that results from fifteen replication experiments conducted from "convenience samples" obtained via MTurk were similar to "national probability samples"). The key question will be the extent to which the effects we examine here are heterogeneous across different subgroups, and whether studies based on the general population are more or less likely to yield the effects we document. As Alexander Coppock explains:

> Some treatments of course have different effects for different subgroups and in such cases, an estimate obtained from a convenience sample may not generalize well. . . . Crucially, simply noting that convenience and probability samples differ in terms of their background characteristics is not sufficient for dismissing the results of experiments conducted on convenience samples.

Id. at 624.

108. *See, e.g.*, KEITH B. ANDERSON, FTC, CONSUMER FRAUD IN THE UNITED STATES: AN FTC SURVEY 80-81, 80 tbl.5-1 (2004), https://perma.cc/H23N-Q2UP (reporting that nearly a third of defrauded consumers made no complaint whatsoever, and fewer than 10% reported fraud to official sources such as local, state, or federal government, or to the Better Business Bureau).

A. Consumer Welfare and Policing Fraud

The findings presented in this Article indicate that laypeople are overdeterred by conflicting fine print in light of their formalistic intuitions.[109] As a result, defrauded consumers are often reluctant to take deceptive companies to court.[110] Moreover, the results suggest that lay consumers are similarly disinclined to take *nonlegal* measures, such as complaining online or telling their friends, once they read their contracts.[111] These findings cast doubt on prevailing accounts suggesting either that defrauded consumers will take steps to punish the seller and recover their money,[112] or that when consumers fail to do so, it is a result of formal and practical barriers to litigation such as class action waivers, small-dollar claims, and the complexity and expense of the remedy process.[113] This research indicates that consumer psychology may be 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 intuit that fraud undermines their consent or mitigates their blameworthiness for failing to read a contract. This aspect of consumer psychology may lead them to take their lumps rather than challenge deceptive practices.

What can be done? Our findings suggest that if we educate consumers about consumer protection statutes that allow for contract rescission on the basis of fraud, consumers may adjust their perceptions. Study participants given information about the law express more intention to pursue legal and nonlegal recourse, and they are less likely to 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.[114]

Yet, we should be cautious about inferring that educating the public will have as great an effect in the real world as in the lab. Perhaps our experimental

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109. *See supra* Parts II.B, IV.B.

110. *See supra* Part III.B.

111. *See supra* Part III.B.

112. *See, e.g.*, BAIRD, *supra* note 55, at 123 ("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."); Steele, *supra* note 13, at 1109-10.

113. *Cf., e.g.*, 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."); David M. 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 for all litigants").

114. *See supra* Part V.B.

setting 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.[115] They may have difficulty incorporating relevant legal information into their decisionmaking processes when they encounter fraud-and-fine-print situations.

Moreover, our findings indicate that even with successful education efforts, some consumers remain deterred by 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.[116]

These findings carry implications for consumer protection laws. Antideception statutes in most states enable consumers to bring suits to enforce laws prohibiting deceptive business practices.[117] Our results suggest, however, that consumers are likely to underutilize their option to initiate lawsuits, thanks to the interaction between consumer psychology and the fine print. Consumers' formalistic intuitions may discourage them from seeking recourse—both legal and nonlegal—even when they recognize the injustice of the deception they experienced.

We suggest that a suite of policy responses may be warranted, such as statutory damages for fine-print fraud, fee-shifting provisions to encourage lawyers to take up these cases on behalf of consumers, and class action fee awards.[118] Of course, sellers often insert class action waivers or arbitration agreements into their boilerplate terms,[119] which may undercut the effectiveness

115. *See* BEN-SHAHAR & SCHNEIDER, *supra* note 1, at 11 (giving examples of ubiquitous warnings that largely go ignored).

116. *See supra* Part V.B.

117. *See* CARTER, *supra* note 48, at 33 ("All state UDAP statutes now allow consumers to take a fraudulent business to court for at least some violations of the state UDAP statute . . . ."). *But see id.* at 33-34 (listing states where "consumers may have a general right to enforce the [UDAP] statute, but the legislature has carved out some businesses and immunized them from consumer suit, or carved out some provisions of the statute and denied consumers the ability to enforce them").

118. *See generally id.* at 36 (noting that "consumer fraud is often committed on a broad scale, with a fraudulent product or scheme foisted on thousands of consumers" and that class actions offer "an efficient way for consumers to obtain redress when an unfair or deceptive practice affects many people," especially when each individual suffers only a small dollar loss).

119. *See, e.g.*, Lisa Renee Pomerantz, *Consumer Arbitration: Pre-Dispute Resolution Clauses and Class Action Waivers*, 71 DISP. RESOL. J., no. 2, 2016, at 63, 69 (noting that consumer contracts of adhesion often include class action waivers and arbitration clauses, "which present consumers with take-it-or-leave-it choices"); *see also* Jean R. Sternlight & Elizabeth J. Jensen, *Using Arbitration to Eliminate Consumer Class Actions: Efficient*

footnote continued on next page

of class-wide remedies. There may therefore be a more substantial role for state attorneys general and federal regulatory agencies such as the FTC and CFPB to play in policing fraudulent business practices.[120] Admittedly, public enforcement and other measures designed to encourage plaintiffs' lawyers to get involved will often rely on consumers' complaints—and consumers may be dissuaded from complaining by the psychological processes we have documented here.[121] Therefore, these policy responses may need to be paired with informational campaigns aimed to educate consumers about their legal rights and remedies.

B. Consumer Contracts

Many commentators have pointed to pervasive nonreadership of contracts and concluded that fine print is essentially white noise.[122] Because few consumers read contracts before signing them, boilerplate contract language does not make a meaningful difference to consumers' initial purchase decisions.[123] We show that fine print *does* ultimately 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.

We find, in other words, that laypeople react to fraud in ways that differ from the intuitions of legal professionals. Our concern is that policymakers, scholars, and courts may understate the likelihood that fraud will proliferate unpunished.

Business Practice or Unconscionable Abuse?, 67 LAW & CONTEMP. PROBS., nos. 1 & 2, 2004, at 75, 75-76 (2004) (noting that "[c]ompanies are increasingly drafting arbitration clauses" to "shield themselves from class action liability, either in court or in arbitration"); Jaimee Conley, Note, *Suing for Small Potatoes: Consumer Class Action Waivers in Arbitration Agreements Distinguished by the Ninth Circuit*, 2008 J. DISP. RESOL. 309, 309 (same).

120. *Cf.* Beales & Muris, *supra* note 36, at 2160 ("Notwithstanding the strengths of private legal rights, seller misbehavior may not be deterred effectively in some circumstances—such as when court enforcement is impractical or economically infeasible. When market forces are insufficient and common law is ineffective, a public agency, such as the FTC, may supplement these other institutions to preserve competition and protect consumers.").

121. *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.").

122. *See, e.g.*, Ayres & Schwartz, *supra* note 1, at 546-48; Bakos et al., *supra* note 1, at 3; Marotta-Wurgler, *supra* note 1, at 168.

123. *See, e.g.*, Hillman, *supra* note 19, at 841-42 (stating that many consumers fail to read contracts and that this leads to "ignor[ing] . . . standard forms and fail[ing] to shop for favorable terms").

Conclusion

Our empirical studies show that fine print plays a crucial role in shaping consumers' perceptions: When a contract's fine print contradicts prior, fraudulent misrepresentations, many consumers feel bound by the written terms notwithstanding the seller's prior assertions.

These findings add to a growing body of work showing that laypeople are contract formalists. They focus on the written terms of the contract and downplay important defects in the formation process.

The results suggest that victims of deception may be disinclined to take action, thanks to the demoralizing effect that fine print—even fine print that conflicts with the seller's deceptive statements—has on their sense of entitlement to redress. Thus, we believe that consumer protection regimes that rely on victims to initiate private claims are likely to be underutilized. While the financial and logistical barriers to litigation have been well documented, this Article's findings point to consumer psychology as a distinct reason underlying consumers' failure to take action against fine-print fraud.

Appendix

In this Appendix, we provide the materials used in the four studies discussed in this Article. For each, we have included the stimuli (the text presented to study participants) and the dependent measures (the questions posed to participants). Where relevant, we also provide supplemental analyses that are specific to each study. The Appendix concludes with a discussion of how participants' demographic characteristics affect study results.

A. Materials for Study 1

1. Stimuli

Participants were presented with the following text modeled after the National Payment Network FTC proceeding:

> 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.
>
> *For participants in the Fraud & Fine Print condition*:
>
> > The contract states that Frank's Motors will charge a $2.99 fee every time consumers make a payment.
>
> *For participants in the 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 seven-point Likert scale (ranging from 1 being "strongly disagree" to 7 being "strongly agree"):

- A court would probably rule that William is legally required to pay the $2.99 fees.
- William consented to paying the $2.99 fees.
- 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 enforceability,[124] consent,[125] and fairness.[126] Laypeople saw higher levels of legal enforceability, consent, and fairness overall, whereas legally trained people viewed the contracts as more suspect. There was no significant interaction between the variables representing the presence of fine print and the level of legal training for any of the three measures.[127]

B. Materials for Study 2

1. Stimuli

Participants were presented with the following text modeled after the National Payment Network FTC proceeding:

> Jennifer has been in the market for a new car for many months. She decides to buy a Honda Civic from the FNP 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.

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124. $F(1, 216) = 25.38$, $p < 0.001$. For an overview of analysis of variance, see LEVINE, *supra* note 75, at 329-30.

125. $F(1, 216) = 17.41$, $p < 0.001$.

126. $F(1, 215) = 7.55$, $p = 0.007$.

127. All $p > 0.30$.

> 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.
>
> *For participants in the 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.
>
> *For participants in the 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 seven-point Likert scale (ranging from 1 being "strongly disagree" to 7 being "strongly agree"):

- Jennifer consented to pay the $2.99 per-debit fees.
- Jennifer is legally required to either continue paying the $2.99 per-debit fees, or else pay the $200 termination fee.
- 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?"

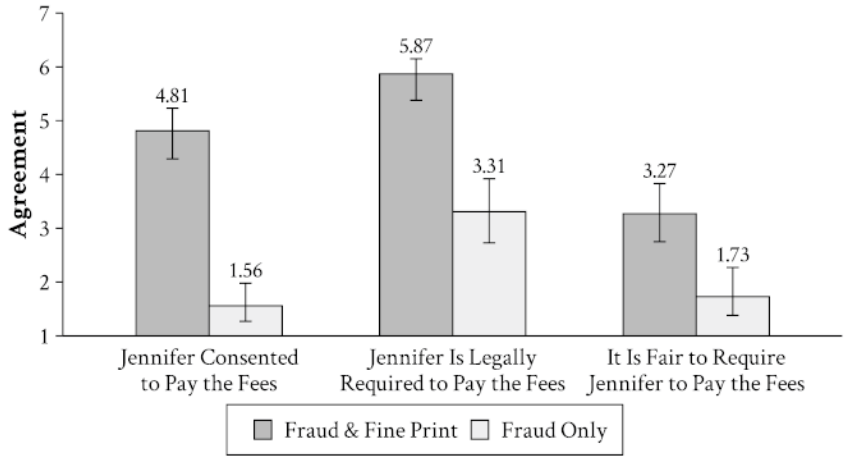
3. Supplemental Analyses

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 versus 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[128] than when it did not.[129] Legally, they more strongly believed that Jennifer was required to pay the fees in the Fraud & Fine Print condition[130] than in the Fraud Only condition.[131] Morally, they felt that it was more legitimate and fair to require her to pay the fees when she received the disclosure[132] than when she did not.[133]

Figure 5

Fraud & Fine Print vs. Fraud Only



Lay perceptions of a consumer contract when the consumer is deceived about a fee that is provided for in the fine print (Fraud & Fine Print), or deceived about a fee that is not provided for in the fine print (Fraud Only). Error bars represent bootstrapped 95% confidence intervals.

128. $M = 4.81$, $SD = 1.72$.

129. $M = 1.56$, $SD = 1.20$, $t_{welch}(91.54) = 11.03$, $p < 0.001$, $d = 2.18$. For an overview of Cohen's d as a measurement of effect size, see FREDERICK J GRAVETTER & LARRY B. WALLNAU, STATISTICS FOR THE BEHAVIORAL SCIENCES 262 (9th ed. 2013).

130. $M = 5.87$, $SD = 1.39$.

131. $M = 3.31$, $SD = 2.14$, $t_{welch}(79.60) = 7.03$, $p < 0.001$, $d = 1.43$.

132. $M = 3.27$, $SD = 1.99$.

133. $M = 1.73$, $SD = 1.54$, $t(98) = 4.30$, $p < 0.001$, $d = 0.86$.

C. Materials for Study 3

1. Telecommunications case

Participants assigned to the telecommunications case were presented with the following text modeled after *Chapman v. Skype*. Italics indicate text that varied across the conditions.

For participants in the Fine Print Only condition:

> 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.*

For participants in the Fraud & Fine Print condition:

> 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.*

For participants in the Fraud Only condition:

> 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.*

Participants were asked the following questions (in random order) and presented with a seven-point Likert scale (ranging from 1 being "strongly disagree" to 7 being "strongly agree"):

- A court would probably rule that Melissa is legally required to pay the overage fee.
- Melissa consented to pay the overage fee.
- Melissa had fair notice about the overage fee.
- It is fair to require Melissa to pay the overage fee.
- Melissa was reasonable in assuming that she would not have to pay overage fees for placing over 1,000 minutes of calls.
- *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.

Finally, they were asked to give a free response to the question: "If you were Melissa, what would you do in this situation?"

2. Home mortgage case

Participants assigned to the home mortgage case were presented with the following text modeled after *Davis v. G.N. Mortgage Corp.*:

For participants in the Fine Print Only condition:

> 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.*

For participants in the Fraud & Fine Print condition:

> 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.*

For participants in the Fraud Only condition:

> 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.*

Participants were asked the following questions (in random order) and presented with a seven-point Likert scale (ranging from 1 being "strongly disagree" to 7 being "strongly agree"):

- A court would probably rule that Cathy and Thomas are legally required to pay the prepayment penalty.
- Cathy and Thomas consented to pay the prepayment penalty.
- Cathy and Thomas had fair notice about the prepayment penalty.
- It is fair to require Cathy and Thomas to pay the prepayment penalty.
- Cathy and Thomas were reasonable in assuming that they would not have to pay a prepayment penalty for refinancing after four years.

- *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.

Finally, they were asked to give a free response to the question: "If you were Cathy and Thomas, what would you do in this situation?"

3. Auto loan case

Participants assigned to the telecommunications case were presented with the following text modeled after the National Payment Network FTC proceeding:

For participants in the Fine Print Only condition:

> William decides to buy a new car from the FNP Automobile Dealership. On the day of his purchase, a salesperson from FNP 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.

For participants in the Fraud & Fine Print condition:

> William decides to buy a new car from the FNP Automobile Dealership. On the day of his purchase, a salesperson from FNP 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.

For participants in the Fraud Only condition:

William decides to buy a new car from the FNP Automobile Dealership. On the day of his purchase, a salesperson from FNP 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.

Participants were asked the following questions (in random order) and presented with a seven-point Likert scale (ranging from 1 being "strongly disagree" to 7 being "strongly agree"):

- A court would probably rule that William is legally required to pay the per-debit fees (or else pay the $200 early termination penalty).
- William consented to paying the per-debit fees.
- William had fair notice about the per-debit fees.
- It is fair to require William to pay the per-debit fees (or else pay the $200 early termination penalty).
- William was reasonable in assuming that he would not have to pay per-debit fees.
- *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.

Finally, they were asked to give a free response to the question: "If you were William, what would you do in this situation?"

D. Materials for Study 4

1. Stimuli

Participants were presented with the following text modeled after the National Payment Network FTC proceeding. Italics indicate text that varied across the conditions.

For participants in the Information 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.

For participants in the 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.

For participants in the 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.

2. Dependent Measures

After participants finished reading the scenario, they were first asked an open-ended question: "If you were William, what would you do in this situation?" They reported their free responses in a text box.

Next, they were asked, "If you were William, how likely would you be to take this matter to court?" They rated their response on a seven-point Likert scale (ranging from 1 being "extremely unlikely" to 7 being "extremely likely").

Next, participants rated their agreement with a series of statements, presented in random order, on seven-point Likert scales (ranging from 1 being "strongly disagree" to 7 being "strongly agree"):

- A court would probably rule that William is legally required to pay the per-debit fees (or else pay the $200 early termination penalty).
- It is fair to require William to pay the per-debit fees (or else pay the $200 early termination penalty).
- William consented to paying the per-debit fees.

Finally, participants recorded their responses to two manipulation check questions:

- The contract that William signed with FNP before enrolling in the program stated that he would be charged per-debit fees of $2.99. (*Yes/No*)
- 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. (*Probably true/Probably false*)

4. Supplemental Analyses

In the main text of the Article, we analyzed only those 264 participants who passed the manipulation check and reported no legal training or background. In Table 4 we also report the findings with all participants included ($n = 300$).

Table 4

Effect of Applying Exclusion Criteria

Question and Condition	**All Participants Included ($n = 300$)**		**Excluding Participants Who Failed the Manipulation Check ($n = 264$)**	
	M	***(SD)***	***M***	***(SD)***
If you were William, how likely would you be to take this matter to court?				
Information	5.04[a]	(1.95)	5.05[a]	(1.93)
Fraud & Fine Print	3.89[b]	(2.02)	3.77[b]	(1.99)
Fraud Only	5.36[a]	(1.44)	5.45[a]	(1.36)
A court would probably rule that William is legally required to pay the per-debit fees.				
Information	3.27[a]	(1.52)	3.29[a]	(1.51)
Fraud & Fine Print	5.22[b]	(1.71)	5.27[b]	(1.73)
Fraud Only	3.02[a]	(1.77)	2.82[c]	(1.66)
It is fair to require William to pay the per-debit fees.				
Information	2.31[a]	(1.63)	2.29[a]	(1.59)
Fraud & Fine Print	3.13[b]	(1.99)	3.18[b]	(1.99)
Fraud Only	1.81[c]	(1.25)	1.66[c]	(1.11)
William consented to paying the per-debit fees.				
Information	3.51[a]	(1.87)	3.49[a]	(1.89)
Fraud & Fine Print	4.11[b]	(2.13)	4.15[b]	(2.16)
Fraud Only	2.11[c]	(1.67)	1.82[c]	(1.41)

Shared superscripts within each question indicate that numbers do not differ from one another to a statistically significant degree.

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 MTurk respondents' overall views that the contract is binding. Men saw the consumer as 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, $t(54) = 3.44$, $p = 0.001$, $d = 93$.

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 ($r = 0.27$).[134] 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 scenarios. Nonwhite participants were inclined to see the consumer as more bound, $t(149) = 1.98$, $p = 0.050$. The effect of race did not vary by condition, however, meaning that white participants were less inclined to see the consumer as 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 seven-point scale ranging from 1 being "extremely liberal" to 7 being "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 ($r = 0.14$). 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.

134. For an overview of the correlation coefficient *r*, see Chin-Chung (Joy) Chao, *Pearson Correlation*, *in* 1 THE SAGE ENCYCLOPEDIA OF COMMUNICATION RESEARCH METHODS 267 (Mike Allen ed., 2017).