

THE UNDERSTANDABILITY OF LEGAL DOCUMENTS: ARE THEY ADEQUATE?

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ABSTRACT

Citizens are frequently asked to make commitments by signing contracts and legal documents that frequently contain phraseology and jargon (sometimes called legalese) that highly-educated citizens often do not understand. In recent years, human factors professionals have become intimately concerned with the design of product-related documentation and safety communications (e.g., warnings), and through research have offered ways to improve these materials. However, there is apparently no human factors research on the design and evaluation of legal contracts and other similar documents. The purpose of the present research was to begin to assess some of the factors related to people's reading and understanding of legal documents. Study 1 examined the types of legal documents that people sign, how often they sign them, how carefully they read them, and whether they understand them. Ninety-two individuals were asked to complete a survey addressing these issues. While it was reported that the contracts were read moderately carefully and were understood moderately well, the levels were not as high as one would expect given the importance of the documents and the education level of the participants in this study (who had, on average, approximately two years of college). Also, 96% of the sample believed that legal documents could be improved and provided specific suggestions on how this might be accomplished. In Study 2, 32 participants rated the set of potential improvements to legal documents that had been suggested by Study 1's participants. The results confirmed the first study's pattern of findings. Implications for average citizens' lack of comprehension of contracts and other legal documents are discussed with a specific focus on the role research might have on their improvement.

INTRODUCTION

People are frequently asked to sign contracts and other legal documents that are meant to bind them to specific rules. But does the average citizen really understand what they are signing? Contracts and other legal documents are often very difficult to read and may result in people making commitments that they do not understand and may not want to make. Surprisingly, there has been virtually no research conducted to determine the factors related to reading and understanding contracts and other legal documents. The only study on legal comprehension that has specifically examined contract understandability was conducted by Scott and Suchan (1987). They examined how easily public-sector union members, officers, and first line supervisors could understand collective bargaining agreements and found that these agreements required reading comprehension skills of a least a college graduate to understand the text.

Several reasons have been suggested for why legal documents are written in ways that make them so difficult to read. Scott and Suchan (1987) note that in order to draft a contract that is acceptable to both labor and management, the parties have to compromise which often requires the use of vague language and complicated sentences. Also, Scott and Suchan (1987) note that negotiators themselves are probably

accustomed to using "legalese" and that they might also lack the skills to write a readable agreement. Scott and Suchan (1987) suggest that contracts need to be written to the reading comprehension level of the intended audience. Scholars have also proposed several other reasons for the continued use of legalese including the following: lawyers catch the "legalese bug" in law school; it maintains the mysterious "hocus pocus of the law;" there is an overwhelming influence of poor models; lawyers try to account for every possible contingency; and it takes more thought to write clear discernible prose (Odum, 1992).

The legal system has also given some recognition to issues associated with the understandability of legal documents. The courts have focused primarily on ambiguity as the major factor in determining whether a contract is valid. In most states, ambiguity is decided by the courts based on whether there are two reasonable alternative interpretations to the terms (In re Stenardo, 1993).

In a recent and growing movement in the U.S. to promote the use of plain English in legal documents, state legislatures such as in Texas, Michigan, Maryland and Florida have begun to consider and in some cases pass "simple-language" rules for legal documents. The State of California has also begun to develop guidelines after a study found that

90% of citizens and lawyers wanted simpler legal language (as cited in McDonald, 1992). Thus, there is considerable interest by several groups including consumer organizations and the legal community on finding ways to ensure contracts and other legal documents are understood by the individuals making the commitments.

The heightened interest in this area is also an opportunity for human factors professionals and other cognitive and behavioral investigators who have a strong background in research and evaluation of documentation, procedural instructions, and hazard warnings. For example, they could: (a) evaluate understandability of particular documents, (b) establish research on the factors that influence understandability of legal documents and people's willingness to sign them without reading or understanding them, and (c) serve as expert witnesses in litigated cases (e.g., contract disputes) where one or more parties claim lack of clarity or ambiguity. The present research is an initial exploration in this area by focusing on some of the factors that are related to reading, understanding, and signing legal documents.

Two brief surveys were distributed in separate studies. Study 1 assessed the types of legal documents that people report that they have signed, how often they have signed them, the extent to which they carefully read the documents, and the extent to which they believed they understood the documents that they read. Participants were also asked several open-ended questions including requests to give: (a) the reasons why they signed legal documents without reading them first, (b) the physical characteristics of legal documents that made them less readable, and (c) recommendations to improve the understandability of these documents. In Study 2, participants rated the relative importance of several characteristics of legal documents that had been generated from Study 1.

STUDY 1

Study 1 was designed to assess the types of legal document that people are often asked to sign. As well as, how often these documents are signed, how well they are read and how well they are understood by the general population.

Method

Participants. Ninety-two public citizens were asked to voluntarily complete a survey on legal documents. Sixty-five percent of the citizens approached were seated at the food court in a shopping mall. The remainder were graduate students and staff approached at various locales on the campus of North Carolina State University in Raleigh, NC. Statistical analysis comparing the responses between the two participant groups (shopping mall vs. college campus) showed very few statistically significant differences (i.e., attributable to chance variation). As a consequence, all responses were aggregated and analyzed as a single group.

Respondents were comprised of 47 females and 45 males with a mean age of 36.73 (*SD* = 15.07); 56% of the sample had a college degree; 76% of the sample was White, 14% African-American, 4% Asian, 3% American Indian, and 3% other; and 89% indicated that English was their first language.

Materials and procedure. The survey was designed to assess what types of written contracts and legal documents are signed and the number of times these documents have been reportedly signed by the participants in their lifetime. Fifteen types of documents that people might be expected to sign without employing an attorney were listed (e.g., car rental/lease, bank loan, auto insurance, employment contract etc.), plus the survey allowed participants to add any that were not included. In addition, participants were asked two questions in reference to the documents that earlier they had indicated having signed. They were: (a) "How carefully did you read the document(s)?" and (b) "How understandable were the document(s)?" The ratings were made on 9-point Likert-type scales with "1" indicating "not at all," "5" indicating "moderately," and "9" indicating "extremely."

Participants were also asked: (a) whether they had ever signed a contract or other legal document without reading it, (b) if so, whether they had a lawyer read and evaluate it for them, and (c) to provide reasons for not reading legal documents themselves. Next participants were asked to list physical characteristics that they have noticed in contracts and legal documents. Lastly, participants were asked an open-ended question on whether they believe that contracts and other legal documents could be improved, and if so, what specifically would they recommend to improve them.

Table 1

Summary Data Collected in Study 1 for Various Legal Documents

	Participant percent signed	Mean number signed	Signed & carefully read rating	Signed & understood rating	Correlation of carefully read & understood
Employment	68.50	3.17	6.65	7.02	.64**
Home mortgage	43.95	1.12	7.08	5.67	.61**
Financial aid/loans	39.10	1.15	6.26	5.97	.44*
Bank loans	59.34	2.97	6.61	5.66	.56**
Car rental/lease	51.10	7.77	5.76	5.91	.60**
Equipment rental	41.30	3.05	4.68	5.97	.52**
Auto insurance	82.60	4.12	6.25	5.45	.53**
Home/renters insurance	52.20	1.27	6.31	5.71	.51**
Health insurance	65.50	2.01	6.41	5.48	.60**
Business partnership	9.90	0.13	7.78	7.67	.99**
Credit card application	87.90	5.33	6.18	6.14	.80**
Warranty	60.00	7.37	5.40	5.72	.56**
Video rental	75.00	19.35	4.32	6.84	.56**
House/Apartment lease	70.30	2.33	6.87	6.34	.57**
Income tax return forms	95.20	16.51	6.89	5.65	.59**

* *p* < .05 ** *p* < .001

Results

Table 1 shows for each document signed: (a) the percentages of people having ever signed the document, (b) the mean number of times signed, (c) how carefully they were read, (d) how well they were understood, and (e) correlations of how carefully the document was read and understood. Interestingly, some of the legal documents that were least understood appear to be the ones that were signed more often. For example, tax forms were one of the least understood documents but were signed more often than any of the other legal document; likewise, auto insurance policies were signed fairly frequently yet it, too, was one of the least understood documents.

As Table 1 shows all types of contracts were reportedly read at levels slightly higher than moderately carefully. Also, comprehension was reported to be somewhat above moderately understandable. Furthermore, the last column of this table shows that for every type of legal document surveyed, there was a positive and significant correlation between how carefully they read and how well they understood the document.

A total of 38% of the participants reported having signed contracts and other legal documents without reading them, and only 33% of this group had an attorney act as counsel to read (and interpret) the document for them. Some of the reasons that participants cited (and the frequency of the reasons cited) for not reading these documents can be seen in the top left portion of Table 2. Participants were also asked to list the physical characteristics of legal documents. These characteristics and the frequency with which they were reported can be seen in the middle left portion of Table 2.

As a group 96% felt that contracts and other legal documents could be improved. Participants were also asked to list a set of specific suggestions for improving legal documents. A compilation of the participants' suggested improvements, and the frequency of their mention can be seen in the bottom left portion of Table 2.

Although 56% of the sample had a college degree, educational attainment did not have a substantial influence in this study as most items did not differ between individuals who have a college degree and those who do not. However, there were a few exceptions which are noted below. Individuals with a college degree more frequently signed house/apartment leases, $\chi^2(1, N = 91) = 5.63, p < .05$, home/renter's insurance documents, $\chi^2(1, N = 92) = 4.20, p < .05$, and business partnerships, $\chi^2(1, N = 91) = 4.27, p < .05$, than individuals without a college degree. There were also differences in the opposite direction: individuals without a degree reported greater carefulness in reading warranties, $F(1, 48) = 5.83, p < .05$, in understanding warranties, $F(1, 48) = 9.34, p < .05$, in understanding auto insurance forms, $F(1, 72)$

Table 2

Responses to Open-Ended Questions from Study 1 and Ratings from Study 2

Reasons for signing legal documents without first reading them:

	Study 1	Study 2	
	Frequency named	Frequency rating mean	SD
Lack of time	10	6.50	2.34
Explained by someone	7	6.84	1.73
Too difficult	6	6.69	2.29
Trust	6	6.72	2.17
Not important	4	5.28	2.57
Familiar	3	5.47	2.71

Reported physical characteristics:

	Study 1	Study 2			
	Frequency named	Mean frequency rating	SD	Mean difficulty rating	SD
Technical	43	7.75	1.55	7.78	1.64
Long	32	6.78	2.11	7.06	1.85
Fine print	25	7.34	1.30	6.25	2.50
Repetitive	11	5.94	1.97	5.09	1.99
Detailed	8	7.19	1.53	6.16	2.05
Vague	8	4.84	2.37	6.19	2.57
Lack organization	5	3.88	2.00	5.59	2.39
Formal	3	7.56	1.46	7.06	1.74

Recommendations to improve understandability:

	Study 1	Study 2	
	Frequency named	Improvement rating mean	SD
Decrease technical	60	7.81	1.69
Shorten	18	6.22	1.62
Increase print size	10	5.50	2.45
Outline	7	6.38	1.60
Give examples	5	6.66	2.06
Give explanations	4	7.59	1.54
Provide definitions	4	7.22	1.88
Visual Aids	1	5.91	2.51

= 5.21, $p < .05$, and carefulness in reading home/renter's insurance materials, $F(1, 46) = 5.39$, $p < .05$, than those with a degree. Thus, it appears that participants with a college degree signed more legal documents than participants without a college degree. However, participants without a college degree reported being more careful about reading them.

It should also be noted that age was correlated only with the number of times participants had ever signed income tax returns ($r = .70$, $p < .01$). Age was not correlated with how carefully the other documents were read or how well they were understood.

Discussion

The proportions for signing, reading and understanding legal documents are higher than expected, but this participant sample was composed of individuals with substantial levels of education. However, if this sample is still unable to report much more than a moderate level of understanding ($M = 6.08$) when the document was reported to have been reasonably well read ($M = 6.23$), then there is clearly a problem with the language used in legal agreements in general.

The responses given by participants to open-ended questions provided information on what kinds of legal documents they have signed. The data show that this group of participants were reasonably experienced with our list of legal documents. Thus their responses are based on knowledge accumulated from past experience with legal documents and thus are likely to have some validity. Together, the data collected in this study can serve as the basis of a document review and evaluation procedure by pointing attention to some of the language and format difficulties that could be improved.

A factor that could have influenced the results is that respondents might have felt uncomfortable admitting that they did not read an important document carefully or that they did not understand what they had read. Thus, it is possible that some participants gave inflated responses to these two questions. Further research is required to evaluate the effect of discomfort on people's responses to the questionnaire. In fact, a related question on discomfort may be even more important. People's level of discomfort might also predict whether people feel forced to sign a document even though they did not read or comprehend it.

STUDY 2

With the information gained in Study 1, a second survey was designed to assess the importance of factors identified by participants in the first survey.

Method

Participants. Thirty-two introductory psychology students at North Carolina State University volunteered to complete the survey.

Materials and procedure. The survey was designed based on the responses to the open-ended questions surveyed in Study 1. Participants were presented with the items identified by participants in Study 1 to the questions that asked for (a) the reasons for not reading legal documents, (b) physical characteristics of legal documents that adversely affect their readability, and (c) recommended improvements for legal documents. In this study, participants rated the items shown in Table 2 on the following dimensions: (a) the likelihood of each of several explanations for why legal document would be signed by people without first reading them, (b) the frequency with which several physical characteristics would be found in legal documents, (c) the extent to which these characteristics hindered understanding and (d) the extent to which recommended improvements would increase the understandability of legal documents. The ratings were made on a 9-point Likert-type scale with 1 indicating "not at all" and 9 indicating "extremely."

The order of the four questions was randomized for each participant. The items for each question were randomized once and half of the participants rated them in the opposite order of the other half.

Results

The ratings for each question were submitted to one-way repeated measures analyses of variance (ANOVAs). The means and standard deviations can be seen on the right-most columns of Table 2.

The ANOVA on the frequency ratings of the reasons for signing legal contracts without reading them first showed a significant effect, $F(5, 31) = 3.13$, $p < .01$. Reasons with the highest ratings were: (1) having had the document explained, (2) having trust in the preparer, (3) being too difficult to understand, and (4) not having enough time. Reasons with the lowest ratings were: (5) familiarity with the contents and (6) believing the document to be unimportant (Fisher's Least Significant Difference = 1.09 at $p < .05$).

The ANOVA on the frequency ratings of legal documents' physical characteristics showed a significant effect, $F(7, 31) = 21.59$, $p < .01$. Physical characteristics with the highest ratings were: (1) being technical, (2) being formal, (3) having fine print, (4) being detailed, and (5) being long. Physical characteristics with the lowest ratings were: (6) being repetitive, (7) being vague, and (8) lacking organization (Fisher's LSD = .84).

The ANOVA on the difficulty ratings of the physical characteristics showed a significant effect, $F(7, 31) = 7.61$, $p < .001$. Physical characteristics rated as causing the most difficulty were: (1) the technicality, (2) being long, and (3) being formal. Physical characteristics given the lowest difficulty ratings were: (4) having fine print, (5) being vague, (6) being detailed, (7) lacking organization, and (8) being repetitive (Fisher's LSD = .88).

The ANOVA on the ratings of recommended improvements to legal documents was significant, $F(7, 31) = 7.22, p < .001$. Recommendations with the highest ratings were: (1) decrease technicality, (2) give explanations, (3) provide definitions, and (4) give examples. The recommendations with the lowest ratings were: (5) provide an outline, (6) shorten the document, (7) give visual aids, and (8) increase print size (Fisher's LSD = .85).

Discussion

The undergraduates' perceptions of legal documents generally agreed with the frequency of the items reported by participants in Study 1. Thus the two different methods and populations show converging patterns of results.

The results show that having the document explained is one of the main reasons for not reading the document before signing them. One implication that can be drawn from this result is that finding a way to make these documents more understandable—so that they do not need to be explained by another person—may lead people to read them more often.

The technical nature of the documents appears to be the number one complaint of participants in this study. They also made this as their foremost recommendation to improve the understandability of legal documents: that technical aspects be decreased. This finding supports the growing attention given by the state legislatures and the news media regarding efforts to decrease "legalese" in order to make these documents more understandable to the people who sign them.

GENERAL DISCUSSION

This research was able to identify some of the factors likely to influence the understandability of contracts and legal documents. Thus, we were able to accomplish the major purposes of this research which was to begin to explore some of the factors related to reading and understanding contracts and other legal documents.

This research has shown that technicality, i.e. legalese, is indeed a frequent element in legal documents that appears to hinder people's understanding of these materials. Decreasing the technicality of legal documents was the most frequently suggested improvement in Study 1 which was confirmed by ratings in Study 2. Thus, reducing the technicality of the documents would produce a major advance in assisting people's understanding of legal materials according to our participants' reports.

Taken together these results could serve as a checklist to improve legal documents. Table 2 provides several sets of characteristics and their relative degree of importance that could anchor dimensions in readability evaluations. These lists could also serve as a guide in remedying problems to existing documents or designing new documents, as a first

step towards making them more readable. Procedures that evaluate comprehension directly (e.g., with comprehension tests) with individuals of the target population are necessary for a more accurate determination of understandability.

Readers should be cautioned that these data are self-reports and subjective impressions that may or may not reflect actual behavior. That is, it is possible that people think that they understand the contents of legal documents more than they actually do. If so, this situation is likely to be more deleterious than realizing that the documents are not understandable and then seeking help in interpreting them.

The present study also serves to identify opportunities for important human factors, cognitive, and behavioral research and application. Survey and experimental studies are needed to examine the factors affecting people's willingness to commit to contracts and other legal documents—particularly those situations where people do not understand a document, but nevertheless sign it. In fact, the same approach currently used by human factors researchers on warnings can be applied to legal documents. In some respects, a contract may be considered a type of "warning" in which serious consequences can be avoided if one understands and complies with its directives.

The ultimate criterion for contract comprehension is whether people are adequately informed when they sign them. Thus, the most relevant sections of the contract should attract attention, and clearly inform people about the reasonably foreseeable consequences of signing the contract. Some additional factors that could generalize from the warnings research literature to legal contracts include: familiarity, risk perception, explicitness, as well as the document's physical characteristics such as format, print size, message brevity, and so forth. Thus, there are opportunities for research directed towards identifying the factors that affect commitment to and signing of legal documents, including tests of noticeability, understandability, individual differences, and social pressures. The present research is one of the first steps in this endeavor.

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REFERENCES

- In re Stenardo. (1993) 991 F.2d 1089.
- McDonald, M. (1992). Lawyers vs. language: Briefs are criminal. *The News & Observer*, Raleigh, NC, May 24.
- Odum, M. (1992). Herein, aforesaid doublespeak. *The Times Union*, Albany, NY, June 5.
- Scott, C., and Suchan (1987). Public sector collective bargaining agreements: How readable are they? *Public Personnel Management*, 16, 15-22.