Considering the growing realization that consumer markets are prone to, and often suffer from, both traditional and behavioral market failures, a trend toward broader substantive regulation of consumer contracts is developing around the globe. Yet, recent empirical findings reveal that sellers and landlords routinely contravene the law by inserting unenforceable terms into their contracts. What role do these clauses play in post-contract negotiations? How do landlords and tenants negotiate disputes in light of such dubious lease terms?

While the literature typically focuses on negotiations taking place before an agreement between the parties is reached, this paper sheds light on negotiations occurring after the contract has been signed and in its shadow. It explores, through experimental means, how tenants and landlords settle rental disputes, while focusing on two main questions: what effect do unenforceable clauses have on the likelihood that negotiations will take place? And, provided that the parties choose to negotiate, how will these clauses affect the nature of the negotiations and the resulting agreement?

It is conventional wisdom that consumers seldom read or pay attention to the fine print, and, as a result, that sellers often cram their boilerplates with one-sided and egregious terms.[[1]](#footnote-1) Scholars and commentators have consistently called for stronger, more substantive, intervention in the content of these standardized agreements.[[2]](#footnote-2) In turn, legislatures and courts have adopted substantive regulation prohibiting sellers and landlords from using terms deemed unfavorable to the non-drafting parties in their contracts.[[3]](#footnote-3) Thus, substantive regulation has been adopted in many types of consumer markets, including rental housing, credit card, and insurance.[[4]](#footnote-4)

1. Marotta-Wurgler 2011; Ayres and Schwartz 2014; Bakos et al., 2014; Ben-Shahar and Schneider 2014; Rakoff 1983; Radin 2013; Korobkin 2003; Bar-Gill 2010). [↑](#footnote-ref-1)
2. Radin 2013; Korobkin 2003. [↑](#footnote-ref-2)
3. Seee.g., Ben-Shahar 2010, p. 228; Braucher 2012; Restatement second of consumer contracts. Add about the markets in which such regulation persists. For example, the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 does bluebook citation apply in footnotes> introduced substantive restrictions (including price caps) alongside heightened disclosure obligations into the Credit Card market (see Credit Card Accountability, Responsibility, and Disclosure Act of 2009; Bar-Gill, *Seduction by Contract*2012, p.105). This is a book – I am not sure what your intention was in (0. 105). [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)