**Pitch**

* My research explores the discrepancies between how **consumer contracts appear on paper** and how **they actually work on the ground**.
* Based on our everyday experiences, we all know that sellers often depart from their formal agreements in meaningful ways. For example, credit card issuers may waive late fees for certain consumers who fail to pay their bills on time. Insurance companies may accept claims despite the insureds’ failure to comply with the policy requirements and retailers may accept returns even after the return period has elapsed.
* But until now, scholars, regulators, and courts have focused almost exclusively on the formal text of these standardized agreements.
* Those who have noted that there might be a gap between the contract on paper and in action have **speculated** that sellers may invoke rigid contract terms to protect themselves from advantage-taking consumers while departing from these terms when buyers ask for reasonable accommodations in good faith.
* But beyond some anecdotal evidence, nearly nothing is known about when and how sellers depart from contractual terms to the benefit of consumers.
* My research explores **consumer contracts in action** through a large-scale field experiment of product returns.
* For this purpose, I hired and trained a team of six testers to return clothing items without receipts to 95 retail stores in Chicago that formally require receipts for returns. The findings reveal that a significant proportion of sellers departed from their policies by accepting the return. However, this practice is hardly universal or uniform. The study identifies several main factors shaping sellers’ departure patterns.
* One main factor is the nature of the store, with luxury and chain stores significantly more likely to be forgiving than are more casual and local mom and pop stores.
* The second, even stronger, predictor is consumer bargaining strategy, with sellers twice as likely to accept returns after consumers complain.
* Sellers’ segmentation of consumers based on their bargaining strategy, regardless of the merits of their claims, raises distributional concerns.
* There is an abundance of empirical evidence that lower-income consumers and members of minority groups feel less entitled and are consequently less likely to complain than are higher- income customers and those belonging to the majority. As a result, sellers’ complaint-based segmentation might disproportionately benefit white, upper-class customers at the expense of those who are more disadvantaged.
* More generally, these results cast doubt on the ability of reputational forces to prevent sellers from enforcing harsh contracts to the letter. Rather, they suggest that policymakers should at least consider regulating consumer contracts when the terms seem to be one-sided against consumers. This is because these one-sided terms might be included in the contract as a result of consumers’ failure to read the agreement, or as a result of consumers’ failure to correctly estimate the costs and benefits of the term. In such cases, the enforcement of the harsh terms against consumers is inefficient and harmful to consumers.

**Research Agenda**

* I see this project as part of a **broader research agenda** to bring **legal realism to consumer contract law** by examining **how contracts operate in action**.
* For this purpose, my research explores **the** **discrepancies between contracts operate in theory and how they are actually written and implemented**.
* Until now, my work has focused on how sellers use unenforceable terms that deny or restrict consumers’ mandatory rights and remedies in their contracts, and on how these contracts shape consumers’ misperceptions about the law and lead them to bear costs that the law explicitly imposed on sellers.
* My ongoing work shifts attention to the **divergences between contracts on paper and in practice**, by examining how sellers **enforce** their standardized agreements towards consumers who **don’t expect to get more than the contract allows**, while displaying **discretionary leniency** towards those who insist and complain.
* In the future, I plan to explore how these **contracting patterns affect consumers’ perceptions, decisions, and welfare, through surveys and experiments, while also shedding light on the distributional consequences of these contracting practices.** For example, one hypothesis is that sellers may exercise their discretionary forgiveness on the ground inconsistently across gender and racial lines. This hypothesis is now being tested In a follow-up field experiment I’m currently administering. I sent testers to return clothing items to stores, but, this time, I varied the race and gender of the testers, so that each store was audited by four testers: a black male, a black female, a white male and a white female. The preliminary findings reveal that black customers are almost twice as likely to be denied the return than are white customers. Female customers receive slightly better treatment than do white men. Race interacts with assertiveness, with white customers achieving improved outcomes after insisting while black customers do not.
  + [or: for example, I plan to test whether lower-income customers, and non-white and female consumers are more demoralized by unenforceable and deceptive contract terms, and are more likely to forgo any complaints rather than negotiate with the seller, compared to white and male customers.]
* The overarching goal of this research is to **assist policymakers** in **promoting consumer welfare** through **behaviorally and empirically informed regulation**.
* The key question I grapple with **is when and how consumer contracts should be regulated**.