

Think Twice Before You Sign! An Experiment on the Cautionary Function of Contractual Formalities

Every day, we provide our consent to a large number of online agreements. The widespread use of the internet not only made already existing services and goods more accessible but also created many new ones. This digital contractual environment poses challenges to both consumers and legal scholars. For instance, it is easier for companies offering their products and services online to distract consumers or to exploit their impatience (Tasker and Pakcyk 2008). These properties of online contracting raise many legal dilemmas. One very important concern is to which extent, *if at all*, digital contract formation fulfills the cautionary function of acting “as a check against inconsiderate action” (Fuller 1941, p. 800). This purpose has been traditionally believed to be served by contractual formalities (e.g., having a contract in writing with a handwritten signature). The issue of the cautionary function is of a great importance to legal scholars for at least three reasons. First, if consumers deliberate so little and are prone to make hasty decisions when entering into online agreements, should that be taken into consideration by courts when evaluating abusive contractual practices? Second, it is unclear whether a contractual formality in the form of a paper contract actually does fulfill its cautionary function. Since certain contract types are still required to be signed on paper in some legal systems (e.g., consumer credit contracts in Germany), it is important to investigate whether the additional costs of a paper form are justified by its effectiveness in preventing impulsive decisions. Finally, if a handwritten signature indeed leads people to consider their actions more carefully than when clicking on the “I agree” button, could we then design the online form in a manner that would make it equivalent to the paper form in terms of its cautionary function?

Scholars have claimed that a mouse click does not create a similar “psychological barrier” (Einsele 2015) or signal the same importance of a decision as a handwritten signature (Hillman and Rachlinski 2002, Moringiello 2005). This assumption although fundamental has never been tested before. To resolve some of the legal dilemmas related to the cautionary function of online and paper contracting, I conducted experimental research to test whether signing on a dotted line leads people to make less impulsive contractual decisions compared to confirming with a mouse click. In a controlled laboratory experiment, I compared four forms of concluding a contract – clicking “OK”, typing in one’s name, entering a PIN code (which should reflect a qualified e-signature) and handwritten signing. I examined how these different forms of confirming a decision influence intertemporal choices. More specifically, I investigated whether handwritten signing indeed leads participants to choose more patiently. I found that individuals are more impulsive when making their decision by clicking on “OK” or by typing in one’s name than when confirming their decision by a handwritten signature. No differences were observed between traditional written form and the one with a PIN code. Further investigation of underlying mechanisms of this observation might provide a basis for designing equivalent online forms of concluding a contract which would fulfill the cautionary function as effective as a written form but would be yet simpler than a qualified e-signature.