

THE PSYCHOLOGY OF MISLEADINGNESS: A STUDY AND A RESEARCH AGENDA

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INTRODUCTION

Traditional contract doctrine, at least as it exists in the casebooks, seems surprisingly indifferent to the problems of deception. Contract law has one big move to protect against deception: a strict liability approach to breach that grants expectation damages whether the promise was untruthful or just optimistic.¹ Unlike showing fraud in tort, which includes an intent element,² the uniform approach of contract doctrine is to hold fraudsters to their promises whether or not the injured party can prove a promise was a lie.³ But once we move past contract's big move—the plaintiff-friendly protection of the expectation interest irrespective of deceptive intent—the indifference to deception can be a doctrinal gift to the would-be deceivers.

In fact, contract law often looks like a tool for duping the unwary. The doctrines of misrepresentation, unconscionability, and duress are so restrictive that they seem to apply only to textbook villains taking advantage of perfect innocents. And any party intent on deception has many options for realizing that dream: make attractive representations and then disclaim them with an as-is clause; make your misleading statements orally and claim the writing is completely integrated; make some placatory promises to save a faltering deal and refuse to honor the modification later. Indeed, the most common tool of deception in 2025 goes even deeper to the core of contract law: nobody reads their form contracts,⁴ and yet the longstanding doctrine of assent imputes agreement to almost all the unread terms.

This Essay argues that deception is a core challenge for contract law and that the Restatement of Consumer Contracts is the first coherent expression of the common law's vested interest in policing deception. In the caselaw and in the Restatement, many of the challenges of policing deception, especially misleadingness, are deeply empirical. What kinds of statements are likely to mislead? What material benefits should consumers reasonably expect? Proceeding in three parts, this Essay proposes a new path for studying the psychology of deception-by-contract. First, I offer a brief synopsis of the puzzle as it is laid out in the doctrine and the scholarship. Second, I report the results of a pre-registered empirical survey of perceptions of misleadingness in three familiar consumer contracting scenarios. Third, I sketch a roadmap for a promising research agenda on the commonsense psychology of deception in consumer transactions.

¹ See, e.g., Robert E. Scott, *In (Partial) Defense of Strict Liability in Contract*, 107 MICH. L. REV. 1381 (2009).

² See, e.g., Henry T. Terry, *Intent to Defraud*, 25 YALE L. J. 87 (1915).

³ See, e.g., Ian Ayres & Gregory Klass, *New Rules for Promissory Fraud*, 48 ARIZ. L. REV. 957 (2006).

⁴ See, e.g., Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 STAN L. REV. 545, 595–605 (2014); see also Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1, 19 (2014).

I. THE LAW AND PSYCHOLOGY OF DECEIVING AND DISCLAIMING

A. *Deception in Contract Doctrine*

The central doctrinal tool purporting to address lying promisors is the misrepresentation excuse, which permits misled parties to avoid their obligations (but limits damages to restitution). Pretending there are no termites when there are termites,⁵ failing to mention a cockroach infestation,⁶ and maybe even lying about dance potential⁷—these are grounds for rescission. The challenge for the parties trying to unwind their flawed deals, though, is that misrepresentation must be one on which a person would be “justified in relying.”⁸ Firms have tools for steering clear of this kind of challenge. Every Amazon buyer agrees that “AMAZON MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND,”⁹ and perhaps more importantly, sellers can and do qualify their statements with exactly the kinds of disclaimers that undermine the buyer’s justification for relying on enticing claims.

Of course, contracts can also be voided on the grounds of unconscionability. The Walker-Thomas Furniture company was deceiving its customers when it sold home goods with a complicated *pro rata* financing plan.¹⁰ The salesmen were not making misrepresentations—the term was spelled out in the contract and the plaintiffs did not claim they had been explicitly lied to—but the sales practice was procedurally flawed. Unconscionability, though, is reserved for the extreme cases.

In the meantime, contract doctrine offers some useful tools for the dishonest. The parol evidence rule lets parties make promises that they will never have to keep because the courts will not hear the oral promise as long as the writing is completely integrated.¹¹ The pre-existing duty rule permitted the *Alaska Packers* superintendent to extract labor from fishermen by promising a raise that would never come to pass.¹² And the doctrine of severability limits the penalties for parties who want to include prohibited terms—personal injury disclaimers, non-compete agreements, etc.—in hopes that consumers will take them to heart even if courts would never enforce them. If the only thing a firm, a landlord, or a seller has to lose is the unenforceability of a single term, the expected value of including it is positive.

⁵ *Gibb v. Citicorp Mortgage*, 518 N.W.2d 910 (1994).

⁶ *Weintraub v. Krobatsch*, 64 N.J. 445 (1974).

⁷ *Vokes v. Arthur Murray Dance Studio*, 212 So. 2d 906, 907–08 (Fla. Dist. Ct. App. 1968).

⁸ RESTATEMENT (SECOND) OF CONTRACTS § 164 (Am. L. Inst. 1981).

⁹ Amazon, *Conditions of Use* (Sep. 14, 2022) <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM> [<https://perma.cc/PU25-253V>].

¹⁰ See, e.g., Anne Fleming, *The Rise and Fall of Unconscionability as the “Law of the Poor,”* 102 GEO. L. J. 1383, 1434–36 (2014).

¹¹ See, e.g., Eric A. Posner, *Parol Evidence Rule, the Plain Meaning Rule, and the Principles of Contractual Interpretation*, 146 U. PA. L. REV. 533 (1998).

¹² *Alaska Packers’ Ass’n v. Domenico*, 117 F. 99 (9th Cir. 1902).

Finally, the most common scenario—qualification-by-fine-print—is one that is rarely described as deception *per se*. In the twenty-first century, consumer transactions include a set of terms that consumers shop on, and then a set of standard terms typically known only to the seller. Imagine a consumer who signs up for a social media app but doesn't realize that its terms and conditions permit third-party data sharing, or a borrower who gets a mortgage with an attractive interest rate but doesn't see the costly prepayment penalty. When those consumers feel misled, it is because the salient features of the contracts suggested a more valuable transaction, which the fine print subsequently undermined. Misleading and disclaiming are endemic to contracts that include appealing upfront promises (i.e., advertising) and then require qualification. The doctrinal question in these cases is at the core of contracts: did the non-drafting party assent to the terms and conditions?¹³

When courts address assent issues in online contracts, they often take inventory of a series of facially plausible factors for fair notice. Was the Terms & Conditions link in a pop-up window or a stable link?¹⁴ Was the hyperlink underlined?¹⁵ But these questions are more or less orthogonal to the misleading-and-disclaiming problem, because notice is irrelevant. Everyone is on notice of additional terms all the time, but the terms are unread and, in the aggregate, unreadable.¹⁶ As a matter of descriptive reality, providing salient notice of fine print does not change what consumers know about the transaction in which they are participating.¹⁷ The Restatement of Consumer Contracts takes an important step by articulating the problem of deception as such in section 7:

§ 7: Deception

- (a) A contract or a term adopted as a result of a deceptive act or practice by the business is unenforceable.

¹³ See, e.g., Omri Ben-Shahar, *The Myth of the 'Opportunity to Read' in Contract Law*, 5 EUR. REV. CONT. L. 1, 15 (2009) ("If we succeeded in reading the text and understanding it, we are often struck by the remoteness of the contingencies it covers – ones that we don't expect to materialize, such that cost of figuring out and improving the terms that apply to these contingencies is not worth it.").

¹⁴ E.g., *In re RealNetworks, Inc.*, No. 00-C-1366, 2000 WL 631341, at *6 (N.D. Ill. 2000) (finding an arbitration clause enforceable in part because "[t]he pop-up window containing the License agreement does not disappear after a certain time period; so, the user can scroll through it and examine it to his heart's content.").

¹⁵ See, e.g., *ProCD, Inc. v. Zeidenberg*, 86 F.3d 1447, 1450–53 (7th Cir. 1996) (deciding that a clickwrap agreement is enforceable because the plaintiff could not purchase without seeing the link to the terms and conditions). See also Robert A. Hillman, *Rolling Contracts*, 71 FORDHAM L. REV. 743, 756 (2002) (arguing that consumers are highly unlikely to read any terms that follow, but that as long as they had an opportunity to do so—perhaps especially “in the quiet of their own homes”—the particular terms should be enforced).

¹⁶ Omri Ben-Shahar & Carl Schneider, *The Failure of Mandatory Disclosure*, 159 U. PA. L. REV. 647 (2011).

¹⁷ See, e.g., Yannis Bakos, Florencia Marotta-Wurgler & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1, 3 (2014) (explaining that consumers read terms and conditions clauses 0.2% of the time).

- (b) Without limiting the scope of subsection (a), an act or practice by the business is deceptive if it has the effect of:
 - (1) contradicting or unreasonably limiting in the standard contract terms a material affirmation of fact or promise made by the business before the consumer assented to the transaction;
 - (2) obscuring the presentation of a material term of the contract or of its effect, including a charge to be paid by the consumer or the overall cost or detriment to the consumer; or
 - (3) obscuring the fact that the subject matter of the contract does not have a material beneficial attribute that consumers to such transactions reasonably expect it to have.

The section explicitly embraces consumer law approaches, echoing the “unfair or deceptive acts or practices” language of § 5 of the Federal Trade Commission (FTC) Act, and the influential 1983 Policy Statement,¹⁸ which instructs courts to consider what practices are “likely to mislead,” what interpretations are likely “from the perspective of a consumer acting reasonably in the circumstances,” and what factors are “likely to affect...conduct or decision.”¹⁹ As the Restatement acknowledges, many consumer contracts are subject to states’ “little FTC Acts” or state Unfair, Deceptive, and Abusive Practices (UDAP) statutes that follow the FTC approach.

B. Evidence of Commonsense Approaches to Transactional Deception

The questions for this Essay are the extent to which consumers share the provision’s normative intuitions and the relationship between those intuitions and the possible legal remedies. Prior behavioral studies seem to suggest that consumers have a high tolerance for being misled.²⁰ Reading is impossible

¹⁸ FTC Policy Statement on Deception, Letter from James C. Miller III, Chairman, FTC, to John D. Dingell, Chairman, Comm. on Energy & Com., U.S. House of Reps. (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf [<https://perma.cc/8UGF-Y486>].

¹⁹ *Id.* ((1) there must be a representation, practice, or omission likely to mislead consumers; (2) the consumers must be interpreting the message reasonably under the circumstances; and (3) the misleading effects must be “material,” that is, likely to affect consumers’ conduct or decision with regard to a product.)

²⁰ *See, e.g.,* Tess Wilkinson-Ryan, *The Perverse Consequences of Disclosing Standard Terms*, 103 CORNELL L. REV. 117 (2017) (showing empirical evidence that lay subjects were more willing to challenge a non-contractual policy than a contract term, even when the term was hidden in a rolling contract); Tess Wilkinson-Ryan, *A Psychological Account of Consent to Fine Print*, 99 IOWA L. REV. 1745 (2014) (reporting data from a study showing that subjects blamed a consumer even when they judged that the consumer had been insufficiently notified); Tess Wilkinson-Ryan, *Breaching the Mortgage Contract: The Behavioral Economics of Strategic Default*, 64 VAND. L. REV. 1547, 1580–81 (2011) (finding that mortgage securitization reduces

and no one does it,²¹ but the predominant cultural narrative around fine print deception remains grounded in *caveat emptor*.²² When news outlets cover egregiously exploitative contracts, or even just clear malfeasance by firms, the articles often conclude their descriptions of extraordinarily bad behavior with a chiding reminder that the solution to this problem is for consumers to read their contracts carefully. The subhead of the New York Times's deep dive into the costs and benefits of arbitration was "Beware the Fine Print."²³

Existing research supports the intuition that non-lawyers will be unsympathetic to claims of deception. Roseanna Sommers has shown copious evidence that a "commonsense" theory of consent finds consent even under conditions of deception,²⁴ even when the false statements are blatant lies not easily fact-checked by their target. Misleadingness in contracts offers even more grounds for blaming the deceived—the misleading statements are often ambiguous, and the victim almost always has plausible recourse because the written contract is available. In empirical contracts scholarship, a line of studies describes a phenomenon sometimes called "intuitive formalism." Most people think that contracts should be, and will be, enforced as written.²⁵ For example, one study showed subjects a scenario describing a consumer who signed up for a contract for a cell phone data plan at a promotional rate. It turned out that one of the clauses deep into the contract indicated that any late payment would result in a reversion to "standard pricing," which was almost fifty percent more expensive. One of the most striking results of the study was that seventy-four percent of the subjects thought that the consumer had consented to the term they had not read, been warned of, or expected.²⁶

In another study, subjects were randomly assigned to read that an unfair term was more or less easy for the consumer to discover. In one case, for example, the term was part of a short contract that a traveler read at a car rental counter; in another, it was given to the customer after signing, in a packet of papers that did not otherwise indicate that it contained additional terms. Subjects thought the term was fair and enforceable in either case—that is, they did not seem to think that the term's hiddenness was related to enforceability, fairness, or consent.²⁷ This finding is in line with other research suggesting

homeowners' feeling of obligation and increases the likelihood of breach); Tess Wilkinson-Ryan & David A. Hoffman, *The Common Sense of Contract Formation*, 67 STAN. L. REV. 1269, 1296–98 (2015) (reporting the salient moment of formation is signing or performing).

²¹ See, e.g., Bakos, Marotta-Wurgler & *supra* note 17.

²² See, e.g., Tess Wilkinson-Ryan, *Justifying Bad Deals*, 169 U. PENN. L. REV. 193 (2020) (describing media coverage of a series of transactional conflicts in which the drafting firm had done something clearly illegal).

²³ Jessica Silver-Greenberg & Robert Gebeloff, *Arbitration Everywhere, Stacking the Deck of Justice*, N.Y. Times, Oct. 10, 1975, <https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html> [<https://perma.cc/T7C2-XCD5>].

²⁴ Rosanna Sommers, *Commonsense Consent*, 129 YALE L. J. 2232 (2020).

²⁵ Roseanna Sommers, *Contract Schemas*, 17 ANN. REV. LAW & SOC. SCI. 293 (2021).

²⁶ Wilkinson-Ryan, *supra* note 20, at 221 ("Very few subjects thought that Ashley had not consented. In fact, 74% of subjects found unequivocal consent to the term, and only 17% thought she had not consented. The median rating of consent on the 1-7 scale was 6.").

²⁷ See Wilkinson-Ryan (2017), *supra* note 18.

that most people think that consumers who do not do their due diligence are stuck with bad terms, even if they agree that a firm has chosen an unreasonable method of communicating terms.²⁸

Indeed, in a study by the contracts scholar Zev Eigen, online respondents were led into a survey that they presumably thought would be short and straightforward, and it was in fact 480 items long and intentionally difficult to complete. Subjects completed a surprising number of the items before quitting, and even more if they were primed to think about the transaction as a contract.²⁹ Performing a contract as written is a strong norm, and that norm is likely to weigh against consumer complaints of misleadingness.

Attitudes toward consumer contracting have been described as “ambivalent”; the psychological challenge for many observers is that between an overreaching drafter and a non-reading consumer, there are two apparently blameworthy parties. Although that problem is not specific to contracts, it presents a familiar problem of one judgment affecting the other.

We know remarkably little about how all of these considerations congeal into judgments about misleading representations. The baseline question of whether a given representation is misleading at all is explicitly empirical. But even once misleadingness is established, we need more research to understand the relationship between deception and other judgments. The Restatement of Consumer Contracts “provides the consumer with the power to avoid any contract or term that is a result of a deceptive act or practice by the business,” in part because deception “undermines the premise that the contract term was agreed to.”³⁰ Do people agree that deception undermines assent, and to what extent? What is the intuitive relationship between deception and potential remedies or legal interventions; if deception is established, is rescission the commonsense response? And finally, what might we learn about informal norms and intuitive sympathy or disdain for the parties—responses that will affect not only who gets relief but also who complains.

II. PERCEPTIONS OF MISLEADING AND DISCLAIMING: A SURVEY STUDY

A. *Experimental Survey Methods*

The study was programmed in Qualtrics, and a nationally representative sample of 1,500 American subjects was recruited via Prolific. Each subject was paid \$1.50 for participating in the study, which took two to three minutes to complete. The study and its analyses were preregistered with AsPredicted.org as submission #206060.³¹

²⁸ See Wilkinson-Ryan (2014), *supra* note 20.

²⁹ Zev J. Eigen, Hans Bernd Schäfer & Shyam Sunder, *Experimental Evidence of the Relationship between Reading the Fine Print and Performance of Form-Contract Terms*, 168 J. INSTITUTIONAL AND THEORETICAL ECON. 124, 126 (2012).

³⁰ RESTATEMENT OF CONSUMER CONTRACTS § 7 cmt. 1 (AM. L. INST. 2024).

³¹ The complete pre-registration is publicly available at <https://aspredicted.org/wcyt-hkp4.pdf>.

Each subject was randomly assigned to read one scenario (Refrigerator, Car Insurance, and Checking Account) in one of two possible conditions, General Disclaimer or Specific Disclaimer. Subjects in the General Disclaimer condition saw an advertising claim that was modified with an asterisked notation like, "Terms and conditions apply." Subjects in the Specific Disclaimer condition read a more directly clarifying statement in the asterisked notation.

After the scenario, subjects were asked to indicate their agreement with five statements. The questions were slightly customized to each scenario, but they overall read as follows:

Misleading: The advertisement is misleading.

Blame: The consumer is to blame for finding herself in this situation.

Rescission: Legally, the consumer should be able to get her deposit back (or cancel the account).

Ban: State law should prohibit the company from advertising the price the way that they did.

Consent: The consumer has agreed to the transaction whether or not she read the * statement on the ad.

The three scenarios were as follows:

Refrigerator Price

Please imagine that the following advertisement from a home supply store appears online with a picture of a new standard refrigerator from a brand called Avionne:

Buy a new Avionne refrigerator for only \$499*! Reserve yours with a deposit today!

At the bottom of the advertisement in smaller but visible font there is a statement that reads:

Specific: *Total cost of refrigerator including all necessary parts, excluding sales tax, is \$623.

Vague: *Price may vary. Terms and conditions apply.

Erin is looking for a new refrigerator, and \$499 would be a good deal. She calls the store, identifies the refrigerator she would like to order, and gives her name and credit card number for the nonrefundable \$100 deposit. They agree that the refrigerator will be delivered and that the balance will be due on delivery, but they do not otherwise talk about price on the phone.

She then receives a confirmation email that indicates that the pre-sales-tax price is \$623, which includes parts priced separately.

Assume the refrigerator is not worth \$623 to Erin; she would rather buy a different model than pay that much.

Insurance Coverage

Please imagine that Ben is in the market for car insurance because he has recently purchased a used 2015 Honda Civic. He lives in an apartment in a city, and he parks his car on the street because he does not have a garage or driveway.

He sees an advertisement for car insurance and a number to call for a local insurance agency.

The advertisement reads:

The Car Insurance You Need for City Driving (And Parking!!) We Cover Everything!*

At the bottom of the advertisement in a smaller but visible font is the statement:

Specific: *Windshield and glass damage not covered.

Vague: *See terms and conditions for details.

Ben signs up for the car insurance by calling a phone number on the ad. The City Driving plan he signs up for comes with a first-year commitment discount, which means he pays monthly, but if he terminates the agreement in less than 12 months, he has to pay a \$100 penalty, which he and the insurance agent discuss ahead of time.

Ben has a couple of neighbors whose cars get broken into that summer. Not much is stolen, but the windows are smashed. He double-checks his insurance policy, because he knows it's expensive to replace a window and also needs a rental car while the work was being done. In the Terms and Conditions of the insurance agreement, the seventh clause reads, "Windshield and glass damage not covered." He wants to change companies.

Bank Fees

A local bank has put up signs around town that they are offering a "No Fee Checking Account." The advertisement reads:

No Fee Checking Account!* Sign up today!

At the bottom of the advertisement in smaller but readable print is the statement:

Specific: *Minimum balance required.

Vague: *Terms and conditions apply.

Dan signs up for the bank's No Fee Checking Account and deposits \$437. His first bank statement shows a \$9 charge for "Monthly Fee" which is the bank's monthly fee for accounts holding less than \$500. The minimum balance and monthly fee explanation is included in the bank's Terms and Conditions online and in the enrollment agreement Dan signed when he opened the account.

Each subject saw one scenario in one condition, meaning that each sub-version had about 250 respondents.

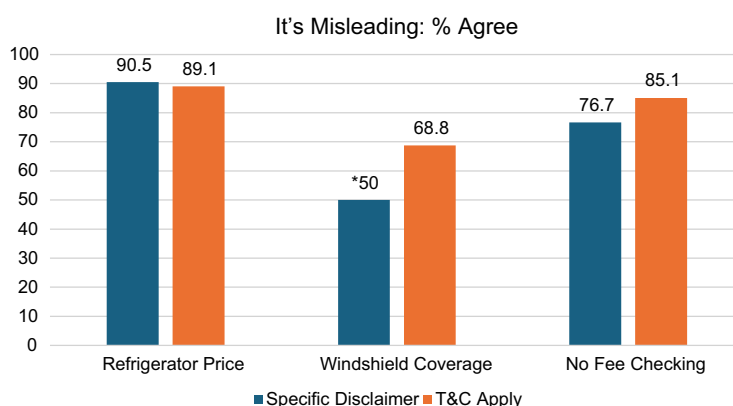
B. Results

Responses were collected and analyzed from 1,501 participants. About forty percent (40.2%) of subjects were under 40, and 21.5% were over age 60. Half (50.6%) of subjects were women. More than half (55.1%) of subjects indicated that they were more politically liberal than conservative.

1. Subject Responses, by Scenario and Condition

The results are presented below in five figures, each of which show the percentage of subjects who agreed with each statement, by condition and by scenario. An asterisk indicates where the pairwise comparisons show statistically significant differences at the $p < .05$ level.

FIGURE 1. PERCENT OF SUBJECTS INDICATING AGREEMENT (5 TO 7 ON A 7-POINT LIKERT SCALE) THAT THE ADVERTISEMENT IS MISLEADING.³²



³² Subjects were significantly more likely to agree that the Insurance advertisement was misleading when the asterisked disclaimer was vague than when it was specific ($W=22946$, $p<.001$). The difference was marginally significant for the Bank scenario ($W = 28780$, $p\text{-value} = 0.091$).

FIGURE 2. PERCENT OF SUBJECTS INDICATING AGREEMENT (5 TO 7 ON A 7-POINT LIKERT SCALE) THAT THE CONSUMER IS TO BLAME FOR THE SITUATION.³³

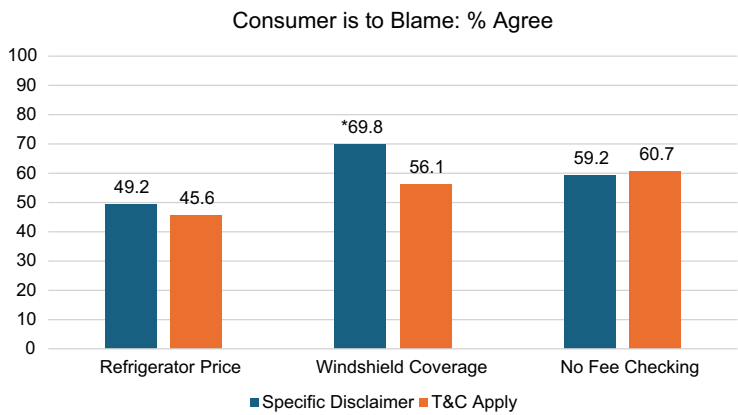
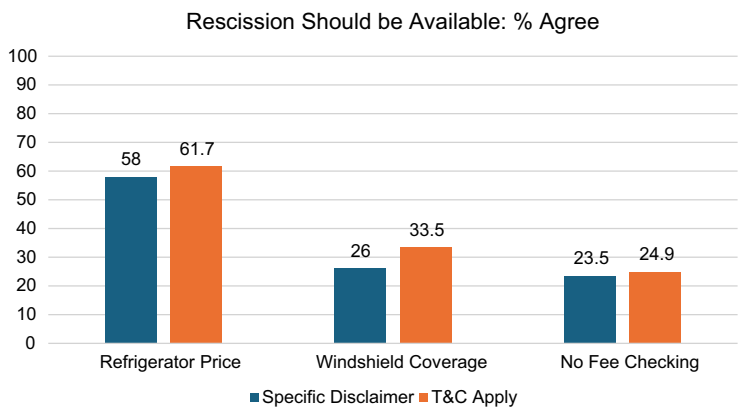


FIGURE 3. PERCENT OF SUBJECTS INDICATING AGREEMENT (5 TO 7 ON A 7-POINT LIKERT SCALE) THAT RESCISSION SHOULD BE AVAILABLE (DEPOSIT RETURN FOR REFRIGERATOR SCENARIO, CANCELLATION OF ACCOUNT FOR INSURANCE AND BANKING).



³³ Subjects were significantly less likely to agree that the Insurance customer was to blame when the asterisked disclaimer was vague than when it was specific ($W = 35360$, $p\text{-value} = 0.010$).

FIGURE 4. PERCENT OF SUBJECTS INDICATING AGREEMENT (5 TO 7 ON A 7-POINT LIKERT SCALE) THAT STATE LAW SHOULD PROHIBIT THE COMPANY FROM ADVERTISING AS DESCRIBED.³⁴

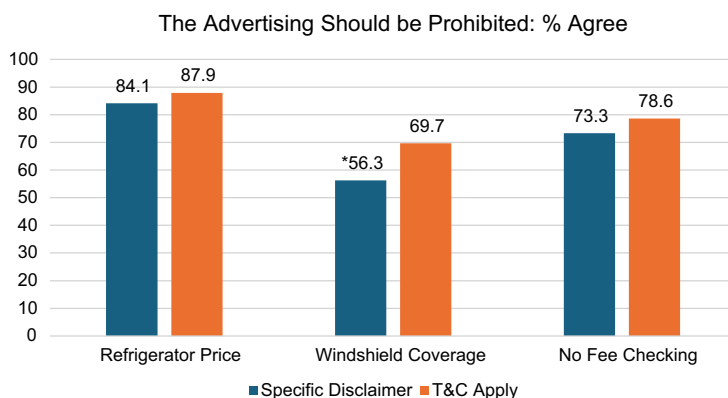
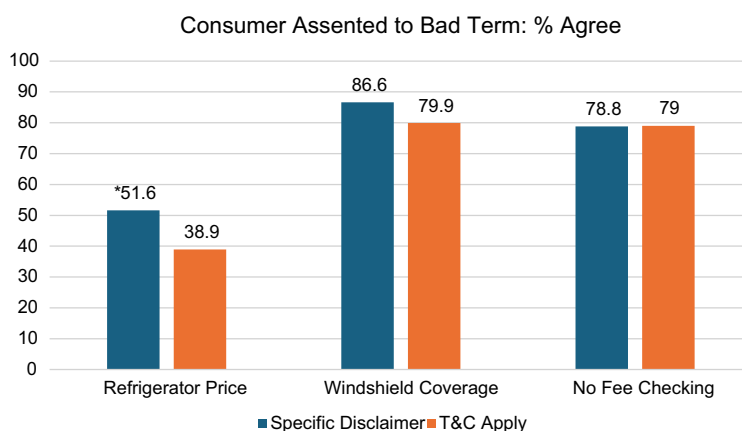


FIGURE 5. PERCENT OF SUBJECTS INDICATING AGREEMENT (5 TO 7 ON A 7-POINT LIKERT SCALE) THAT THE CONSUMER AGREED TO THE DISPUTED TERM.³⁵



³⁴ Subjects were significantly more likely to agree that the Insurance advertisement should be banned when the asterisked disclaimer was vague than when it was specific ($W = 26560$, $p\text{-value} = 0.004$).

³⁵ Subjects were significantly less likely to agree that the Refrigerator customer agreed to the higher price when the asterisked disclaimer was vague than when it was specific ($W = 36917$, $p\text{-value} = 0.000$).

2. Individual Differences

Finally, I asked whether there were demographic patterns in the results, as many scholars have reported elsewhere.³⁶ To conduct the demographic analysis, I aggregated across scenarios so that I had a single column for each dependent variable: Misleading, Blame, Rescission, Ban, and Assent. I could then regress the demographic variables—age, gender, socioeconomic class (self-reported), and political beliefs. The approach I took is exploratory, ignoring scenario and condition, to look at broader trends, for example: overall, were older subjects more likely to think ads were misleading, or overall, did men and women differ on consumer blame? In fact, age and political beliefs were consistently predictive, holding other variables constant. Older subjects were less likely to support rescission,³⁷ more likely to find assent,³⁸

³⁶ See, e.g., David A. Hoffman, *From Promise to Form: How Contracting Online Changes Consumers*, 91 N.Y.U. L. Rev. 1595 (2017).

³⁷ Table 1 (see Appendix Table A2 for full results including cutpoint coefficients). Regression of demographic variables on combined Rescission measure.

| Favor Rescission Remedy for Consumer | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | -0.016*** | 0.00 | 0.00 |
| gen | -0.042 | 0.09 | 0.65 |
| class | 0.002 | 0.03 | 0.94 |
| pol | 0.005*** | 0.00 | 0.00 |

³⁸ Table 2 (see Appendix Table A2 for full results including cutpoint coefficients). Regression of demographic variables on combined Rescission measure.

| Agree Consumer Assented | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | 0.019*** | 0.00 | 0.00 |
| gen | 0.103 | 0.09 | 0.27 |
| class | -0.002 | 0.03 | 0.96 |
| pol | -0.004* | 0.00 | 0.01 |

more likely to blame the consumer,³⁹ less likely to find the advertisements to be misleading,⁴⁰ and less likely to support prohibitions on the ads.⁴¹ Neither gender nor class were predictive of any attitudes measured here.⁴² Liberalism was a significant predictor in the opposite direction of age; it was positively associated with perceptions of misleadingness,⁴³ openness to both *ex ante*⁴⁴ and *ex post* regulation,⁴⁵ and negatively associated with judgments of consumer blame⁴⁶ and consumer assent.⁴⁷

³⁹ Table 3 (see Appendix Table A2 for full results including cutpoint coefficients). Regression of demographic variables on combined Blame measure.

| Agree Consumer is to Blame | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | 0.024*** | 0.00 | 0.00 |
| gen | -0.094 | 0.09 | 0.31 |
| class | -0.003 | 0.03 | 0.91 |
| pol | -0.003* | 0.00 | 0.04 |

⁴⁰ Table 4 (see Appendix Table A2 for full results including cutpoint coefficients). Regression of demographic variables on combined Misleading measure.

| Agree Ad is Misleading | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | -0.008* | 0.00 | 0.01 |
| gen | -0.065 | 0.09 | 0.48 |
| class | 0 | 0.03 | 1.00 |
| pol | 0.003* | 0.00 | 0.04 |

⁴¹ Table 5 (see Appendix Table A2 for full results including cutpoint coefficients). Regression of demographic variables on combined Ban measure.

| State Should Prohibit Misleading Ad | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | -0.006* | 0.00 | 0.04 |
| gen | -0.055 | 0.09 | 0.56 |
| class | 0.027 | 0.03 | 0.41 |
| pol | 0.009*** | 0.00 | 0.00 |

⁴² See *supra* Tables 1–5 at notes 37–41.

⁴³ See *supra* Table 4 at note 40.

⁴⁴ See *supra* Table 1 at note 37.

⁴⁵ See *supra* Table 5 at note 41.

⁴⁶ See *supra* Table 3 at note 39.

⁴⁷ See *supra* Table 2 at note 38.

III. RESEARCH AGENDA

A. *Substance and Form of Disclosures*

The experimental manipulation in this study was modest: did subjects have different perceptions of specific, clarifying disclosures than they did of general warnings that terms and conditions apply? The results were notably mixed. The scenario that produced the most consistent differences across conditions was the insurance scenario. The question that seemed the most sensitive to the condition was the Misleading question—it is more misleading to make a claim and then note that “terms and conditions apply” than it is to make a claim and then note a specific exception or modification to the claim. There were no differences by condition in the Misleading question for the Refrigerator scenario because of a ceiling effect—almost all subjects thought it was egregiously misleading to put a low price in large print and a higher price in the small print, much less just a vague disclaimer.

Overall, as we might expect, perceptions of misleadingness were negatively correlated with judgments of blame.⁴⁸ However, more than half of the participants in this study both agreed (score 5–7) that the advertisement they saw was misleading and agreed (5–7) that the customer was to blame for their predicament. The correlation between blame judgments and assent judgments was very high. One of the underexplored research questions raised by this data is when misleadingness does and does not increase sympathy, and decrease blame, for the consumer. There are additional questions to ask about demographics and discrimination, and how interpersonal judgments of blame may reflect attributes about the identity of the parties rather than their behavior—for example, number of studies suggest that women are more likely to be stereotyped as easily misled, and thus subject to dishonest negotiating statements.⁴⁹

B. *Is Price Sacred and if So, Why?*

Among the three scenarios tested here, the Refrigerator price scenario elicited notably more critical responses from subjects. Almost all subjects agreed that the advertisement was misleading, even when the correct price was shown on the face of the advertisement. Subjects were moderately but consistently more likely to support prohibitions on the advertisement and less likely to blame the consumer for the conflict. More notably, however, were the

⁴⁸ $r = -0.28$; $t = -11.38$, $df = 1506$, $p\text{-value} < .001$.

⁴⁹ See, e.g., Laura J. Kray, Jessica A. Kennedy & Alex B. Van Zant, *Not Competent Enough to Know the Difference? Gender Stereotypes About Women's Ease of Being Misled Predict Negotiator Deception*, 125 *ORG. BEHAV. & HUM. DECISION PROCESSES* 61, 69 (2014); see also, Gregory Klass & Tess Wilkinson-Ryan, *Gender and Deception: Moral Perceptions and Legal Responses*, 118 *Nw. U. L. REV.* 193 (2023).

responses to the rescission and the assent questions. In this and other studies, lay respondents are usually very hostile to permitting rescission for unwary consumers. And in many, many studies, even the most egregious deception fails to vitiate consent, at least in the perception of lay observers.⁵⁰ Across conditions, around eighty percent of subjects thought that there was valid assent in the insurance and banking scenarios—but only fifty-two percent (specific disclaimer) and thirty-eight percent (terms and conditions disclaimer) of subjects thought there was agreement to buy the refrigerator for the higher price.

There are, of course, a variety of ways that a household appliance purchase is unlike a long-term insurance or banking contract. People may have more negative views about home warehouse stores than insurance countries, or just more established perceptions. A distinct and novel hypothesis, however—plausible given this data—is that there is something special about price, that being coy about a dollar amount is viewed as unfair in a way that other kinds of deception are not.

If the conjecture is right, or partially right, the question is why—what is it about price that pings a distinct set of moral intuitions? One possibility is that price is a more concrete attribute that people expect to understand at the outset, or that since it's numeric, its veracity is more black-and-white. Another is that there is something morally special about price, such that lying about it is a greater moral violation.⁵¹ This is a novel question that deserves empirical attention.

C. *Appetite for Legal Intervention*

One of the most striking observations from this research is how differently subjects responded to two possible legal approaches to misleading advertising. Across scenarios and conditions, most subjects would support state laws regulating—i.e., prohibiting—deceptive advertising of the kind they saw. But subjects were far less agreeable to the prospect of rescission. Many subjects who highly agreed that an advertisement was deceptive were nonetheless unwilling to support a remedy of free cancellation. So, for example, while about three in four subjects were in favor of prohibiting the bank from advertising no-fee checking when there was a fee for patrons who did not meet the minimum balance, only one in four would permit the duped consumer to avoid the fee once it was imposed.

⁵⁰ Sommers, *supra* note 24.

⁵¹ Another possibility is that the stark differences are due to the attributes of each scenario's protagonist. In other work, there is evidence that people are more likely to judge deception harshly if the target of the deception is a woman. The consumer in the refrigerator scenario is named Erin and identified with female pronouns. This might matter, but it does not seem likely that it accounts for how differently subjects responded to this scenario; in prior work, the gender effect is very small.

There are a variety of well-trodden normative justifications for using consumer law mechanisms of *ex ante* regulation even when contract law is unwilling to police terms *ex post*. But there is no obvious reason to think that lay people have the same concerns about institutional competence, protecting reliance interests, or general vs. specific policing of terms. One psychological distinction between banning terms *ex ante* vs. refusing to enforce *ex post* is that banning terms does not implicate the buyer's fecklessness in the same way. Future research should explore the intuitions driving this analysis.

CONCLUSION

The Restatement of Consumer Contracts has articulated a more sensitive and responsive approach to deception in consumer contracting. How ordinary consumers think about deception will affect what terms they complain about, what contracts they avoid or agree to, when they read, and whom they trust. Whether or not the law ought to reflect consumers' intuitions back to them, we ought to understand how buyers perceive their own legal rights and obligations. And, of course, the legal regime will shape the evolving psychology of contracts. This is an opportunity for empirical scholars to develop a deeper research agenda on deception, and to contribute meaningfully to a newly salient area of contract law.

APPENDIX

Table A1. Is the Ad Misleading? Results of an ordinal regression on Misleading, with four demographic predictors: Age, Gender, Class, and Political Beliefs (where political beliefs are elicited on a 1-100 scale with 1 being the most conservative and 100 being the most liberal). (Ordinal regression results are reported because the dependent variable is a 1-7 Likert scale where the responses are a ranking rather than values at fixed intervals. In addition to the demographic predictors, the table shows the effect of each cutpoint on the output.)

| Agree Ad is Misleading | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | -0.008* | 0.00 | 0.01 |
| gen | -0.065 | 0.09 | 0.48 |
| class | 0 | 0.03 | 1.00 |
| pol | 0.003* | 0.00 | 0.04 |
| 0 1 | -7.574*** | 1.03 | 0.00 |
| 1 2 | -3.759*** | 0.28 | 0.00 |
| 2 3 | -2.423*** | 0.24 | 0.00 |
| 3 4 | -1.788*** | 0.24 | 0.00 |
| 4 5 | -1.473*** | 0.24 | 0.00 |
| 5 6 | -0.456 | 0.23 | 0.05 |
| 6 7 | 0.872*** | 0.23 | 0.00 |

Table A2. Should Refund or Cancellation be Permitted? Results of an ordinal regression on Refund or Cancel, with four demographic predictors: Age, Gender, Class, and Political Beliefs (where political beliefs are elicited on a 1-100 scale with 1 being the most conservative and 100 being the most liberal).

| Favor Rescission Remedy for Consumer | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | -0.016*** | 0.00 | 0.00 |
| gen | -0.042 | 0.09 | 0.65 |
| class | 0.002 | 0.03 | 0.94 |
| pol | 0.005*** | 0.00 | 0.00 |
| 0 1 | -6.046*** | 0.47 | 0.00 |
| 1 2 | -2.782*** | 0.25 | 0.00 |
| 2 3 | -1.137*** | 0.24 | 0.00 |
| 3 4 | -0.501* | 0.23 | 0.03 |
| 4 5 | 0.001 | 0.23 | 1.00 |
| 5 6 | 0.53* | 0.23 | 0.02 |
| 6 7 | 1.559*** | 0.24 | 0.00 |

Table A3. Should the state prohibit ads of this kind? Results of an ordinal regression on Ban, with four demographic predictors: Age, Gender, Class, and Political Beliefs, where higher numbers are associated with more liberal beliefs (where political beliefs are elicited on a 1-100 scale with 1 being the most conservative and 100 being the most liberal).

| State Should Prohibit Misleading Ad | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | -0.006* | 0.00 | 0.04 |
| gen | -0.055 | 0.09 | 0.56 |
| class | 0.027 | 0.03 | 0.41 |
| pol | 0.009*** | 0.00 | 0.00 |
| 0 1 | -5.506*** | 0.50 | 0.00 |
| 1 2 | -3.278*** | 0.27 | 0.00 |
| 2 3 | -2.077*** | 0.24 | 0.00 |
| 3 4 | -1.55*** | 0.24 | 0.00 |
| 4 5 | -0.896*** | 0.23 | 0.00 |
| 5 6 | -0.06 | 0.23 | 0.80 |
| 6 7 | 1.102*** | 0.24 | 0.00 |

Table A4. Did the consumer assent to the hidden term? Results of an ordinal regression on Assent, with four demographic predictors: Age, Gender, Class, and Political Beliefs, where higher numbers are associated with more liberal beliefs (where political beliefs are elicited on a 1-100 scale with 1 being the most conservative and 100 being the most liberal).

| Agree Consumer Assented | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | 0.019*** | 0.00 | 0.00 |
| gen | 0.103 | 0.09 | 0.27 |
| class | -0.002 | 0.03 | 0.96 |
| pol | -0.004* | 0.00 | 0.01 |
| 0 1 | -5.844*** | 0.74 | 0.00 |
| 1 2 | -1.981*** | 0.25 | 0.00 |
| 2 3 | -1.052*** | 0.24 | 0.00 |
| 3 4 | -0.579* | 0.24 | 0.01 |
| 4 5 | -0.031 | 0.23 | 0.89 |
| 5 6 | 0.83*** | 0.24 | 0.00 |
| 6 7 | 2.514*** | 0.24 | 0.00 |

Table A5. Is the consumer to blame for the situation? Results of an ordinal regression on Blame, with four demographic predictors: Age, Gender, Class, and Political Beliefs, where higher numbers are associated with more liberal beliefs (where political beliefs are elicited on a 1-100 scale with 1 being the most conservative and 100 being the most liberal).

| Agree Consumer is to Blame | | | |
|--|-------------|------------|---------|
| Ordinal Logistic Regression results, including cutpoints | | | |
| Predictor | Coefficient | Std. Error | p-value |
| age | 0.024*** | 0.00 | 0.00 |
| gen | -0.094 | 0.09 | 0.31 |
| class | -0.003 | 0.03 | 0.91 |
| pol | -0.003* | 0.00 | 0.04 |
| 0 1 | -5.422*** | 0.61 | 0.00 |
| 1 2 | -2.112*** | 0.25 | 0.00 |
| 2 3 | -0.826*** | 0.24 | 0.00 |
| 3 4 | -0.039 | 0.24 | 0.87 |
| 4 5 | 0.462 | 0.24 | 0.05 |
| 5 6 | 2.02*** | 0.24 | 0.00 |
| 6 7 | 3.596*** | 0.26 | 0.00 |