Can We Assume That People Read Contracts?

A Commentary Illuminating the Incongruity Between the Expectation that all Individuals Should Read Contracts and the Realistic Infeasibility of Contract Reading, Culminating in a Suggested Policy Change

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Executive Summary

This paper will address the need to establish a national standard for Terms and Conditions in everyday consumer contracts. Consumers are routinely required to agree to contracts when executing purchases or service subscriptions. This paper discusses the practical considerations that render it unreasonable to expect that end users will read and understand the contracts in full, as is notionally required, before signing. The conclusion drawn is that these consumer contracts are commonly too lengthy and verbose to expect a reasonable person to read, and that the reading level required for comprehension is beyond the capability of a significant proportion of consumers. The result is that most consumers feel compelled to agree to sign without actually reading the contracts. Further, since this situation is well known, it may be argued that it is morally unjust for the legal system to enforce these contractual terms. Accordingly, such contract terms should be deemed unfit for purpose, and replaced by a more user-friendly set of terms, conforming to a national standard that ensures clarity, brevity and uniformity. Doing so will benefit all parties, because if the consumer can reasonably be expected to understand the contract to which they are agreeing then this decreases the likelihood of inadvertent breach, and provides improved legal recourse in the event that breach occurs.

Introduction

A contract is "an exchange relationship created by oral or written agreement between two or more persons, containing at least one promise, and recognized in law as enforceable." (Blum, 2011) This definition of a contract states nothing about explicitly reading a contract, however in order to agree to an exchange relationship enforceable by law, the contract must be read as is implied within the definition (Blum, 2011). Contracts precede upon the notion of common

understanding, but if the contract is not read then the contract cannot be understood. If a contract has not been read, and therefore not understood, the contract cannot be valid. In order to prove a contract has been read, the legal system has required the signature binding each party to the contract to also assume each party has agreed that they have read the contract (Blum, 2011). In an ideal world, this sounds simple and obvious. However, in the real world this assumption is patently unrealistic because many people do not read contracts before signing them. People that don't read contracts can be broken down into three main categories: non-English speaking persons, illiterate English speakers, and literate persons. Non-English speaking persons are, for the scope of this paper, immigrants or foreign visitors who speak and read another language altogether. Illiterate English speaking persons include those who either cannot read at all, or people with a literacy level lower than that required for the contract they are reading, rending the contract incomprehensible. Literate persons who don't sign contracts are broken into two groups: people who do not have time to read the contract; and people who see no purpose in reading the contract because they believe that they are compelled to agree to the terms to receive the product regardless of whether they actively assent to the terms . Current legislation supports the position that by signing a contract, regardless of whether the contract has been read or understood, the signatory is deemed to have read and understood the terms. But since most people do not or cannot read these end user contract before signing, there is a need for a structural change to contracts rather than continuing to place the onus on the weaker party, the consumer.

Companies continue to assert that contracts are closely read despite the overwhelming evidence to the contrary, but does this incorrect assumption matter (Blodget, 2011)? The false premise that individuals closely examine the contracts that they agree to has led to many harrowing lawsuits at the expense of unsuspecting consumers.. Corporations initially began implementing meticulous Terms and Conditions in order to protect themselves from the outlandish accusations brought by litigious customers(Tugend, 2013). Now, exhaustive contracts have become customary and the vagaries and restrictions included to target customers with

extraordinary or unreasonable expectations are inflicted on the public in general, rendering the documents baffling and incomprehensible to many. In agreeing to the contractual Terms and Conditions, the typical consumer places their trust in the fairness of the contract, and assumes that established consumer rights from prior court case precedent will protect them from harm.

These contracts have become unreasonably burdensome for educated individuals to navigate, practically unintelligible to the lesser educated, and functionally inaccessible to the illiterate, thereby creating a situation where contracts are routinely not read and understood before signing. These contracts need to be made universally comprehensible and accessible because the services that they regulate now constitute the fabric of modern society and have effectively become a basic human right. I posit that a national standard for Consumer Terms and Conditions contracts should be established in order that they be user friendly and comprehensible for those who are required to sign them. This contract standard should force companies to shorten and simplify clauses, provide contracts in multiple languages and with a verbally recanted option, format the contract to be more visually pleasing and easy to read and eliminate arbitration agreements. Employing uniform language and terms would further aid with comprehension. As part of the national standard for consumer Terms and Conditions contracts, the definitions of legal contract exceptions should be expanded to encompass the illiterate and semi-literate, which would allow greater protections for consumers against corporations. The summation of these suggested changes centers on the desire to provide an even playing field, so that laypersons are not unfairly disadvantaged by their lack of legal expertise or being overwhelmed by an unreasonably long and complex contract.

Understanding the Current Problem Surrounding Contract Law

The fundamental concept of contracts.

Understanding the definition of a contract, and when a contract can become void is paramount to discussing current case law and the suggested changes to contract policy enumerated later in this paper. As mentioned above, a contract is " defined as an exchange relationship created by oral or written agreement between two or more persons, containing at least one promise, and recognized in law as enforceable." (Blum, 2011) An "oral or written agreement between two or more persons" allows even illiterate or semi-literate individuals the ability to agree to contracts because they can be made verbally (Blum, 2011). A contract should also be enforceable, with legal ramifications if the contract is breached, as well as a promise, either explicit or implied (Blum, 2011). The last section of the contract definition establishes an exchange relationship, whereby each party to the contract agrees to provide something of value to the other (Blum, 2011). While one party may unilaterally promise to do something, an exchange ensures that both parties are providing something of value in order to create a fair contract.

Courts do not care if you cannot speak English.

For the scope of this paper, non-English speaking persons exclusively focuses on legal United States immigrants and foreign visitors who speak and/or read a language other than English. The problem with reading contracts as it relates to non-English speaking persons is that these people can neither understand the language of a contract written in English, nor the words of a verbal contract.

Current case law has generally surmised that it is the responsibility of these individuals to understand the contract, whether that be through written translation or it being read aloud in their native language, provided that the interpretation is full and accurate. In *Morales v Sun Constructors,* Morales was a Spanish speaking worker who was asked to sign a contract for

employment (2008). Morales could not read the contract, but was embarrassed to ask for help and wanted the job so signed without reading the contract (*Morales v. Sun Contractors*, 2008). Later, Morales was fired so Morales sued for wrongful termination. The company counter-sued that Morales was violating the arbitration agreement he signed by suing the company in open court. Morales argued that he did not understand what he was signing, which meant the contract should be voided under the unconscionability contract exception and the arbitration agreement should be made invalid. The court did not agree because Morales could have asked for translation and sided with the Sun Contractors (*Morales v. Sun Contractors*, 2008). *Washington Finances Group v Bailey* followed a similar storyline, where Bailey was a Spanish speaking worker who did not understand the contract he was signing for employment (2004). Interestingly in this case, Mississippi District Court sided with Bailey and "held that the individuals' illiteracy, coupled with a lack of oral disclosure, rendered the agreement procedurally unconscionable." (*Washington Finance Group v. Bailey*, 2004) However, the Mississippi Supreme Court reversed this ruling, citing Mississippi contract law that required the Spanish speaking employees to either read the contract or have the contract read to them (*Washington Finance Group v. Bailey*, 2004). This Mississippi law apportions blame to the workers for not reading the contract, and not the company for failing to make the contract available in the appropriate language for the workers.

In *Feldman v Google*, Feldman argued that because he had not actually read Google's Terms and Conditions he was exempt from the contract under the unconscionable contract limit (2007). However, the court ruled Feldman was responsible for understanding the contract because he was "capable of understanding the agreement's terms and he consented to the terms" (*Feldman v Google,* 2007). The opinion of *Feldman v Google* appears to infer that if Feldman were incapable of understanding the agreement's terms, then the contract would have been deemed unconscionable (2007). However, this is inconsistent with rulings in both *Morales v Sun Constructors* and *Washington Finances Group v Bailey* (2008; 2004).

Jimenez v 24 Hour Fitness finds that contracts can be unconscionable to a non-English speaking person if they are also misled into the contents of the contract (*Jimenez v. 24 Hour Fitness*, 2015). In this case, Jimenez was a woman who did not speak or read English but wanted to sign up for a membership at her local 24 Hour Fitness. Jimenez signed a contract to join the gym despite the fact that Jimenez could not read the contract. The gym manager knew that Jimenez did not understand what she was signing and undertook, through motions, to explain to the contact and to have Jimenez sign. However, critically, the manager omitted any mention of signing to an arbitration agreement (*Jimenez v. 24 Hour Fitness*, 2015). Jimenez was injured when falling off a treadmill that was placed less than the required six feet minimum safety zone away from other equipment, and sued. The court upheld the lawsuit and found the contract to be void because Jimenez was purposefully misled when signing the contract, rendering the contract unconscionable (*Jimenez v. 24 Hour Fitness*, 2015).

Illiterate English speaking persons often are unable to understand the contracts they agree to.

The category of illiterate persons who speak English includes individuals who cannot understand any written contract because they cannot read English at all, as well as individuals whose literacy level is lower than that of the contracts they are required to read. The problem for illiterate people who speak English is that most contracts are written, not verbal, so they cannot understand the contents they are signing. Additionally, for those who are literate but at a low literacy level, the literacy level of most contracts surpasses their ability to understand them.

Specht v Netscape Commerce Corporation decided the future of click box signing for contracts, requiring that companies explicitly outline what click box signing agreement entails with respect to the contract such that a “reasonably prudent internet user” could understand (2002). A “reasonably prudent internet user” is a vague term, which has caused controversy in courts (*Specht v. Netscape Commerce Corp*., 2002). *Fteja v Facebook* resolved this ambiguity by

stating, in the Judge's opinion, that there are certain aspects of the internet that are considered general knowledge, such as an underlined term being a hyperlink, and so it is fair to assume all customers have this general knowledge when using the internet to sign contracts (2002; Smith, 2014). The continued argument after this ruling is whether it is considered general knowledge for most groups of American people to be familiar with common internet conventions, especially those who have limited access to the internet.

Much of the U.S. population is, in fact, illiterate or at a low literacy rate (N.A., 2013). In Mississippi, individuals are required to either read the contract or have the contract read to them, however, 50% of adults in Mississippi do not read above an eighth grade level, while 16% of adults in Mississippi are considered illiterate (*Washington Finance Group v. Bailey*, 2004; Ciurczak, 2016). In the United States as a whole, 32 million people, or 14% of the population, are illiterate, and 21% of the population cannot read above a fifth grade reading level (N.A., 2013). These numbers have not changed since 1992 (N.A., 2017). Illiteracy also occurs in clusters within immigrant and lower socioeconomic groups, which then limits their ability to reach to to third parties to provide support to read contracts (Statistic Brain, 2017). Illiteracy is not uniformly distributed across racial groupings in the USA, with non-whites and lower socioeconomic groups significantly overrepresented (Statistic Brain, 2017). Illiteracy and or low literacy amongst white Americans occurs at at a frequency of 9%, whereas for African Americans the rate is 21%,and 41% for Hispanic Americans (Statistic Brain, 2017).

The average English reading level of a United States citizen is between seventh or eighth grade, whereas the average credit card contract is found to require an eleventh grade reading level, with a range between ninth grade reading level to fifteenth grade (N.A., 2016; CreditCards.com Staff, 2016). Even hospital consent forms, which are required for most medical procedures, were found to have an average reading level of 11.6 (Larson & Foe, 2015). Services such as credit cards, internet and medical procedures are now considered in the utmost

importance to the lives of Americans, similar to access to electricity and telephones, as net neutrality regulations in 2015 confirmed (King, 2017).

Many of the cases setting precedent for what constitutes ‘a reasonably prudent internet user’ when signing a contract, what elements a contract should contain, and the responsibilities of the signing parties overlook some glaringly obvious aspects of American society. Four in ten senior citizens, aged 65 or older, own smartphones, but it is also found that seniors have less understanding of technology because they were not habituated to it from an early age (Perrin & Anderson, 2017). Children undergoing primary education and with limited life experience are expected to read and understand complicated online Terms and Conditions (Anderson, 2017). For example, Instagram requires its subscribers, who can be as young as 13 years old (sixth grade), to read and assent to a 17 page, 5,000 word terms of service agreement (Anderson, 2017).

Literate persons do not typically read the contracts they sign.

Literate persons are defined as individuals who possess an above average English language reading level for the United States, which is ninth grade or above. Many of these individuals indicate that they are unwilling or unable to devote the time to read a contract, or that they feel that there is no point in reading the contract because they will have to agree to the terms as stated anyway in order to access the product(s) or service(s) they desire. This position is completely reasonable and rational. The average credit card contract is 4,900 words in length, but can range between 3,500 - 11,500 words, while the average hospital consent form contains 10.3 pages, but can stretch to as many as 28 pages long (CreditCards.com Staff, 2016; Larson & Foe, 2015). The average Terms and Conditions accompanying a software package contains 74,000 words, equivalent to the length of the first Harry Potter Book (Tugend, 2013).

Literate people are demonstrably unlikely to read the contracts they are signing. In one study, 543 university students were recruited and asked to sign up to subscribe to a fake website service. 98% of participants failed to identify deliberately outrageous clauses included in the

terms, such as surrendering their first born child, or sharing all their private data with National Security Agency (NSA) (Obar & Oeldorf-Hirsch, 2017). In this same study, the remaining two percent noticed the terms but proceeded to sign the contract regardless (Obar & Oeldorf-Hirsch, 2017). In another study, only seven percent of individuals were found to have even skimmed Terms and Conditions, while third study determined that the average person spent six seconds viewing the Terms and Conditions page before agreeing (Smithers, 2011; 26). Instances of unreasonable clauses inserted in Terms and Conditions have been reported in genuine, legally-binding contracts. For example, in signing up for Onstar, the driving navigation service, customers agreed in the terms of service contract to allow Onstar to sell all their driving information to anyone, without their further consent or recourse (Germ, 2015). As mentioned earlier, many of the services people sign contracts for have now been deemed important to the lives of all Americans, such as internet and cell phones, but the contracts associated with each of these services is extremely long and often updated frequently (King, 2017). For example, Apple's iTunes program requires is users to read and accept a 56 page long Terms and Conditions contract, or Apple's iPhone IOS updates which are updated and required to be read again every update (Hern, 2015; Pidaparthy, 2011). One journalist studied whether contracts are too long to read by setting aside a week to read all the latest Terms and Conditions he had signed or clicked agree (Hern, 2015). The journalist found that many of the Terms and Conditions are so obscure and include convoluted legal jargon render them infeasible to read in sufficient depth to understand, including some popular companies' Terms and Conditions, such as the technology company Apple's (Blodget, 2011; Pidaparthy, 2011).

In the corpus of contract court cases where literate individuals choose to not read the contracts before signing, case law has held rigidly that signing a contract without reading the contract is the individual's responsibility (Albergotti & Cornish, 2014). For online terms of service contract agreements, a series of cases have identified a well defined set of rules that a company must conform to in its terms of service in order to have the contract stand in a court of

law (Albergotti & Cornish, 2014). *Specht v Netscape Commerce Corporation* decided the future of click boxes, requires that companies explicitly outline what click box signing agreement entails with respect to the Terms and Conditions such that a "reasonably prudent internet user" can understand (2002). A "reasonably prudent internet user" is a vague term, which has caused controversy in courts (*Specht v.Netscape Commerce Corp*., 2002). *Fteja v Facebook* resolved this ambiguity by stating in the Judge's opinion that there are certain aspects of the internet that are considered general knowledge, such as an underlined term being a hyperlink, and so it is fair to assume all customers possess this general knowledge when using the internet to sign contracts (2002; Smith, 2014). Finally, *Bragg v Linden Research Incorporated* adjudicated that it must be possible for an end user to dispute and negotiate the standard contractual terms, otherwise individuals are considered to be forced to sign the contract under duress, creating a contract that is found unenforceable due to the unconscionable contract exception (2007).

Subsequent to the precedents established by these cases, where companies' online Terms and Conditions contracts conform to these requirement guidelines, an individual has no reasonable prospects to sue in open court. In *Feldman v. Google*, Feldman argued that he had signed Google's terms of service without reading the details and believed that he should be able to dissolve the contract as a result (2007). The court found the contract was not procedurally unconscionable, as Feldman argued, because he was "capable of understanding the agreement's terms and he consented to the terms" and thus upheld the contract. (*Feldman v. Google* , 2007)

Reasoning Why Current Contract Agreements are Not Valid

A contract should be considered invalid under one of the legal contract exceptions when the contract is not understood by both parties.

A contract is considered void if it is deemed to meet a legal exception where a contract can no longer be valid (Blum, 2011). Relevant contract exceptions include: lack of capacity; duress; and unconscionable exception. Lack of capacity exceptions apply when a person is unable to understand the purpose of signing a contract and is therefore unable effectively to agree to a contract because they are not capable of consenting to what they are signing (Blum, 2011) Lack of capacity exceptions can affect any part of the contract definition if one party did not understand what they are agreeing to as a result of lacking understanding of written or verbal English (Blum, 2011; Hilton, 2010) The duress contract exception applies to the enforceability portion of the contract definition when one party feels compelled to sign the contract, for example in cases where a power dynamic exists that unreasonably pressures the weaker party to sign without recourse to negotiate (Blum, 2011). Lastly, the contract definition may be invalidated in whole under the unconscionable contract exception if one party knows that the other is not capable of understanding the agreement because they could either not read or speak English, but required the other party to execute the contract regardless.

While these provisions theoretically protect parties signing contracts where they do not or cannot understand the terms, these exceptions are rarely applied. Additionally, if someone simply elects not to read the contract when they are able to, then contracts are usually deemed enforceable. One might argue that the duress exception applies to most Terms and Conditions contracts, including those signed by literate individuals, because the consumer feels forced to sign the contract with no ability to dispute the terms or negotiate. Similarly, the unconscionable

exception could be applied because companies do not allow much flexibility to negotiate the contracts, and contracts are offered as a take-it or leave-it proposition to provide the companies the maximal security. This is evident in *Bragg v. Linden Research*, where the court found that the ability to t negotiate terms was not available to Bragg, and thus found the contract unconscionable (2007). The court ruled that contract negotiation needs to be available in order for the contract to be enforceable. However, again, these exceptions are rarely invoked and are ambiguous at best (*Bragg v. Linden Research Inc.*, 2007).

Current case law upholds the foundational concept that signing a contract binds an individual to its Terms and Conditions and does not recognize that legal exceptions apply in cases where a signatory does not read the contract, regardless of whether the cause was its undue length, disproportionately high reading level, or that the signatory cannot read English. These elements apply to contract signers of all levels of literacy and can be seen in the following three groups of signers who do not read contracts: illiterate persons who do not speak English, illiterate persons who speak English, and literate persons.

Contracts that non-English speaking persons sign are invalid because they cannot understand the terms they are agreeing to.

In *Jimenez v. 24 Hour Fitness,* while Jimenez was able to negate her contract, most individuals who cannot read or speak English are not so fortunate(2015). Many immigrants experience the problem of incomprehension every time they need to sign a contract, which is why it is so important to improve how persons who are illiterate, semi-literate or do not speak English are treated by the contract legal system. California has enacted a radical way to improve the contract legal system for illiterate persons who do not speak English by implementing the "Foreign Language Translation of Consumer Contracts Law" in May 2012 (2012). This state law dictates that any contract must be written in language that all parties can understand and that if this standard is not met by one side, the contract can be voided at any time by the party who does

not hold a copy of the contract in a language understandable to them (2012). This law represents a shining example for a national standard for contract drafting non-English speaking persons who do not speak English.

The contracts that illiterate and semi-literate and adolescent English speakers sign are not valid because they cannot understand the contract's content.

As previously discussed, so many Americans are illiterate or semi-literate that it cannot safely be assumed that a consumer can read and understand an end user contract of typical writing caliber and length. Many services that are considered basic human rights and which people utilize on a daily basis require prior assent to contracts are at a higher reading level than the average person in the United States. Therefore, we can not be confident that the public consistently demonstrate 'reasonably prudent' behavior and read and understand the contracts that they sign because many Americans do not possess a reading level sufficient to comprehend these contracts.

Many of the cases setting precedent for what constitutes 'assumed knowledge' when signing a contract overlook some glaringly obvious aspects of American society. In *Fteja v Facebook* (2002) and *Specht v Netscape Commerce Corporation* (2002), the respective court's assumptions about what knowledge a 'reasonably prudent' internet user should possess when signing a contract ignored large groups of the population, including lower socioeconomic groups, teenagers and seniors (Smith, 2014). Adolescents should not be assumed to possess an adult understanding of online Terms and Conditions, especially when the average reading level of a contract is eleventh grade, however, they are regularly required to by institutions such as social media sites (Anderson, 2017). Similarly, many seniors do possess the same level of familiarity with the internet as younger age groups, and are inexperienced at navigating the Terms and Conditions that are required in order to access the services that they require (Perrin & Anderson, 2017). Since significant portions of the user population cannot read and understand the online

terms of service, it cannot safely be assumed that all internet users, including children and seniors, meet the test of ‘reasonably prudent’ and be familiar with the consequences of signing an online contract.

Illiteracy and semi-literacy are a major, chronic concern in the United States, and should be addressed in schools so that people can understand the words they are reading (Willingham, 2017). That being said, the current issue of illiteracy and semi-literacy should be acknowledged and better addressed by contract writers. Due to the large number of Americans who cannot read English sufficiently well to comprehend standard consumer contracts as currently composed, a national standard for contracts should enforce that contracts be shortened and use simplified words to meet the reading level of at least the average American, seventh to eighth grade.

Contracts that literate persons sign without reading are invalid because they are unreasonably long or the signatory signs under perceived duress.

Contracts have become massive and wordy, but the law expects literate people to find time to read every contract they encounter, from credit card agreements, to t medical appointments, and every time a software company issues an updated Terms and Conditions. Literate individuals are afforded no leniency in the eyes of contract law, and it is held that if a literate person agrees to a contract then they are deemed to have also agreed that they have read and understood the contract. However, this premise is widely acknowledged as nonsense, as evidenced by everyday personal experience and supported by a number of scientific studies, some listed above. Literate people typically don’t have the time to read all the contracts they are presented with and often do not see the point of reading the contract if they need to agree to the terms anyway, perceiving little personal risk through the knowledge that millions of their fellow citizens are also bound by similar Terms and Conditions. Yet the legal system disregards the evidence indicating literate people do not read their contracts and assume that clicking or signing agree to a contract indicates that the signatory has read and understood the contract in full. In

order to make contracts more user-friendly, , they should be shortened and made more visually appealing and easier to follow. Additionally, arbitration agreements should be eliminated, so that customers have the opportunity to dispute a company in open court rather than in closed arbitration at the company's discretion

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Policy changes to contract drafting and litigation should be implemented to protect the majority of the population who do not understand the contracts they are signing.

Case law has established that for literate and illiterate people alike, failure to read a contract is their fault, but should this precedent persist? Current case law accurately adheres to written legislation, with judicial interpretations providing elucidation where necessary (Hilton, 2010). Yet, it must be considered that the opinion of the legal professionals tasked with determining the obligations of individuals when they sign a contract may be affected by the fact that they are themselves are highly educated lawyers, conversant in reading and interpreting contracts and legalese, and judges who are steeped in jurisprudence and possess a higher reading level than most. Consequently, despite their best efforts they may fail to empathize with the plight of those Americans who lack the time or literacy level to scrutinize the minutiae of every contract they are required to sign. A reasonable person cannot engage with society via the internet, either by operating a smartphone or computer, without routinely being required to read and agree to Terms and Conditions. Current legislation and case law precedents disproportionately advantage companies over consumers who may not have the time or skills required to read these contracts, or who sign without bothering to read them because they believe they terms to be a unilateral 'take it or leave it' requirement, which they can neither negotiate nor refuse.

The reading level of illiterate and semi-literate individuals is insufficient to comprehend many contracts, and even the fully literate struggle with the length and complexity of the typical

contract. These facts are proven and beyond reproach, yet the format of contracts has not been altered to accommodate the demonstrable need to make them more comprehensible. If contracts were shortened and simplified to meet the average reading level of a United States adult (a seventh or eighth grade reading level), then more semi-literate and literate people would better understand what they are agreeing to when signing a contract. For example, Slack, the online messaging board, has a terms of service page that is extremely easy to navigate and uses simple language (N.A., 2016). It has been argued that Slack's terms of service being so relaxed disarms the reader so they do not realize that they are unwittingly agreeing to an arbitration clause (Mill, 2014). But on the other hand, by making the terms of service easier to read, the subscriber can at least reasonably be expected to understand that they are signing an arbitration agreement, unlike many other companies' terms of service contracts (Mil, 2014).

Because a significant proportion of United States citizens are illiterate, with a disproportionate incidence in minority populations, consumer Terms and Conditions contracts should be redesigned to provide make them more uniform and simpler to understand. Providing the opportunity for customers to change or challenge the the contract terms is important. While *Bragg v Linden* did specify that the company had to at least make provision for a customer to edit the contract so it isn't a take-it-or-leave-it deal, many contracts today are still highly unilateral, with little wiggle room or provision for challenging the contract's terms (2007). If customers were able to more easily negotiate or clarify the terms of the contracts, arbitration clauses could be potentially eliminated from many contracts.

Improved application of legal exceptions to render a contract unenforceable would provide additional protection for the illiterate and semi-literate. The lack of capacity exception currently protects individuals with mental health problems, minors, and those who in some other way cannot be regarded as being capable to make rational decisions using the information presented. The lack of capacity exception should be expanded to encompass the illiterate and semi-literate because it cannot be confidently assumed that these groups possess the capacity to

read and comprehend the meaning of a contract, and so are unable to make an informed and rational decision on whether to accept the terms and sign the contract. (Hilton, 2010).

The unconscionable exception is invoked to invalidate a contract when one party is deemed to have acted immorally in order to coerce the other party to sign the contract. This exception currently requires a very high standard of proof, but if this standard of proof were lowered so that, perhaps, failing to provide a contract in a language that the signatory can understand, or failing to provide a full and faithful verbal interpretation would be covered under the unconscionable exception. Each of these modifications to the current law surrounding contract enforcement would provide consumers with better understanding and more control of the obligations to which they are committing themselves through the contracts they sign. After all, to meet the basic definition of a contract, the agreement must be understood by both sides (Blum, 2011).

Conclusion

Contract drafting and signing has evolved into a byzantine and overly complicated process that leaves many Americans oblivious to the details of what they are agreeing to. In this regard, these consumer agreements cannot be considered to be fit for purpose. Agreement to such contracts is required to access many services, such as social media, cell phones and the internet, which are now considered in the utmost importance to the lives of Americans (King, 2017). The ubiquitous application of these contracts mean that the vast majority of adults are required so assent to and abide by their conditions. Accordingly, these contracts should be provided in a form that is readily understood by the individual required to sign them, with appropriate provisions made to accommodate those that lack the capacity to read and comprehend the contract unassisted. Therefore, the rules and regulations surrounding contract drafting and signing should be overhauled to optimize the ability of the signatories to understand them. This

may be achieved by simplifying the choice of vocabulary, shortening the length of the contract, formatting the contract to be more visually pleasing and easy to read, providing multiple languages for the contract and providing for the contract to be administered and executed verbally, where someone would read the contract to an illiterate party. These adaptations would improve the accessibility of the documents, and provide better opportunity for the end users to engage with and to understand the material that they reading. Ultimately, the result would be to render the assumption that if someone has signed a contract then they have read and understood its contents both believable and feasible.

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