

CONTRACT LAW AND CIVIL JUSTICE IN LOCAL COURTS

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Most American contract law disputes take place in the shadows, unnoticed by commentators, scholars, and casebooks. These disputes—often heard by lay judges in local courts that do not publish their opinions—account for more than 80 percent of total contract disputes. Using state-level filing data and original interviews with local court judges, this Article unearths, for the first time, this vitally important yet understudied world. Our findings provide a blueprint for new research on local courts and contract law, with wide-ranging implications for theory and practice.

This Article makes three contributions to the literature. First, we identify what we call “values-driven adjudication.” Through interviews, we find that local court judges know relatively little about legal concepts like unconscionability, parol evidence, and canons of construction—principles that scholars, lawyers, and students have always believed form the basis of contract law adjudication. Instead, local court judges rely on broader values of fairness, commitment to mediation, fidelity to law (as they understand the law to be), and community norms. Second, while values-driven adjudication might cause concern at first glance, we find that many of the broader ideas local judges instinctively rely on vindicate contract law’s underlying values. Local judges may not know the contours of the doctrine of unconscionability, for example, but they do care that contracts are fair. They may not know that efficiency motivates some contract law doctrines, but they do attempt to mediate contract law disputes in ways that avoid appeals. Finally, we consider the wide-ranging implications of these findings for contract theory, contract design, civil justice, and judicial education, and we call for more research on this shrouded but vitally important world of local courts.

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INTRODUCTION

Last year, a judge in the preeminent business litigation venue, the Delaware Court of Chancery, rejected Tesla’s \$50 billion compensation package for its CEO Elon Musk, citing Musk’s outsized influence on the Tesla board that approved the plan.¹ A few years ago, a contract dispute delayed luxury retailer LVMH’s acquisition of iconic American jeweler Tiffany & Co., igniting a flurry of commentary from law firms, law professors, and rubbernecking observers.²

1. Chandelis Duster, *Elon Musk’s More than \$50 Billion Pay Deal at Tesla Was Rejected Again. Here Is Why*, NPR (Dec. 3, 2024, at 16:20 ET), <https://www.npr.org/2024/12/03/nx-s1-5214484/elon-musk-tesla-compensation> [<https://perma.cc/JU9V-JYT2>].

2. *Covid-19’s Effect on M&A Part 2: LVMH and Tiffany & Co.*, SADIS & GOLDBERG LLP (Jan. 12, 2021), <https://www.sadis.com/insights/covid-19s-effect-on-ma-part-2-lvmh-and-tiffany-co> [<https://perma.cc/N6MV-W9DT>]; Todd H. Eveson, *Structuring M&A Agreements – Five Lessons from the Tiffany & Co. v. LVMH Affair*, WYRICK ROBBINS (Oct. 8, 2020), <https://www.wyrick.com/news-insights/structuring-ma-agreements-five-lessons-from-the-tiffany-co-v-lvmh-affair> [<https://perma.cc/DUT2-3QZ7>]; Nicole Kar, Clara Pang & Antonia Sherman, *Break Fee at Tiffany’s? Invoking Failure to Comply with Regulatory Conditionality in Broken Deals*, LINKLATERS LLP (Oct. 2, 2020), https://awards.concurrences.com/IMG/pdf/linklaters_break_fee_at_tiffans_invoking_failure_to_comply_with_regulatory_conditionality_in_broken_deals.pdf [<https://perma.cc/6P78-TAYL>]; Colin Sylvester, *Diamonds Are Forever, Deals Are Not: Freight Mergers and Frustration of Contract in the Age of COVID-19*, COLUM. BUS. L. REV. (Nov. 2, 2020), <https://journals.library.columbia.edu/index.php/CBLR/announcement/view/356> [<https://perma.cc/5JWV-KBDJ>]; Rachel Wynn & Emily

These are the extraordinary contract disputes that make the headlines, capture the curiosity of scholars, and shape contract law. These cases, alongside the state supreme court cases that fill contract law casebooks, are the small set of highly visible cases that have come to represent a field. But they bear little resemblance to how most people experience contract law and dispute resolution.³

What lies below the surface is very different, both in venue and substance. While many high-profile contract disputes are heard in extraordinary courts like the Delaware Chancery Court and state and federal courts in New York,⁴ the vast majority of contract disputes play out in far more modest institutions around the country: in lowly local courts.⁵

Local courts, or “limited jurisdiction courts,”⁶ fall at the bottom of the organizational chart of almost every state court system.⁷ They can only hear cases with the lowest monetary stakes,⁸ so they necessarily resolve the contract disputes that arise in our daily lives: things like home renovation disputes, debt collection cases, and homeowner’s associations fights.⁹ In many states, local court judges need not possess a law degree.¹⁰

Buchholz, *Hard Luxury: Material Adverse Effect in the LVMH and Tiffany Merger*, MINN. L. REV.: DE NOVO BLOG (May 10, 2022), <https://minnesotalawreview.org/2022/05/10/hard-luxury-material-adverse-effect-in-the-lvmh-and-tiffany-merger/> [https://perma.cc/XAM5-7V35].

3. Cf. Norman W. Spaulding, *The Ideal and the Actual in Procedural Due Process*, 48 HASTINGS CONST. L.Q. 261, 262 (2021) (“[T]he procedural law we write about and teach is nothing like what most ordinary Americans experience when they step into court.”).

4. While not every sophisticated-party contract dispute is heard in a sophisticated court, many are, with Delaware Chancery and New York courts being by far the most commonly chosen courts in forum selection clauses. See generally David A. Hoffman, Cathy Hwang, Matthew Jennejohn & Luiza R. Pedrozo, *Mergers & Arbitrations* (June 27, 2025) (unpublished manuscript) (on file with authors) (discussing the rate at which disputes between sophisticated parties are heard in courts versus arbitral fora).

5. See *infra* Section I.B.

6. We use these two terms interchangeably throughout.

7. See Justin Weinstein-Tull, *The Structures of Local Courts*, 106 VA. L. REV. 1031, 1040–41 (2020) [hereinafter Weinstein-Tull, *The Structures of Local Courts*] (describing the difference between limited and general jurisdiction courts in the state system).

8. In Arizona and Pennsylvania, the states where we conducted interviews with local judges for this Article, the civil limits are \$10,000 and \$12,000, respectively. ARIZ. REV. STAT. ANN. § 22-201(B) (2025); 42 PA. CONS. STAT. § 1515(a)(3) (2025).

9. Some of these contract disputes are resolved in “small claims court,” which in some states is a subset of limited jurisdiction courts. See *infra* Section I.B.

10. Sara Sternberg Greene & Kristen M. Renberg, *Judging Without a J.D.*, 122 COLUM. L. REV. 1287, 1291 (2022) (“[E]mpirically, the assumption that most judges have legal training does not hold true for low-level state courts in many states. . . . [T]hirty-two states allow at least some low-level state court judges to adjudicate without a law degree . . .”).

How local courts resolve these disputes—that is, the law of these disputes—has been a black box. Local court cases rarely result in written opinions, and the ones that do are not published.¹¹ Scholars largely ignore them.¹² The result, then, is that we have little idea what most contract disputes look like.¹³

This Article expands the traditional domains of contract law by unearthing the everyday disputes through which most Americans experience the law of contracts. Our motivating questions are both basic and foundational: What is the law of contracts on the ground, rather than in the books? And why does it matter?

Through a mixed-methods approach,¹⁴ including the collection of state-level filing data, original interviews with local court judges, and review of rarely disclosed judge training materials, we find that the local law of contract, which reflects approximately four-fifths of all contracts cases decided each year, is informal and discretionary. In terms of raw numbers, millions of contracts are decided this way each year. The contracts principles with which we are most familiar—canons of construction, Statute of Frauds, parol evidence, and more—largely give way to broad principles of equity and fairness. In other words, judges are engaged in “values-driven adjudication.” The contract doctrines we know find limited footing in the courtroom, while broader values of legal decision-making are alive and well.

11. See Weinstein-Tull, *The Structures of Local Courts*, *supra* note 7, at 1072 (“[O]nly a very small number of [local court] decisions are ever published and many are not even recorded.”). Moreover, in many cases, claims are uncontested, so there is little opportunity for the adversarial process to play out. See generally Yonathan A. Arbel, *Adminization: Gatekeeping Consumer Contracts*, 71 VAND. L. REV. 121 (2018) (describing the large number of unmeritorious debt collection suits filed every year that result in default judgments and proposing solutions to detect and sanction those who file such claims).

12. See Anna E. Carpenter, Alyx Mark, Colleen F. Shanahan & Jessica K. Steinberg, *Foreword: The Field of State Civil Courts*, 122 COLUM. L. REV. 1165, 1165 (2022) [hereinafter Carpenter, Mark, Shanahan & Steinberg, *The Field of State Civil Courts*] (“Historically, legal scholarship has largely ignored the most common and ordinary aspects of American civil justice in favor of studying the uncommon and the extraordinary.”).

13. Cf. Justin Weinstein-Tull, *Traffic Courts*, 112 CALIF. L. REV. 1183, 1186 (2024) [hereinafter Weinstein-Tull, *Traffic Courts*] (“[W]e are in the bizarre position of knowing a great deal about upper-level courts but almost nothing about the courts that make decisions immediately affecting our lives.”).

14. See Laura Beth Nielsen, *The Need for Multi-Method Approaches in Empirical Legal Research*, in THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH 951, 952 (Peter Cane & Herbert M. Kritzer, eds., 2010) (“[F]ully understanding law demands research conducted using multiple approaches.”). Gathering both quantitative and qualitative data allows us to “create[] a thorough picture of the institution while acknowledging its diversity and complexity.” Weinstein-Tull, *Traffic Courts*, *supra* note 13, at 1200.

Our study provides a tonic to the bulk of contract law doctrine and theory, a great deal of which is built on the idea that contract law is the law of business.¹⁵ Law and economics scholars, for instance, have long argued for courts to hold parties to the bargains they struck at the outset, especially when the contracts involve sophisticated parties¹⁶ advised by sophisticated counsel.¹⁷ With that assumption in mind, scholars have

15. And, of course, that attention on extraordinary cases is not entirely unjustified. These are important cases. Many headline contract disputes have the potential to set off widespread changes to future contracting practices, the law, and even the economy. Chancellor Kathaleen McCormick's decision to reject Musk's compensation package in 2024, for instance, motivated a hurried amendment to Delaware law in 2025, Senate Bill 21, but not before frenzied debate in the state about how a Musk-led corporate exodus from Delaware might spell economic doom for incorporation-dependent Delaware. *See generally Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024) (rescinding Tesla's compensation plan for Musk due to Musk's control over the board); *Tornetta v. Musk (Tornetta II)*, 326 A.3d 1203 (Del. Ch. 2024) (affirming its prior decision); Robert Freedman, *Judge Nixes Post-Trial 'Ratification' of Elon Musk's Record Tesla Pay Package*, LEGAL DIVE (Dec. 3, 2024), <https://www.legaldive.com/news/chancery-court-kathaleen-McCormick-knocks-down-post-trial-ratification-musk-record-tesla-pay-package/734494/> [<https://perma.cc/LJW9-UUEG>] (discussing the events surrounding the two compensation cases); Lawrence Cunningham, *What Is the Furor Behind Delaware SB 21?*, PROMARKET (Apr. 9, 2025), <https://www.promarket.org/2025/04/09/what-is-the-furor-behind-delaware-sb-21/> [<https://perma.cc/Y3AR-PF6S>] (analyzing the ramifications of the Delaware amendments).

16. For example, many law and economics scholars have argued that for contracts between sophisticated parties, textualism is the right approach. *See, e.g.*, Ronald J. Gilson, Charles F. Sabel & Robert E. Scott, *Text and Context: Contract Interpretation as Contract Design*, 100 CORNELL L. REV. 23, 23, 40–41 (2014) [hereinafter Gilson, Sabel & Scott, *Text and Context*] (“For modern textualists, contracts are bespoke, between legally sophisticated parties . . .”). But contracts scholars have also argued that context is very important in contractual relationships, even when contracting parties are engaged in business deals, some of which are very high stakes. *See* Jonathan M. Barnett, *Hollywood Deals: Soft Contracts for Hard Markets*, 64 DUKE L.J. 605, 608 (2015) (documenting how Hollywood films are made using soft contracts, within a rich context of relationships); Lisa Bernstein, *Beyond Relational Contracts: Social Capital and Network Governance in Procurement Contracts*, 7 J. LEGAL ANALYSIS 561, 562 (2016) (documenting the rich context in the contracting of Midwestern original equipment manufacturers); *see also* Ronald J. Gilson, Charles F. Sabel & Robert E. Scott, *Braiding: The Interaction of Formal and Informal Contracting in Theory, Practice, and Doctrine*, 110 COLUM. L. REV. 1377, 1382 (2010) [hereinafter Gilson, Sabel & Scott, *Braiding*] (discussing how parties use a mix of formal and informal enforcement techniques); Gillian K. Hadfield & Iva Bozovic, *Scaffolding: Using Formal Contracts to Support Informal Relations in Support of Innovation*, 2016 WIS. L. REV. 981, 986–87 (documenting the use of informal contracts in a wide variety of Los Angeles businesses). For more on the trade-off between text and context, *see* Cathy Hwang & Matthew Jennejohn, *Deal Structure*, 113 NW. U. L. REV. 279, 288 (2018) (discussing the trade-off between textualist and contextualist approaches to contract interpretation), and Cathy Hwang, *Collaborative Intent*, 108 VA. L. REV. 665, 707 (2022) (same).

17. Victor Fleischer, *Regulatory Arbitrage*, 89 TEX. L. REV. 227, 240–42 (2010) (noting that business lawyers add value by “quarterbacking” deals); Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L.J. 239, 295, 298 (1984) (noting that business lawyers add value by minimizing

noted that American courts generally engage in reliable, textual enforcement of contracts.¹⁸

But contracts are not always the result of negotiations between well-informed parties with sophisticated advisors—and in recent years, the legal academy has started to notice that ordinary people do not enter contracts the way that businesses do. In a recent paper, for example, Tess Wilkinson-Ryan, David Hoffman, and Emily Campbell have noted that “[t]he contracts that provide exemplars for doctrine—deals that reach courts and fill casebooks—are disproportionately those of older, wealthier, parties, because only high-stakes, well-documented transactions generate the litigation paper trails that build precedent.”¹⁹ Most people, by contrast, do not act this way. Indeed, ordinary people enter into a large number of un-negotiated contracts that they do not read at all.²⁰

But while there is now a growing understanding of how human beings create ordinary *contracts*, there is still a gap in our understanding of ordinary contract *law*: That is, how do ordinary courts resolve contract disputes? We focus, in this Article, on the mundane rather than the extraordinary. As Judith Resnick eloquently put it, it is “the mundane,” rather than the extraordinary, “where people live and that is where state control can be both useful and yet overreaching. The dense and tedious repetition of ordinary exchanges is where one finds the enormity of the power of both bureaucratic states and private sector actors, and that authority is at risk of operating unseen.”²¹

Our findings are significant for both scholars and practitioners of contract law, and we hope they pave the way for much more research in this area. Understanding how contract disputes are actually resolved is necessary as a descriptive matter “to answer the most basic questions about civil law and the civil justice system, to say nothing of exploring

transaction cost); Cathy Hwang, *Value Creation by Transactional Associates*, 88 *FORDHAM L. REV.* 1649, 1657, 1659 (2020) (discussing the ways that transactional associates add value to deals by re-bundling modular contracts).

18. David A. Hoffman & Cathy Hwang, *The Social Cost of Contract*, 121 *COLUM. L. REV.* 979, 995 (2021).

19. Tess Wilkinson-Ryan, David A. Hoffman & Emily Campbell, *Lessons in Contract*, *GEO. L.J.* (forthcoming 2026) (manuscript at 5) (on file with authors), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5052807.

20. *Id.* (manuscript at 1, 3); see also Alexis C. Madrigal, *Reading the Privacy Policies You Encounter in a Year Would Take 76 Work Days*, *ATLANTIC* (Mar. 1, 2012), <https://www.theatlantic.com/technology/archive/2012/03/reading-the-privacy-policies-you-encounter-in-a-year-would-take-76-work-days/253851/> (describing how onerous it would be to review the voluminous privacy policies that consumers regularly enter); Thomas D. Haley, *Illusory Privacy*, 98 *IND. L.J.* 75, 76–78 (2022) (discussing how hard it would be for consumers to review all of the platform policies they enter into).

21. Judith Resnik, *Courts: In and Out of Sight, Site, and Cite*, 53 *VILL. L. REV.* 771, 804 (2008).

broader social, economic, and political questions that intersect with civil courts' work."²² As Mari Matsuda has written, "[t]he method of looking to the bottom can lead to *concepts* of law radically different from those generated at the top."²³ Expanding the domain of contract law helps us build better contract law theories.

Our Article also has special relevance for understanding how low-income individuals experience the justice system. Because of the nature of the cases in local courts, some scholars have called these courts "poor people's courts."²⁴ Expanding our understanding of these courts helps us more deeply comprehend the issues affecting the most vulnerable populations, such as access to civil justice, equity in adjudication, and protection from predatory contracts.

This Article proceeds in three Parts. In Part I, we expand the domains of contract law downward. We first identify contract law's traditional stars: high-profile cases resolved in courts with lawyers, judges, legal formality, and relative order and transparency. Then, drawing on state-level filing data, we show that over 80 percent of contract law disputes take place in local courts. Part II presents the results of our original interviews with local court judges. It demonstrates how these judges have a tenuous grasp of established contract law concepts and that they instead resolve disputes by drawing from broad values like fidelity to the contractual text, fairness, and common sense. Part III discusses the implications of our findings for contract law theory, civil justice, and judicial education. The Conclusion calls for more research and describes additional ways to explore these expanded domains of contract law.

22. Carpenter, Mark, Shanahan & Steinberg, *The Field of State Civil Courts*, *supra* note 12, at 1165.

23. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 326 (1987) (emphasis added); *see also* Carpenter, Mark, Shanahan & Steinberg, *The Field of State Civil Courts*, *supra* note 12, at 1165 ("[M]any of our core premises and assumptions—in civil procedure, administrative law, contracts, torts, and even constitutional law—are based on an understanding of only a sliver of formal civil justice activity.").

24. *See, e.g.*, Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473, 475 (2015) (using "the term 'poor people's courts' to refer to state civil courts serving large numbers of low-income, unrepresented litigants—namely, family, housing, and small claims and other consumer courts"); Tonya L. Brito, *Producing Justice in Poor People's Courts: Four Models of State Legal Actors*, 24 LEWIS & CLARK L. REV. 145, 162–72 (2020) (same). Understanding how contract law operates in these courts thus may also have important impact on how to understand how low-income individuals engage with the justice system.

I. EXPANDING THE DOMAINS OF CONTRACT LAW

In a paper surveying the state of civil law in state courts, Anna Carpenter, Alyx Mark, Colleen F. Shanahan, and Jessica K. Steinberg wrote: “[L]egal scholarship has largely ignored the most common and ordinary aspects of American civil justice in favor of studying the uncommon and the extraordinary. Thus, many of our core premises and assumptions . . . are based on an understanding of only a sliver of formal civil justice activity.”²⁵ As they note, federal court cases take up only about 2 percent of all civil cases heard in the United States every year—but they take up the extraordinary bulk of cases in scholarship, commentary, and casebooks.²⁶

Their observations resonate, too, in contract law. In Section I.A, we focus on the traditional domains of contract law, tracing how the contract law we know mostly originates from extraordinary cases outside of the local courts. In Section I.B, we turn to state-level filing data to reveal the true state of affairs: that the traditional domains represent only a small sliver of total contract law cases. Most contract law disputes occur at the local court level.

A. *The Traditional Domains of Contract Law*

Where does modern contract law, as we understand it, come from?

25. Carpenter, Mark, Shanahan & Steinberg, *The Field of State Civil Courts*, *supra* note 12, at 1165.

26. *Id.* This observation is especially true for contemporary scholarship. Scholars in the 1970s and 1980s, however, explored some contract law issues in lower courts, including in small claims courts. *See, e.g.*, Richard E. Miller & Austin Sarat, *Grievances, Claims, and Disputes: Assessing the Adversary Culture*, 15 L. & SOC’Y REV. 525, 525–27, 544–46 (1980–81) (discussing the process by which grievances turn into claims, which can then turn into civil disputes in courts of general jurisdiction. This process is described as a “dispute pyramid” in which many grievances turn into a relatively small number of civil disputes); William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 L. & SOC’Y REV. 631, 632–33 (1980–81) (discussing the way legal disputes emerge, “plac[ing] disputants at the center of the sociological study of law”); *see also* Austin Sarat, *Alternatives in Dispute Processing: Litigation in a Small Claims Court*, 10 L. & SOC’Y REV. 339, 343 (1976) (presenting a case study of small claims court litigation, describing and analyzing the processing of cases as litigants choose among dispute resolution alternatives). Some contemporary scholarship has also considered the question of how disagreements become legal disputes. *See, e.g.*, Catherine Albison, Lauren B. Edelman & Joy Milligan, *The Dispute Tree and the Legal Forest*, 10 ANN. REV. L. & SOC. SCI. 105, 108–09 (2014) (proposing a dispute resolution “tree” as an alternative to the idea of a pyramid, reflecting the legal and non-legal methods of dispute resolution); Herbert M. Kritzer, *The Antecedents of Disputes: Complaining and Claiming* 3–10 (Univ. of Minn. L. Sch. Research Paper No. 10-33, 2010) (reviewing the literature on how complaining becomes disputes).

At the broadest level, contract law is common law, so like in all common law, cases form the backbone. Many contracts are also governed by the Uniform Commercial Code (UCC), a set of laws developed in 1942 by the Uniform Law Commission and the American Law Institute.²⁷ The UCC was adopted by all fifty states and provides rules governing many types of commercial transactions but not most real estate, services, or employment contracts.²⁸

Because of the common law's influence in contract law, the types of cases and venues that become influential is critically important. In our contemporary system, most contract cases are heard at the state level, rather than at the federal level.²⁹ It is thus primarily state appellate and supreme courts that create the most influential contemporary contract law. And it is cases from these same courts that make up the contract law casebooks that law students learn from.³⁰ Contract law, as we understand it, is thus created by state appeals and supreme court judges—most of them trained as lawyers—in courts where relatively sophisticated parties are represented by counsel.³¹

As Wilkinson-Ryan, Hoffman, and Campbell have noted, the contracts that end up in casebooks tend to be those that are “high-stakes, [and] well-documented.”³² Indeed, the contract disputes that make the

27. *Uniform Commercial Code*, UNIF. L. COMM'N, <https://www.uniformlaws.org/acts/ucc> [<https://perma.cc/DN2Q-VG8H>] (last visited Jan. 26, 2026).

28. *Id.*

29. In 2023, where 31,309 contract law actions were filed in the federal courts, state courts heard well over four *million* cases. See *Table C-2—U.S. District Courts—Civil Federal Judicial Caseload Statistics (March 21, 2023)*, U.S. CTS., <https://www.uscourts.gov/data-news/data-tables/2023/03/31/federal-judicial-caseload-statistics/c-2> (last visited Feb. 2, 2026) [hereinafter *Table C-2*]; *Trial Court Caseload Overview: Income Caseload Composition—Overview*, NAT'L CTR. FOR STATE CTS.: CT. STAT. PROJECT (Oct. 2024) [hereinafter *Trial Court Caseload Overview*], <https://www.ncsctableauserver.org/t/Research/views/TrialDashboards/Overview>; Cathy Hwang & Justin Weinstein-Tull, Coded NCSC Data Spreadsheet (2025) (on file with authors) [hereinafter *NCSC Data Spreadsheet*].

30. One leading contract book, for example, contains many state and federal cases, but only one small claims case. See *generally* ROBERT S. SUMMERS, ROBERT A. HILLMAN & DAVID A. HOFFMAN, *CONTRACT AND RELATED OBLIGATION: THEORY, DOCTRINE, AND PRACTICE* (8th ed. 2021) (leading casebook).

31. See *Qualifications of Judges of State Appellate Courts and General Trial Courts*, COUNCIL OF STATE GOV'TS, <https://bookofthestates.org/tables/2022-5-3/> [<https://perma.cc/W2J9-LXU5>] (last visited Feb. 20, 2026). See *generally* Samuel Issacharoff & Florencia Marotta-Wurgler, *The Hollowed Out Common Law*, 67 UCLA L. REV. 600 (2020) (discussing how the contracts of today—for example, browsewrap, clickwrap, and shrinkwrap contracts—do not fit well with traditional contract doctrines that are based on negotiated contracts).

32. Wilkinson-Ryan, Hoffman & Campbell, *supra* note 19 (manuscript at 5). Contracts like these are not the ones entered into on an everyday basis by average folk. Wilkinson-Ryan, Hoffman, and Campbell surveyed individuals about contracting behaviors and attitudes to understand the types of contracts entered into by average folk.

headlines are often the ones where a great deal of money is at stake. And this is for good reason: State supreme court cases generally begin in state trial courts of general jurisdiction, rather than smaller courts of limited jurisdiction,³³ like the ones we study in this Article. By definition, cases that originate from general jurisdiction courts have comparatively larger amounts of money at stake.³⁴ And there is, of course, human nature: People are more willing to forgo litigation when disputed amounts are small, and more willing to litigate (and thus create law) when there is much to gain or lose.

Finally, major contract disputes are the ones that shock the system and change behavior. In 2018, for example, Delaware’s Court of Chancery—the premier court for corporate litigation and a state trial court—found, to the shock of court observers, that a target company had suffered a material adverse effect after the company entered a merger agreement.³⁵ Because of this, the buyer could terminate the agreement. This sparked a flurry of commentary from practitioners.³⁶ One law firm, for instance, noted in a client alert that “[t]he court’s strong emphasis in *Akorn* on looking to the plain language of the parties’ agreement to resolve disputes between them . . . should stimulate consideration of modifying the drafting of certain standard provisions.”³⁷

They found that only 15.8% of respondents have written contracts from scratch. *Id.* (manuscript at 19). While a good proportion had negotiated price terms—for instance, about 40 percent had negotiated a bill and about 40 percent had negotiated a salary—these numbers were overwhelmed by the fact that over 90 percent had “clicked to assent” to contracts. *Id.* (manuscript at 19). In other words, average people are not negotiating contracts. This also means that the literature on design and litigation, and the relationship between them, may not find much relevance when applied to the average contracts of average people.

33. See Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *Lawyerless Law Development*, 75 STAN. L. REV. ONLINE 64, 66–67 (2023), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=5175&context=faculty_scholarship (providing support for the hypothesis that “rates of appeal will be lower in the housing, debt collection, and family relationships cases that dominate lawyerless courts as compared to fully lawyered cases”).

34. See *infra* notes 53–57 and accompanying text.

35. *Akorn, Inc. v. Fresenius Kabi AG Inc.*, 2018 WL 4719347, C.A. No. 2018-0300 (Del. Ch. Oct. 1, 2018), *aff’d*, 2018 WL 6427137, No. 535, 2018 (Del. Dec. 7, 2018).

36. See, e.g., Adam O. Emmerich & Trevor S. Nortwitz, *The MAC Is Back: Material Adverse Change Provisions After Akorn*, in THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: MERGERS & ACQUISITIONS 2019, at 4, 4–8 (Glob. Legal Grp., 13th ed. 2019), https://www.wlrk.com/wp-content/uploads/2019/03/MA19_Chapter-2_Wachtell-Lipton-Rosen-Katz.pdf [<https://perma.cc/FXB4-HWZY>]; Gail Weinstein, Steven Epstein, Matthew Soran & Andrew Colosimo, *Tips for Drafting M&A Agreements After Akorn*, LAW360.COM (Oct. 31, 2018, at 13:26 ET), <https://www.friedfrank.com/uploads/siteFiles/Publications/Tips%20For%20Drafting%20M%26A%20Agreements%20After%20Akorn.pdf>.

37. Weinstein, Epstein, Soran & Colosimo, *supra* note 36 (emphasis added).

These are the traditional domains of contract law: Often, legally sophisticated judges resolving disputes between legally sophisticated parties over complex, high-value contracts.

As an example, consider the law and economics movement. In a classic paper, Judge Richard Posner cast the total cost of a contract as the sum of the design cost at the outset, the cost of any anticipated dispute, and judicial error.³⁸ Much scholarship on both contract litigation and design builds on the Posner formula, and many of the contributions from that literature work best in the traditional domains of contract law, when the parties to the contract are understood to be sophisticated parties litigating before sophisticated judges. For example, Posner himself argued that parties might titrate how much effort they expend on front-end design based on the anticipated cost of future litigation.³⁹ Others have riffed on the idea, too, showing that the probability of future litigation is doing a lot of work in determining that future cost of litigation.⁴⁰ In particular, a low probability of future litigation might cause contracting parties to invest less in ex ante contract design, even when the cost of any litigation is expected to be high.⁴¹

Relational contracting theory—perhaps the flip side of the coin to law and economics—also often contemplates business contracts. This strand of contract theory kicked off with Stewart Macaulay’s now-famous 1963 paper on the contractual interactions between Wisconsin businessmen.⁴² There, he documented how businessmen turned to informal enforcement, such as reputational sanctions through a professional organization or through other social interactions, rather than courts to resolve their disputes.⁴³ In the last half-decade, many scholars

38. Richard A. Posner, *The Law and Economics of Contract Interpretation*, 83 TEX. L. REV. 1581, 1583–84 (2005) (defining the cost of a contract as the ex ante negotiating and drafting costs, plus the probability of litigation multiplied by the sum of the parties’ litigation costs, the judiciary’s litigation costs, and judicial error costs).

39. *Id.* at 1583–84.

40. Albert Choi and George Triantis have shown, for example, that some high-stakes provisions of mergers and acquisitions (M&A) agreements are so unlikely to be litigated that it is not worth expending effort on the front end to make them more specific. See Albert Choi & George Triantis, *Strategic Vagueness in Contract Design: The Case of Corporate Acquisitions*, 119 YALE L.J. 848, 852 (2010) (showing that parties may choose vague contracts if the probability of later litigation is low, even if the cost of that litigation is high); see also Robert E. Scott & George G. Triantis, *Anticipating Litigation in Contract Design*, 115 YALE L.J. 814, 822 (2006) (showing that litigation plays a role in determining contract design choices).

41. Choi & Triantis, *supra* note 40, at 876; Scott & Triantis, *supra* note 40, at 814, 837.

42. Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55, 55–56 (1963) (showing, through interviews of businesspeople, that although businesspeople seldom draft complete contracts, they also rarely use legal sanctions to adjudicate disputes when they inevitably arise).

43. *Id.* at 63–64.

have expanded Macaulay's theory to other settings, and many of those studies have also focused on business relationships—such as those in the New York diamond business,⁴⁴ and the businesses of cotton merchants,⁴⁵ of Los Angeles-area businesspeople,⁴⁶ of Hollywood filmmakers,⁴⁷ and of M&A parties.⁴⁸

Because these business matters dominate the field of contracts, contract law doctrines get shaped by courts considering disputes about high-value contracts between sophisticated parties. The nature of contract law as it applies to average people is less studied.

B. Expanding Downward

We now follow contract disputes down, all the way down, to where most of them live. We begin with a necessary—and short—primer on local courts and local judges. We then use state-level filing data from the National Center for State Courts (NCSC) to demonstrate that the lowest state courts hear the most contract disputes.⁴⁹

1. Limited Jurisdiction Courts and Judges

Local courts are modest courts that hear a high volume of cases. They are often lawyerless places, where most cases have at least one unrepresented litigant, and they are often *presided over* by nonlawyer

44. Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115, 157 (1992) (showing how New York City diamond merchants used extralegal tools to ensure performance of their contracts).

45. Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724, 1745 (2001) (discussing relational contracting in the cotton industry).

46. Iva Bozovic & Gillian K. Hadfield, *Scaffolding: Using Formal Contracts to Build Informal Relations in Support of Innovation*, 2016 WIS. L. REV. 981, 1018–19 (showing how Los Angeles businesspeople use a mix of formal and informal contracts, as well as formal and informal enforcement mechanisms to enforce those contracts).

47. Jonathan M. Barnett, *Hollywood Deals: Soft Contracts for Hard Markets*, 64 DUKE L.J. 605, 617–42 (2015) (presenting evidence that even big-budget Hollywood films are made using informal, non-binding preliminary agreements).

48. Cathy Hwang, *Faux Contracts*, 105 VA. L. REV. 1025, 1032 (2019) (“In modern contracts between corporate and commercial parties, formal enforcement is perhaps even rarer, as parties have become lerier of high litigation costs and the disclosure of sensitive information during the discovery process.”); *see also* Cathy Hwang, *Deal Momentum*, 65 UCLA L. REV. 376, 404–11 (2018) (discussing why parties to M&A deals use non-binding agreements).

49. Not all states report to the NCSC. For states that did not report, we attempted to look at individual states' own electronic databases to collect comparable data. We corresponded with several state court administrators and reviewed the data we were able to collect from several states but ultimately were unable to obtain comparable data to add to the NCSC-reported data.

judges or non-judge hearing officers.⁵⁰ Some cases are legally and procedurally informal. Of interest to us, however, are a few specific features.

General vs. limited jurisdiction courts. Unlike the federal courts, which have one trial-level court (the federal district court), most state court systems split their trial-level courts into two distinct institutions: general jurisdiction courts and limited jurisdiction courts.⁵¹ Limited jurisdiction courts—which vary in name between states but are often called justice of the peace courts, municipal courts, or minor courts—hear the cases with the lowest stakes.⁵²

Although both general and limited jurisdiction courts are trial-level courts, general jurisdiction courts are typically one level above limited jurisdiction courts on state court structure charts.⁵³ General jurisdiction courts sometimes serve as appellate courts for limited jurisdiction cases.⁵⁴

General and limited jurisdiction courts split jurisdiction over contract cases based on the amount in controversy. Limited jurisdiction courts hear the cases with the lowest amounts in controversy.⁵⁵ In Arizona, for example, in the context of civil disputes, limited jurisdiction courts hear cases where the amount in controversy is \$10,000 or less.⁵⁶ In Pennsylvania, that number is \$12,000.⁵⁷ Small claims courts are a subset of limited jurisdiction courts that can hear contract claims with even smaller amounts in controversy⁵⁸—so small that one judge called these cases the “Judge Judy” cases.⁵⁹

50. See Greene & Renberg, *supra* note 10, at 1291.

51. See Court Statistics Project, *Understanding State Court Jurisdictions*, NAT'L CTR. FOR STATE CTS., <https://www.ncsc.org/resources-courts/understanding-state-court-jurisdictions> (select the “All States” tab and then the “two-tiered” trial court structure filter). States that have a single-tiered trial court structure include California, Illinois, Iowa, Minnesota, Vermont, and the District of Columbia. *Id.* (select the “All States” tab and then the “single-tiered” trial court structure filter).

52. See *Limited Jurisdiction*, CORN. L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/limited_jurisdiction [<https://perma.cc/U3DC-GDHL>] (last visited Feb. 2, 2026).

53. See, e.g., *Learn*, UNIFIED JUD. SYS. OF PA., <https://www.pacourts.us/learn> [<https://perma.cc/3C2M-UP9N>] (last visited Jan. 27, 2026) (placing the Pennsylvania limited jurisdiction minor courts below the general jurisdiction courts of common pleas).

54. See *id.* (stating that the general jurisdiction trial courts of common pleas serve as appeals courts for the limited jurisdiction minor courts).

55. *Id.* at 9. General jurisdiction courts hear any civil dispute exceeding that amount.

56. ARIZ. REV. STAT. ANN. § 22-201(B) (2025).

57. 42 PA. CONS. STAT. § 1515(a)(3) (2025).

58. See Bruce Zucker & Monica Her, *The People’s Court Examined: A Legal and Empirical Analysis of the Small Claims Court System*, 37 U.S.F. L. REV. 315, 320 (2003) (listing the monetary limits of small claims courts by state).

59. See Telephone Interview with Local Court Judge A (Apr. 15, 2025).

We envision court hearings as battles between two trained lawyers, but that scenario is rare in local court.⁶⁰ In these courts overall, both parties are represented by counsel in only 17 percent of cases.⁶¹ As Carpenter, Shanahan, Steinberg, and Mark have found, “[i]n some areas of law, such as debt or eviction, imbalanced representation is the norm—plaintiffs have counsel, defendants do not.”⁶² In other areas of contract law, like small claims court, litigants are almost never represented.⁶³ The lack of lawyers in the courtroom means that judges have less legal guidance than they might otherwise and that judges have more flexibility in how they run their courtrooms.⁶⁴

Local court power and opacity. Although limited jurisdiction courts hear only the smallest cases, they are deeply powerful institutions. That they are limited to low-stakes disputes means they are necessarily embedded into the lives of ordinary people.⁶⁵ These are the courts empowered to resolve the disputes that arise between neighbors, friends, and ordinary people, as well as the small businesses they patronize.

To add to their power, local courts are low-visibility institutions whose functioning is rarely checked by other governments and the media.⁶⁶ How they rule tends not to become public, making their

60. See Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365, 1367 (2021) (“On television, in movies, and even in law school, we typically think of law and courts operating according to a formalized process. The actors and the setting are familiar—a judge wearing a black robe presides over a richly wooden courtroom, each party sitting with their suited lawyer at a table flanking the judge’s bench, all following a strict set of procedures before an eagerly awaiting audience seated in the benches. . . . In many of America’s lower-level courts, however, ‘court’ often looks very different from the above description.”).

61. See PAULA HANNAFORD-AGOR, SCOTT GRAVES & SHELLEY SPACEK MILLER, *THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS* 32 (2015); Nora Freeman Engstrom & David Freeman Engstrom, *The Making of the A2J Crisis*, 75 STAN. L. REV. ONLINE 146, 146 (2024), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2024/04/Engstrom-Engstrom-75-Stan.-L.-Rev.-Online-146.pdf> (“In roughly three-quarters of the 20 million civil cases filed in state courts each year, one side lacks a lawyer—a dynamic that poses a direct challenge to the system’s adversarial core.”).

62. Anna E. Carpenter, Colleen F. Shanahan, Jessica K. Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 GEO. L.J. 509, 511–12 (2022) [hereinafter Carpenter, Shanahan, Steinberg & Mark, *Judges in Lawyerless Courts*].

63. See Telephone Interview with Local Court Judge J (May 14, 2025).

64. See Telephone Interview with Local Court Judge A, *supra* note 59 (“Lawyers are harder to manipulate and control.”); Weinstein-Tull, *Traffic Courts*, *supra* note 13, at 1204 (“Arizona judges and hearing officers . . . explicitly linked the absence of lawyers to a more informal atmosphere.”).

65. See Justin Weinstein-Tull, *Power and Promise in Local Courts* 11–12 (Dec. 13, 2025) (unpublished manuscript) (on file with authors) [hereinafter Weinstein-Tull, *Power and Promise in Local Courts*].

66. Justin Weinstein-Tull, *Federalism for the Shadows* 1, 3 (Jan. 9, 2026) (unpublished manuscript) (on file with authors) (describing the low-visibility nature of local courts).

decisions “likely to [be] both the first and final words in any dispute within the justice system.”⁶⁷ Appeals rates from these courts are minuscule. Existing estimates put appeals rates between 0.1%⁶⁸ and 1.6%⁶⁹ (compared to 7.3% in general jurisdiction state courts⁷⁰). In addition, many limited jurisdiction courts are not designated as courts of record, meaning that they are not required to record their proceedings, and whether they do so is discretionary.⁷¹ This lack of obligation to record, joined with the lack of published opinions (many opinions are delivered orally from the bench, according to our interviews⁷²), means that these courts are deeply opaque institutions.

Local judges and judicial training. Local courts are presided over by a diverse and understudied group of individuals: local court judges. Local judges come to power via two primary mechanisms: election and appointment.⁷³ They enjoy a great deal of discretion in deciding their cases.⁷⁴

These judges vary in their legal training. Some local judges have law degrees; many do not. The most comprehensive study of lay judges found that thirty-two states (including our two case study states of Arizona and Pennsylvania) allow at least some form of local judge to adjudicate without a law degree.⁷⁵ Some people hearing local cases are not even technically “judges”; they are hearing or administrative officers empowered to preside over these cases.⁷⁶ Arizona, for example, uses small claims hearing officers⁷⁷ to hear its smallest civil cases, including contract cases, with amounts in controversy of no more than \$5,000.⁷⁸ These hearing officers rarely have legal training and serve in a volunteer

67. Weinstein-Tull, *The Structures of Local Courts*, *supra* note 7, at 1034.

68. See Shanahan, Steinberg, Mark & Carpenter, *Lawyerless Law Development*, *supra* note 33, at 67.

69. See Annie Decker, *A Theory of Local Common Law*, 35 CARDOZO L. REV. 1939, 1969–70 (2014) (collecting local court appellate data).

70. See Theodore Eisenberg & Michael Heise, *Plaintiphobia in State Courts Redux? An Empirical Study of State Court Trials on Appeal*, 12 J. EMP. LEGAL STUD. 100, 110–11, 126 (2015).

71. See Telephone Interview with Local Court Judge R (June 5, 2025).

72. See, e.g., Telephone Interview with Local Court Judge W (June 13, 2025).

73. In Arizona, for example, justices of the peace are elected. See ARIZ. REV. STAT. ANN. § 22-111 (2025). However, municipal court judges, who are also local court judges, are appointed by the councils of their municipality. See *id.* § 22-403(A); *Limited Jurisdiction Courts*, AZCOURTS.GOV: AZ. JUD. BRANCH, <https://www.azcourts.gov/guidetoazcourts/Limited-Jurisdiction-Courts> [<https://perma.cc/A6LQ-DUBB>] (last visited Jan. 27, 2026) (“City or town councils appoint their judges, except in Yuma, where municipal court judges are elected.”).

74. Weinstein-Tull, *Power and Promise in Local Courts*, *supra* note 65, at 3.

75. See Greene & Renberg, *supra* note 10, at 1291.

76. See Weinstein-Tull, *Traffic Courts*, *supra* note 13, at 1206.

77. See ARIZ. REV. STAT. ANN. § 22-506 (2025).

78. See § 22-503(A).

capacity, but they do attend a sixteen-hour training on small claims adjudication offered by the state Administrative Office of the Courts.⁷⁹

Whether local judges are law-trained or not, most are required to take training courses offered by their state court administrative offices—both at the beginning of their tenure and on an annual basis. In Arizona, for example, limited jurisdiction judges (no matter their prior legal training) must attend a three-week orientation where they learn the fundamentals of their jobs, including legal basics in some areas of law, management skills, and administration.⁸⁰ In Pennsylvania, the judicial education system is different: Nonlawyers interested in becoming judges must take a four-week course on legal training to become certified to run for Magisterial District Judge (MDJ), and lawyers need not get that certification before running.⁸¹ Once elected, all MDJs take a four-day course covering basic doctrinal, management, and administrative topics.⁸²

There is no national database of training materials regarding judge training. There is no national minimum standard for training either. We were able to obtain the judge training syllabi and materials for our two case study states. The training that these judges receive on contracts is akin to a crash course on basic contract principles condensed into several hours. The courses cover the basic concepts that we asked judges about in our interviews: the principles of contract formation, the Statute of Frauds, the plain meaning rule, the parol evidence rule, and unconscionability. They explain what to do in case of breach and how to handle quantum meruit issues in case of an unenforceable contract.⁸³

79. See ARIZ. CODE OF JUD. ADMIN. § 1-302(I)(7)(a) (2024). More work needs to be done on lay judging; as of yet, there is no consensus on how lay judges adjudicate differently from judges with legal training. Some have been critical of lay judges' ability to engage sufficiently with the legal rights that the law provides to litigants. See Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 1002 (2021) ("Nonlawyer judges are part of a larger tolerance for legal informality in misdemeanor courts generally and municipal courts in particular."). Others have celebrated the ability of lay judges to tap into community norms. See Cathy Lesser Mansfield, *Disorder in the People's Court: Rethinking the Role of Non-Lawyer Judges in Limited Jurisdiction Court Civil Cases*, 29 N.M. L. REV. 119, 142 (1999) ("One of the images that underlies much of the non-lawyer judge discourse is that of the wise and experienced member of the community, unrestrained by the formality of court rules, and informed by his knowledge of local custom, and perhaps even the knowledge of individuals before him."). Both arguments likely contain some truth.

80. Arizona Limited Jurisdiction New Judge Orientation Materials (on file with authors).

81. See 201 PA. CODE § 601(a) (2015); Pennsylvania Magisterial District Judge Training Materials (on file with authors).

82. See Pennsylvania Magisterial District Judge Training Materials (on file with authors).

83. See Arizona Limited Jurisdiction New Judge Orientation Materials (on file with authors).

2. Data on Contracts Cases in Limited Jurisdiction Courts

Although local court judges may have little to no prior legal training on contract law (or any other law), they decide the bulk of contract law cases in the United States. To arrive at this finding, we relied on our original analysis of raw data provided by the NCSC. As a general matter, finding case data at any level is a challenge.⁸⁴ And while some efforts have begun to organize federal court data,⁸⁵ state and local court data is decidedly *not* organized.⁸⁶ Although the NCSC data is incomplete because it does not provide data for all fifty states, it still “offers the best available national estimates of key civil court data points like case volume, type, outcome, and representation status.”⁸⁷

State and federal court cases. At the broadest level of generality, as between the federal and state courts, it is mostly state courts that hear contract cases. In 2023, only 31,309 contract law actions were filed in the federal courts.⁸⁸ By contrast, in the thirty-seven states that reported case data to the NCSC, litigants filed 4.2 million contracts cases in 2023.⁸⁹

State court cases. Within state courts, contract cases make up a significant portion of the civil docket. The NCSC estimates that in 2023, civil cases made up approximately 23 percent of all incoming state cases,

84. Tanina Rostain, *Access to Justice as Access to Data*, 119 NW. U. L. REV. 5, 6 (2024) (referring to court data as a “hot mess”).

85. *Id.* at 10 (“It is gratifying to know that, with support from the National Science Foundation (NSF), the efforts to build an open federal court data system will continue and grow.”). *But see* Zachary D. Clopton & Aziz Z. Huq, *The Necessary and Proper Stewardship of Judicial Data*, 76 STAN. L. REV. 893, 897 (2024) (“The legal and administrative infrastructure of judicial data, as a result, largely remains terra incognita for scholars and the general public alike.”).

86. *See* Rostain, *supra* note 84, at 10 (noting that at the state and local court level, “the coordinated effort required to capture, clean, and harmonize the data will be even more Herculean” than at the federal level).

87. *See* Carpenter, Mark, Shanahan & Steinberg, *The Field of State Civil Courts*, *supra* note 12, at 1167 n.3. For more on our methodology, see *infra* Appendix 1.

88. *Table C-2*, *supra* note 29. Most of those—18,547—were insurance cases. *Id.* Of those contract law actions, most (27,128) were heard as a matter of diversity jurisdiction. *Id.*

89. NCSC Data Spreadsheet, *supra* note 29. Pew Charitable Trusts has also used NCSC data to estimate the docket breakdown of state and local courts. Although not as focused on contract cases specifically as our analysis is, Pew estimates that approximately 13.1 million state and local cases each year are “community and business” cases (which appear to be civil cases generally), of which over 5.1 million are landlord/tenant cases and debt collection cases, with approximately 3.9 million additional “unidentified” or “other” types of cases, presumably some of which are contracts cases. *See How Many Cases—and What Kind—Do State and Local Courts Handle?*, PEW (Mar. 6, 2025), <https://www.pew.org/en/research-and-analysis/data-visualizations/2025/03/how-many-cases-and-what-kind-do-state-and-local-courts-handle>.

increasing to approximately 42 percent when traffic cases are excluded.⁹⁰ Of those civil cases, contract cases were approximately one-third of the cases filed.⁹¹ However, even this number undercounts the proportion of contract cases, as it does not include small claims contracts cases. Many small claims cases are contractual in nature, but because NCSC does not break out small claims cases by subject, we do not include those cases in our total. As Daniel Wilf-Townsend has noted, “the composition of courts’ caseloads has changed, from the more tort-heavy landscape of the twentieth century to a docket dominated by contract disputes.”⁹²

Contracts cases in limited jurisdiction courts. Most state court cases involving contracts are adjudicated in limited jurisdiction courts, rather than general jurisdiction courts.

In the aggregate, the nineteen NCSC-reporting states heard a total of 2.9 million contracts cases, of which 2.4 million (approximately 83 percent) were heard in limited jurisdiction courts.⁹³ The remaining nearly 500,000 cases, or 17 percent of the total, were heard by general jurisdiction courts.⁹⁴ This proportion—83 percent—is in line with the percentage of state cases generally that are heard by limited jurisdiction courts, which is estimated to be approximately 80 percent.⁹⁵ Within this set of states, the proportion of contracts cases heard in limited jurisdiction courts varied from 14 percent (in Indiana) to 98 percent (in Wyoming), but sixteen of the nineteen states heard over 70 percent of their contract cases in limited jurisdiction courts, and fourteen of the nineteen heard over 80 percent of their cases in limited jurisdiction courts.⁹⁶

Types of contracts. Publicly available data on the types of contracts being litigated is limited; most states do not differentiate between the types of contracts being litigated in their publicly available data. But judges we spoke with listed these disputes as the most common: debt collection claims; auto loans; lease disputes between landlords and tenants, and especially eviction/nonpayment claims; contract disputes with general contractors and landscapers; small-dollar business-to-business services; and family loans.⁹⁷

Small claims courts also hear contract cases, and the small claims judges we spoke with described these forms of contract disputes as the most common: disputes between homeowners’ associations and

90. *Trial Court Caseload Overview*, *supra* note 29.

91. NCSC Data Spreadsheet, *supra* note 29.

92. Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704, 1714 (2022).

93. NCSC Data Spreadsheet, *supra* note 29.

94. *Id.*

95. *See* Weinstein-Tull, Power and Promise in Local Courts, *supra* note 65, at 10.

96. NCSC Data Spreadsheet, *supra* note 29.

97. Telephone Interviews with Local Court Judges A–Y (2025).

residents; non-eviction lease disputes between landlords and tenants about property conditions and security deposits; small disputes about house construction and renovation; neighbor disputes; and disputes over car purchase and car repair payments.⁹⁸

II. CONTRACT LAW BELOW

There is much to learn about contract dispute resolution at the lowest levels.⁹⁹ In this Part, we use interviews with twenty-five local court judges to provide new insight into how judges in limited jurisdiction courts decide contracts cases. Because few local court adjudications result in written opinions—much less published ones—interviews are the best way to learn about what happens in these courtrooms. As we will discuss in the next Part, this has significant implications for contract theory, contract design, and educating both judges and lawyers about contract law. We provide more information about interviewed judges’ demographics, as well as other information about methodology, in Appendix 1.

In Section II.A, we discuss some core contract law concepts, such as unconscionability and contract formation. We find that few local court

98. See Telephone Interview with Local Court Judge J, *supra* note 63; Telephone Interview with Local Court Judge L (May 15, 2025); Telephone Interview with Local Court Judge M (May 16, 2025); Telephone Interview with Local Court Judge P (May 29, 2025).

99. Although little research exists on the nature of *contract* law in local courts, which this Article presents, scholars have begun excavating other forms of law in these courts, and we situate our findings amongst this work. Much of this work has found that these courts are characterized by legal flexibility. For example, one of us has written about how, because of low appeals rates and a lack of legal training on the part of judges, local court judgments in general tend to be somewhat independent from existing legal doctrine. See Weinstein-Tull, *Traffic Courts*, *supra* note 13, at 1186–87. Nicole Summers has written about how litigants in housing court often do not benefit from the existence of law that could be helpful to their case. See Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 150 (2020) (“[V]ery few tenants with meritorious warranty of habitability claims actually benefited from the law. Overall, less than 2 percent of tenants who had meritorious claims received rent abatements.”). Earlier work found that judges in informal courts exhibited diversity in how they reached their decisions and lumped judges together as “strict adherent[s],” “lawmaker[s],” “mediator[s],” “authoritarian[s],” and “proceduralist[s].” John M. Conley & William M. O’Barr, *Fundamentals of Jurisprudence: An Ethnography of Judicial Decision Making in Informal Courts*, 66 N.C. L. REV. 467, 481–82 (1988); JOHN M. CONLEY & WILLIAM M. O’BARR, RULES VERSUS RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE 106 (1990) (“The extent of the variation in the decision-making process in informal courts is extraordinary Depending on the judge that a litigant draws, informal justice may mean mediation, enforced compromise, apologetic application of legal norms, authoritative decision making spiced with social commentary, or obsessive attention to points of procedure.”). Our work builds on these accounts.

judges have a broad understanding of these concepts.¹⁰⁰ In Section II.B, we describe the general approach that local court judges take to resolving contract disputes. Here, we discover that common contract law values motivate their decision-making—creating the values-driven adjudication we have previewed. In Section II.C, we dig deeper into one specific doctrine—unconscionability—and show how the way judges define that idea combines both doctrinal and values-based components.

A. Contract Law

The first major question we sought to answer was to what extent local courts relied on traditional and familiar contract law concepts. To determine this, we asked judges about the legal sources they consulted when resolving contract disputes as well as the contract concepts they considered. In asking judges about the sources they used, we mentioned that possible answers might include contract law treatises, case law, statutes, and the contract at issue, as well as any other sources.

1. Legal Sources

The contract. Most of the interviewed judges reported that they always read the contract being litigated (22/25, or 88 percent). Half of those (11/25, or 44 percent) said that they *only* consulted the contract at hand. For example, one judge said that their process was “just reading over whatever the contract is” and making a decision.¹⁰¹ Another stated that they “[a]lmost always just exclusively [consider] the language of the contract.”¹⁰² A third said that they consider whatever they “have in front of [them], which [generally] includes the contract, but nothing else.”¹⁰³ Some noted that there wasn’t always a written contract to consult, in which case they would attempt to figure out whether an agreement existed and, if so, what the terms were.¹⁰⁴

Statutes. Just under half of the judges we interviewed said that they consulted statutes (11/25, or 44 percent). In particular, judges consulted

100. Some of the concepts that we interviewed judges about would not be considered by judges unless raised by the parties—for example, as an affirmative defense. But some judges we spoke to did not know certain concepts at all, suggesting that even if the issues had been raised by litigants, judges could lack tools to address those issues. In addition, whether raised as affirmative defenses or not, the fact that these judges are not engaging with these concepts means that the concepts may not be a part of contract adjudication in lower courts.

101. Telephone Interview with Local Court Judge C (Apr. 23, 2025).

102. Telephone Interview with Local Court Judge O (May 22, 2025).

103. Telephone Interview with Local Court Judge N (May 20, 2025).

104. Telephone Interview with Local Court Judge W, *supra* note 72.

“statutory provisions governing credit card cases and evictions.”¹⁰⁵ One judge said that they “always ke[pt] a copy of [the] landlord/tenant statute with him.”¹⁰⁶

Case law. Only one-fifth of the judges we interviewed (5/25, or 20 percent) said that they consulted case law. Some judges said that they did not consult case law because their courts did not have access to Westlaw or other online databases.¹⁰⁷ One common response was that the judges would look at cases only after being presented with them by lawyers or litigants.¹⁰⁸ As one judge put it, “[i]f I were aware of some [relevant] case, I would read that, but that’s not typical.”¹⁰⁹

Treatises and other sources. Only a small number of judges we spoke with consulted contract law treatises (2/25, or 8 percent, including one judge who said that “[o]nce in a great while [they] will go to the courthouse law library to look at a restatement, but that’s been five times in fourteen years”¹¹⁰) and jury instructions (1/25, or 4 percent). Three judges we spoke with said that they would consult other, more knowledgeable judges when faced with tricky contract law questions (3/25, or 12 percent).¹¹¹

2. Contract Law Concepts

We chose six common contract law concepts and asked judges whether they were familiar with those concepts and whether they consider those concepts in adjudicating contract cases.

Every judge we spoke with was conscientious, gracious with their time, and interested in doing the very best they could. Indeed, we were struck by how deeply they understood their role in their communities as potentially the only judge most people would ever encounter. Most judges we spoke with had not gone to law school—18 of the 25, or 72 percent—and we would not expect them to know the ins and outs of contract law doctrine off the tops of their heads.

105. Telephone Interview with Local Court Judge E (Apr. 24, 2025).

106. Telephone Interview with Local Court Judge P, *supra* note 98.

107. *See, e.g., id.*

108. Telephone Interview with Local Court Judge M, *supra* note 98 (noting that it “would be unusual for someone to cite to a case, but if they did, I would read that case”).

109. *Id.*

110. Telephone Interview with Local Court Judge A, *supra* note 59. For more on our interview methodology, see *infra* Section II.D and Appendix 1.

111. We conducted the interviews for this Article during the earlier days of widespread use of generative artificial intelligence. We anticipate that as artificial intelligence becomes a more common method of research, judges might also turn to those sources for information, which may or may not increase the judges’ accurate understanding of legal doctrines.

We asked specifically about three issues involving contract formation: the elements of contract formation, the Statute of Frauds, and unconscionability. We also asked about three issues relating to contract interpretation: plain meaning, parol evidence, and canons of construction. In this subsection, we provide brief descriptions of each of these six concepts.

Elements of contract formation. The elements of contract formation are mutual assent, consideration, and enforceability.¹¹² Absent a circumstance such as mistake, misrepresentation, undue influence, unenforceability due to public policy, the Statute of Frauds, and a variety of other exceptions and excuses, mutual assent and consideration create a binding, enforceable contractual obligation under the law.¹¹³ Whether a contract has been formed is perhaps the most important question that a judge can consider: If no contract is formed, then the parties have no legal obligation to each other, and there can thus be no breach and no liability.¹¹⁴ Indeed, if a judge finds that there is no legally binding contract, the parties have merely entered into an agreement, and courts play no role in the dispute.

Contract formation was something that many judges we spoke with considered: Nineteen of twenty-five of our respondents (76 percent) reported thinking about it (making it the second-most considered doctrine). One judge said that questions of contract formation were particularly important where contracts existed by “word of mouth” or “text messages back and forth.”¹¹⁵ Judges likely reported high rates of formation-related questions due to the informal nature of many of these contracts.

The Statute of Frauds. The Statute of Frauds is a doctrine that requires certain types of contracts to be written (and often signed) to be

112. RESTATEMENT (SECOND) OF CONTRACTS § 17 (A.L.I. 1981) (“(1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.”); see also Cathy Hwang, *Unbundled Bargains: Multi-Agreement Dealmaking in Complex Mergers and Acquisitions*, 164 U. PA. L. REV. 1403, 1410 n.27 (2016) [hereinafter Hwang, *Unbundled Bargains*] (discussing the differences between agreements and contracts, the latter of which causes legal liability to attach).

113. See 1 SAMUEL WILLISTON & RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS § 1:1 (4th ed. 2007) (“The traditional definition of the term ‘contract’ is ‘a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.’ . . . [T]he word ‘contract’ . . . may, to one in business or a lay person, mean the writing that evidences a bargain or agreement.”). Courts have considered numerous riffs on the questions of what is an offer, what is an acceptance, and what counts as sufficient consideration. See, e.g., *Carlill v. Carbolic Smoke Ball Co.* [1893] QB 256 at 258, 264 (Eng.); David A. Hoffman, *The Best Puffery Article Ever*, 91 IOWA L. REV. 101, 119 (2006).

114. See Hwang, *Unbundled Bargains*, *supra* note 112, at 1410 n.27.

115. Telephone Interview with Local Court Judge U (June 12, 2025).

enforceable.¹¹⁶ Scholars have argued that “[t]he purpose of contract formalities such as the Statute of Frauds is to prevent people from defrauding victims with whom they do not necessarily have a contractual relationship.”¹¹⁷ Other scholars have argued that the purpose of contractual formalities like the Statute of Frauds is to give parties a way to signal to courts that they intend to be legally bound by the contract, to provide evidence for a later dispute resolution, and to force parties to be careful when entering into potentially legally binding arrangements.¹¹⁸

Fourteen of the twenty-five judges (56 percent) we interviewed reported considering the Statute of Frauds. But we also found some confusion about this doctrine. One judge believed it concerned criminal fraud.¹¹⁹ Another stated they found it confusing and had to look it up when lawyers raised it.¹²⁰

Unconscionability. Unconscionability is a defense against contract enforcement in which one party to the contract argues that the contract is so unfair or oppressive as to be unenforceable.¹²¹ Scholars have mixed views about the usefulness and purpose of unconscionability as a doctrine. Some have argued that it injects unpredictability into adjudication and “that courts [are] less competent than markets to adjudicate consumer fairness.”¹²² Critics have argued that unconscionability is subjective, “substituting ex-post judicial review for the discipline imposed by a competitive market.”¹²³ Others have lauded

116. *Statute of Frauds*, CORN. L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/statute_of_frauds [<https://perma.cc/X3BK-9R94>] (last visited Jan. 26, 2026).

117. Eric A. Posner, *Norms, Formalities, and the Statute of Frauds: A Comment*, 144 U. PENN. L. REV. 1971, 1986 (1996) [hereinafter Posner, *Norms, Formalities, and the Statute of Frauds*].

118. Lon L. Fuller, *Consideration and Form*, 41 COLUM. L. REV. 799, 800–03 (1941).

119. Telephone Interview with Local Court Judge U, *supra* note 115.

120. Telephone Interview with Local Court Judge B (Apr. 18, 2025).

121. *Unconscionability*, CORN. L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/unconscionability> [<https://perma.cc/9HW7-FG2P>] (last visited Feb. 19, 2025). See generally Jacob Hale Russell, *Unconscionability’s Greatly Exaggerated Death*, 53 U.C. DAVIS L. REV. 965 (2019) (discussing modern uses of the doctrine by both defendants and plaintiffs). *Williams v. Walker-Thomas Furniture* is the seminal case on unconscionability. In its opinion, the judge wrote that an unconscionable contract was one that had “an absence of meaningful choice on the part of one of the parties together with contract terms unreasonably favorable to the other party.” *Williams v. Walker-Thomas Furniture*, 50 F.2d 445, 449 (D.C. Cir. 1965). For a history of the case and unconscionability as the law of the poor, see generally Anne Fleming, *The Rise and Fall of Unconscionability as the ‘Law of the Poor,’* 102 GEO. L.J. 1383 (2014), <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2381&context=facpub>.

122. Russell, *supra* note 121, at 993.

123. *Id.* at 994.

the doctrine “as a last resort ‘backstop’ to ensure fairness.”¹²⁴ For those judges and scholars, unconscionability provides a substantive limit on contracts of adhesion and other unfair contracts that target the poor and those with limited resources.¹²⁵

Unconscionability was the most considered concept, with twenty of twenty-five respondents (80 percent) reporting thinking about it. We asked the judges what unconscionability meant to them, and we report on those findings in Section II.C.

Parol evidence rule. Courts must determine what information it may use to interpret a contract. The parol evidence rule is “the primary rule for determining when a writing is given special evidentiary weight.”¹²⁶ It helps courts “determine when writings are integrated” and if writings outside of the written contract “may be used to contradict, supplement, and sometimes interpret the terms contained in an integrated writing.”¹²⁷ Courts apply different versions of the parol evidence rule—some allow extrinsic evidence, some do not, and many courts apply versions of the rule somewhere in between those two extremes.

Scholars have also taken different approaches to parol evidence.¹²⁸ Some see it as a question of autonomy: Gregory Klass, for instance, has written that “[c]ontractual obligations are chosen obligations. . . . [T]he parties have the ability to choose the terms of their agreement, and thereby determine the content of their contractual obligations.”¹²⁹ For others, parol evidence is a matter of efficiency. Law and economics scholars like Ronald Gilson, Robert Scott, Charles Sabel, Jody Kraus, Juliet Kostritsky, Eric Posner and others argue that admitting more evidence enhances interpretive accuracy but uses judicial resources.¹³⁰

124. *Id.* at 995 (citing Anthony T. Kronman, *Paternalism and the Law of Contracts*, 92 YALE L.J. 763 (1983); then citing Melissa T. Lonegrass, *Finding Room for Fairness in Formalism—The Sliding Scale Approach to Unconscionability*, 44 LOY. U. CHI. L.J. 1, 74 (2012); then citing Jennifer Nadler, *Unconscionability, Freedom, and the Portrait of a Lady*, 27 YALE J.L. & HUMANS. 213 (2015); then citing Amy J. Schmitz, *Embracing Unconscionability’s Safety Net Function*, 58 ALA. L. REV. 73, 74 (2006); and then citing Robin West, *The Anti-Empathic Turn* (Georgetown Pub. Law & Legal Theory Research Paper No. 11-97, 2011)).

125. Fleming, *supra* note 121, at 1388, 1421.

126. Gregory Klass, *Parol Evidence Rules and the Mechanics of Choice*, 20 THEORETICAL INQUIRIES L. 457, 458 (2019).

127. *Id.*; see also RESTATEMENT (SECOND) OF CONTRACTS § 213 (A.L.I. 1981) (providing a very similar definition).

128. See Eric A. Posner, *The Parol Evidence Rule, the Plain Meaning Rule, and the Principles of Contractual Interpretation*, 146 U. PA. L. REV. 533, 534–35 (1998) [hereinafter Posner, *Parol Evidence Rule*] (discussing “hard” and “soft” approaches to the rule).

129. Klass, *supra* note 126, at 457.

130. See, e.g., Juliet P. Kostritsky, *The Means/Ends Dilemma in Contract Interpretation: A Response to Professors Kraus and Scott: How the Intractability of Express Language Affects Interpretive Authority and Legal Interventions in*

The parol evidence rule was the least considered principle we asked about, with only eight of twenty-five respondents (32 percent) reporting that they considered the principle. We found some confusion with this doctrine as well. One judge stated that the parol evidence rule did not apply to the contract disputes she resolved,¹³¹ and another believed it was related to criminal parole.¹³²

The plain meaning rule. The plain meaning rule is “a standard of contract interpretation [that] requires that the meaning of contractual language be determined solely by attaching the plain or usual meaning to words that appear clear and unambiguous on the face of the agreement.”¹³³ States differ in how strictly they adhere to the plain meaning rule.¹³⁴

There are some challenges to implementing the plain meaning rule—for example, plain meaning is almost never plain; even simple words can have multiple meanings.¹³⁵ But scholars have argued that “[t]he best rationale for [it] is that it makes available a public fund of terms with judicially ‘proofed’ or ‘protected’ meanings on which contractual parties can rely to effectively communicate their commitments to each other and to courts.”¹³⁶ In other words, it is not so much that we can ascertain that

Contracts 5–8 (Case W. Rsrv. Univ. Sch. of L.: Case Rsch. Paper Series in Legal Stud., Working Paper No. 09-23, 2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442067; Jody S. Kraus & Robert E. Scott, *Contract Design and the Structure of Contractual Intent*, 84 N.Y.U. L. REV. 1023, 1025–28 (2009); Gilson, Sabel & Scott, *Braiding*, *supra* note 16, at 1385–86; Gilson, Sabel & Scott, *Text and Context*, *supra* note 16, at 34; Posner, *Parol Evidence Rule*, *supra* note 128, at 534.

131. Telephone Interview with Local Court Judge F (Apr. 25, 2025).

132. Telephone Interview with Local Court Judge J, *supra* note 63.

133. Carlton J. Snow, *Contract Interpretation: The Plain Meaning in Labor Arbitration*, 55 FORDHAM L. REV. 681, 681 (1987). The plain meaning rule is a doctrine that is often spoken of in the same breath as the parol evidence rule. Posner, *Parol Evidence Rule*, *supra* note 128, at 534 n.1.

134. See Gilson, Sabel & Scott, *Text and Context*, *supra* note 16, at 25–26.

135. Stephen C. Mouritsen, *Hard Cases and Hard Data: Assessing Corpus Linguistics as an Empirical Path to Plain Meaning*, 13 COLUM. SCI. & TECH. L. REV. 156, 156 (2011). Even the Restatement itself expresses skepticism of the *plainness* of plain meaning. RESTATEMENT (SECOND) OF CONTRACTS § 212 cmt. b (A.L.I. 1981) (“It is sometimes said that extrinsic evidence cannot change the plain meaning of a writing, but meaning can almost never be plain except in a context.”). Scholars have argued for various empirical methods to ascertain plain meaning. See Omri Ben-Shahar & Lior Jacob Strahlievitz, *Interpreting Contracts via Surveys and Experiments*, 92 N.Y.U. L. REV. 1753, 1809 (2017) (arguing for interpreting contracts through widespread surveys); Yonathan Arbel & David A. Hoffman, *Generative Interpretation*, 99 N.Y.U. L. REV. 451, 451 (2024) (proposing using artificial intelligence to figure out what the common meaning of a word might be).

136. Kraus & Scott, *supra* note 130, at 1047 (citing Charles J. Goetz & Robert E. Scott, *The Limits of Expanded Choice: An Analysis of the Interactions Between Express and Implied Contract Terms*, 73 CALIF. L. REV. 261, 273, 316–17 (1985)).

a particular word *plainly* means one thing or another, but that the law has agreed that a particular word will mean that thing.¹³⁷

Just over half (14 of 25, or 56 percent) of respondents reported considering the plain meaning rule. Some judges admitted to not knowing what the rule meant specifically, but also stated that they still tried to take a “common sense” approach to contract interpretation.¹³⁸

Canons of construction. When a contract is ambiguous, courts often turn to canons of construction as tiebreakers.¹³⁹ These are “statement[s] of judicial preference as to how a particular textual ambiguity should be resolved”¹⁴⁰ and “have been touted for centuries as neutral rules of thumb for reliably interpreting statutes”¹⁴¹—and, in many cases, also contracts.¹⁴² An example is *contra proferentem*, which states that ambiguous contract terms should be interpreted against the drafter of the contract.¹⁴³ There is no standard list of contract interpretation canons and no rules about which ones should be applied or in what order.¹⁴⁴

137. In a nice article on textualism with good examples of plain meaning’s challenges, see generally Kevin Tobia, Brian G. Slocum & Victoria Nourse, *Progressive Textualism*, 110 GEO. L.J. 1437 (2022).

138. See, e.g., Telephone Interview with Local Court Judge U, *supra* note 115.

139. Larry Kramer, *Rethinking Choice of Law*, 90 COLUM. L. REV. 277, 320 (1990). As John Coyle has noted, scholars sometimes distinguish between canons of interpretation and canons of construction, with the latter meaning “the ascertainment of legal operation or effect,” but most court and scholars use the terms interchangeably. John F. Coyle, *The Canons of Construction for Choice-of-Law Clauses*, 92 WASH. L. REV. 631, 636 n.25 (2017); see also Omri Ben-Shahar, David A. Hoffman & Cathy Hwang, *Nonparty Interests in Contract Law*, 171 U. PA. L. REV. 1095, 1101 (2023) (discussing how courts use canons of construction in adjudicating disputes).

140. Coyle, *supra* note 139, at 636.

141. Matthew James Foerster, *Canons of Construction: What is Their Role, if Any, in Modern Jurisprudence?*, A.B.A. (Feb. 4, 2022), <https://www.americanbar.org/groups/judicial/resources/appellate-issues/archive/canons-construction-role-if-any-modern-jurisprudence/>.

142. Leigh Ellis, *15 Canons of Construction (to Read Business Contracts the Right Way)*, HALL ELLIS SOLICITORS: BLOG (Jan. 3, 2019), https://hallellis.co.uk/canons-construction-contracts/#_Toc521003961.

143. *Contra Proferentem*, CORN. L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/contra_proferentem [<https://perma.cc/NZ3T-UKWH>] (last visited Feb. 20, 2026). The rationale for the rule is that the drafter is in the best position to mitigate any potential contract ambiguity, so if they fail to do so, they should bear the cost of the ambiguity. Michelle E. Boardman, *Contra Proferentem: The Allure of Ambiguous Boilerplate*, 104 MICH. L. REV. 1105, 1108 (2006).

144. There are also many canons. Scholars of both contract law and statutory interpretation often turn to a book coauthored by Justice Antonin Scalia that lists fifty-seven canons of interpretation, but a study of Supreme Court opinions during the Rehnquist and Roberts courts suggests that justices used as many as 187 canons. William N. Eskridge, Jr., *The New Textualism and Normative Canons*, 113 COLUM. L. REV. 531, 536 (2013) (reviewing ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012)).

Many judges turn to canons of constructions “for their relative clarity and commonsense virtues,” and scholars have sometimes praised them for, at the least, being usable as a valuable “substitute for lack of judicial expertise” and as a way to “guide judicial discretion” and improve predictability of interpretation.¹⁴⁵ That said, commentators generally agree that canons are not silver bullets: As Karl Llewellyn wrote, “there are two opposing canons on almost every point.”¹⁴⁶ Canons have also been criticized for putting a neutral veneer on the judicial decision-making process.¹⁴⁷

Just under half (11/25, or 44 percent) of respondents reported considering canons of construction. One specifically mentioned the canon that any contractual ambiguity should be construed against the contract drafter.¹⁴⁸ Others said that the canons existed somewhat “in the background” of their decision-making.¹⁴⁹

Summary findings. Although local judges should in theory regularly rely on or at least consider the six contract law concepts we asked them about, only two of the twenty-five judges reported thinking about all six. One reported that they do not think of *any* of the six concepts we asked about.¹⁵⁰ On average, a judge thought about 3.4 of the six concepts.¹⁵¹ Both respondents who reported thinking about all six concepts had served as teachers who trained new judges in their state, which may explain their knowledge of the doctrine. One who was familiar with all of the concepts we asked about had also written legal scholarship about various private law topics.

Although this was not a study specifically about the differences between judges who hold law degrees and those who do not, those with

145. James J. Brudney & Corey Ditslear, *Canons of Construction and the Elusive Quest for Neutral Reasoning*, 58 VAND. L. REV. 1, 4 (2005).

146. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 401–06 (1950). In a panel hosted by the American Bar Association on canons of construction, panelists also noted that judges can “earnestly analyz[e] text and apply[] canons in good faith, yet reach[] opposite results.” Foerster, *supra* note 141.

147. Brudney & Ditslear, *supra* note 145, at 4–5 (first citing Stephen F. Ross, *Where Have You Gone Karl Llewellyn? Should Congress Turn Its Lonely Eyes to You?*, 45 VAND. L. REV. 561, 562 (1992); and then citing Edward L. Rubin, *Modern Statutes, Loose Canons, and the Limits of Practical Reason: A Response to Farber and Ross*, 45 VAND. L. REV. 579 (1992)).

148. See Telephone Interview with Local Court Judge W, *supra* note 72.

149. See, e.g., Telephone Interview with Local Court Judge R, *supra* note 71.

150. Telephone Interview with Local Court Judge H (Apr. 29, 2025).

151. In summary, one reported that they do not think about *any* of the six concepts we asked about. Three reported that they think about *one* of the six concepts. Five reported that they think about *two* of the six concepts. One reported that they think about *three* of the six concepts. Seven reported that they think about *four* of the six concepts. Six reported that they think about *five* of the six concepts. Two reported that they think about *all* six concepts.

law degrees did consider more concepts than those without. Seven of our twenty-five respondents possessed law degrees: They collectively considered an average of 4.9 of the six concepts. The eighteen respondents without law degrees collectively considered 2.9 of the six concepts.

In sum, the judges we spoke with had varied understandings of contract law. A very few had detailed knowledge of contract law, but the vast majority had incomplete knowledge, and many had very little knowledge.

B. Contract Law Values

What do local judges bring to bear in resolving disputes, if not the core concepts we typically expect? To probe this question, we asked judges how they approach contract law cases and about the underlying concepts that motivate their decision-making. For the most part, the judges reported being guided by broad *values* like commitment to mediation, fairness, fidelity to law, and common sense. This Section reports those responses. Because we believe that many of the judges' responses are useful to read, we excerpt them in full when we can.

1. Fidelity to Law

Many judges reported that they were guided by fidelity to the law—by which they largely meant fidelity to the private law created by contractual language. Interestingly, while scholarly commentary has been more supportive of contextualist approaches in situations involving less sophisticated parties,¹⁵² the judges we interviewed often described a textualist approach to contract adjudication, bereft of outside influences like further legal research. They seemed to explicitly reject other potential jurisprudential inputs in favor of a strict reading of the text of the contract.

This approach is typified by the following response from a judge:

I believe we are bound by the law. Our job is to apply the law to the situation. We don't write those laws, and they may be poorly written. The law has to take precedence. Sense of fairness is subjective; it's dangerous territory to get into. The law is controlling. In a contract dispute the contractual language is what you have to roll with. Assuming it's not something a

152. See *supra* Section I.A.

normal person might be misled by, that's a binding document.¹⁵³

It is worth noting, however, that this judge, who was committed to applying the law and the language of the contract, also stated that they did not engage with canons of construction, the Statute of Frauds, or the parol evidence rule.¹⁵⁴

In another example, a judge acknowledged potential conflicts between fairness and the law, but noted that when those values came into conflict,

you follow the law. It happens just about all the time when I see title loans. Those folks are just on the edge of staying above water, but the contract's the contract . . . and the best thing we can do . . . is at the end of it, [I] will talk to them and say here's how to live with it, and you can get a payment plan, and contact numbers [for social services].¹⁵⁵

Although this judge privileged the law and the contractual terms, they also did not engage with canons of construction, the Statute of Frauds, the plain meaning rule, or the parol evidence rule.¹⁵⁶ Another said that their process of contract adjudication was: “You take the testimony, review the contract, abide by [the] terms of the contract.”¹⁵⁷

So while these judges may proclaim their fidelity to law by adhering to the terms of the contract, they also decline to interpret the contract in accordance with at least some principles of contract law itself.

2. Fairness

To think of all these judges as strict textualists would also be an oversimplification. Judges often said they prioritized the idea of “fairness” in their adjudication. What they meant by “fairness” varied by judge,¹⁵⁸ but it seemed to generally encompass the idea of doing the right thing or leveling the playing field between litigants.

153. See Telephone Interview with Local Court Judge M, *supra* note 98.

154. *Id.*

155. Telephone Interview with Local Court Judge P, *supra* note 98.

156. *Id.*

157. Telephone Interview with Local Court Judge V (June 12, 2025).

158. *Cf.* Weinstein-Tull, *Traffic Courts*, *supra* note 13, at 1211–14 (finding that “fairness” in traffic courts meant a variety of things, including allowing litigants to be fully heard, treating litigants consistently, being sensitive to litigant circumstances, and being responsive to good litigant behavior).

One judge, for example, described fairness as making sure that one party was not taken advantage of by the other party.¹⁵⁹ This judge said that in local court contract cases, the more resourced party (such as a corporate party) had an obligation not to take advantage of the less-resourced party (such as an individual).¹⁶⁰ Another judge reported that fairness entailed “treating people individually,”¹⁶¹ or “taking people’s circumstances into account,”¹⁶² and in particular, their wealth, or lack of it. A third judge felt that “fairness” was encapsulated within contract law itself. They noted that “the principle of fairness is embedded in the restatement and all these cases.”¹⁶³

Other judges believed fairness was “reasonableness”¹⁶⁴ or something that “the reasonable person” would think was fair.¹⁶⁵ Still other judges felt that fairness meant throwing out contracts when it was clear that one party did not understand it.¹⁶⁶ For one judge, this meant protecting litigants who had limited proficiency in English, wrapped up in the idea that “local courts deal with local problems.”¹⁶⁷

The small claims court judges that we spoke with seemed particularly willing to overlook strict readings in favor of fairness or equality. One small claims judge stated that in small claims cases, the law was rarely a pressing concern. Instead, they said, “what’s fair, what’s right determines the outcome.”¹⁶⁸ Another judge seemed to pursue a “split the difference” approach, wanting to ensure that no one left unhappy, or that everyone got something from the litigation.¹⁶⁹

3. Balancing “Law” and “Fairness”

Common among the judges we interviewed was a desire to balance what they understood the law to require and what they believed fairness required. This process seemed to be about tempering the contract terms with sensitivity to both the circumstances of the litigants and the litigation. For example, one of these judges described their process of adjudication as “balanc[ing] fairness with the law,”¹⁷⁰ and another judge described it as “the judicial discretion catchall that exists between the law

159. Telephone Interview with Local Court Judge D (Apr. 23, 2025).

160. *Id.*

161. Telephone Interview with Local Court Judge O, *supra* note 102.

162. Telephone Interview with Local Court Judge U, *supra* note 115.

163. Telephone Interview with Local Court Judge T (June 11, 2025).

164. Telephone Interview with Local Court Judge Y (June 20, 2025).

165. Telephone Interview with Local Court Judge F, *supra* note 131.

166. *See, e.g.*, Telephone Interview with Local Court Judge X (June 18, 2025).

167. *Id.*

168. Telephone Interview with Local Court Judge L, *supra* note 98.

169. Telephone Interview with Local Court Judge J, *supra* note 63.

170. Telephone Interview with Local Court Judge Q (June 4, 2025).

and general ideas of fairness.”¹⁷¹ Another judge said that they thought “about the law, and what’s fair,” and aimed to “meet somewhere within there, without abusing [their] discretion.”¹⁷²

One judge described how they approached contract adjudication in this way:

You follow the law, however there are situations in which it’s common sense and or fairness that weigh heavily. The most glaring examples are evictions cases. You have immediate eviction actions. By a strict interpretation of the reading of the law, yeah, they have violated the paragraph in the lease that talks about health and safety. But when you really look at what has happened, . . . this person might have had a guest over, and the guest was fighting with someone or smoking in a nonsmoking area. The first time I kind of fell for it, but after that, absolutely not, if the defendant could not have reasonably expected their guest to have done that, then no eviction. It is oftentimes maybe that’s not what the law says specifically, . . . [but if I] evict this person, they don’t have any money, where are they going to go? . . . *Whether it is legally correct or not, fairness can play a big role in decision-making for me.*¹⁷³

In this excerpt, the judge is describing how landlords will seek to evict tenants based on the conduct of the tenants’ guests—something that the judge came to understand as unfair to the tenants themselves. This particular judge attributed her approach and empathy to her background as a social worker.¹⁷⁴

Other judges tempered the language of the contract when they found that the party who might otherwise prevail by the contractual terms had been acting in bad faith:

If the facts denote poor behavior, or willfully deceitful behavior, or deceitful practices, or bad faith, all of those things make a major difference in decision-making. Sometimes the only authority is the contract, and the only recourse is to address terrible behavior. . . . The contract might require [something], but because of people’s behavior, [I] might award them nothing.¹⁷⁵

171. Telephone Interview with Local Court Judge C, *supra* note 101.

172. Telephone Interview with Local Court Judge I (May 8, 2025).

173. Telephone Interview with Local Court Judge C, *supra* note 101 (emphasis added).

174. *Id.*

175. Telephone Interview with Local Court Judge E, *supra* note 105.

This judge understood that they might be technically bound by the contract but felt comfortable using the discretion they believed they had in remedying the breach to address bad behavior and vindicate fairness.¹⁷⁶

Still other judges used their authority and sense of fairness to try to broker a deal with the party that “ought” to win, and thus provide some beneficial outcome to the losing party. One judge said that if they noticed that a contract was “unfair,” they had good success at convincing the “winning” party to settle and compromise with the opposing litigant.¹⁷⁷ Another said that in eviction cases, they will ask landlords to postpone eviction to give the tenants time to find new housing or deal with other logistics, threaten to find against them if they decline, and remind them that any appeal would take longer than the postponement they were asking for.¹⁷⁸

4. Commitment to Mediation

Several judges also reported that they, or their court systems, often encouraged mediation as a path to resolution.¹⁷⁹ When we asked judges broadly how they approach contract law cases, many said they began with attempts to mediate, either serving as an informal mediator themselves¹⁸⁰ or (if their court provides one) referring the case to an independent mediator.¹⁸¹

For example, one judge said that the default posture is that cases begin with an attempt at mediation: “We have mediators who have been through the class. If they can’t make a decision, it’ll go to the civil calendar and have a trial.”¹⁸² In particular, they continued, “[a]nything that is one-sided pro per [where one party represents themselves] will set for mediation. . . . Many [cases] resolve [through mediation].”¹⁸³ Another judge described a similar process, noting that “[t]ypically both sides have some legitimate argument. . . . If both are legitimate, [we] set

176. *Id.*

177. Telephone Interview with Local Court Judge S (June 5, 2025).

178. Telephone Interview with Local Court Judge W, *supra* note 72.

179. *See, e.g.*, Telephone Interview with Local Court Judge A, *supra* note 59; Telephone Interview with Local Court Judge K (May 15, 2025). This is despite the fact that it is well-recognized that the U.S. legal system is an adversarial one. *See* Edward A. Purcell, Jr., *Exploring the Origins of America’s ‘Adversarial’ Legal Culture*, 70 STAN. L. REV. ONLINE 37, 38 (2017) (book review), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/07/70-Stan.-L.-Rev.-Online-37-Purcell.pdf> [<https://perma.cc/82CX-AFJ9>].

180. *See, e.g.*, Telephone Interview with Local Court Judge A, *supra* note 59.

181. *See* Telephone Interview with Local Court Judge G (May 15, 2025); Telephone Interview with Local Court Judge K, *supra* note 179; Telephone Interview with Local Court Judge N, *supra* note 103.

182. Telephone Interview with Local Court Judge G, *supra* note 181.

183. Telephone Interview with Local Court Judge K, *supra* note 179.

[the] case for mediation, but only if both sides want to go.”¹⁸⁴ One judge said that they presided over an area with a large Liberian population and is sometimes presented with a request to continue the case while the parties attempt mediation with a Liberian elder, which they are happy to oblige: “In [my jurisdiction], over eighty-nine languages [are] spoken So the Liberian folks will come in and say we have a Liberian elder who is going to assist us, and if the Liberian elder doesn’t resolve it, they can come back.”¹⁸⁵

Where mediation fails, the next step that many judges mentioned was to engage with the content of the dispute: look at the contract and hear testimony from the two parties.¹⁸⁶ Once the judges we spoke with determine that there has been a breach, most then turn to the question of damages.¹⁸⁷

C. The Case of Unconscionability

To understand how judges’ engagement with contract law *doctrine* worked in tandem with their engagement with contract law *values*, we chose one doctrine—unconscionability—and asked the twenty judges who were familiar with the concept to tell us what it meant to them.

As described above, the doctrine of unconscionability seeks to prevent contractual relationships that are “so unfair or oppressive as to be unenforceable” and provides a backstop to ensure fairness.¹⁸⁸

The judges we spoke with provided a variety of different answers to our question: Some provided a definition of unconscionability, and others provided examples of an unconscionable contract, for example.¹⁸⁹ The responses, taken as a whole, describe an amalgamation of formal contract law concepts and broader values.

As a threshold matter, Arizona and Pennsylvania treat unconscionability similarly: If a court finds a clause to be unconscionable, it can refuse to enforce the contract, enforce all parts of the contract except the unconscionable clause, or limit application of the unconscionable clause to avoid an unconscionable result.¹⁹⁰

The judges we spoke with had differing standards for what might constitute an unconscionable contract. A small number of judges expressed reluctance to find contracts unconscionable at all and instead

184. Telephone Interview with Local Court Judge O, *supra* note 102.

185. *See* Telephone Interview with Local Court Judge S, *supra* note 177.

186. *See, e.g.*, Telephone Interview with Local Court Judge V, *supra* note 157.

187. *See* Telephone Interview with Local Court Judge Y, *supra* note 164.

188. *See supra* Section II.A.2.

189. For a full list of the responses, see Appendix 2.

190. ARIZ. REV. STAT. ANN. § 47-2302 (2025); 13 PA. CONS. STAT. § 2302 (2025).

privileged the freedom to contract. One judge, for example, said that “[t]he bottom line is, it’s a contract, and somebody signed it”—implying that doing so made the contract legitimate private law that ought to be enforced.¹⁹¹ Another judge echoed this idea, saying that “[a] deal is a deal. There’s a duty to read, and I’m not here to say that it’s a good economic deal or not.”¹⁹²

Other judges reported that unconscionability was possible to prove, but they understood it to impose a high standard. These judges said that unconscionable contracts are those that “shock[] the conscience,”¹⁹³ are “[e]gregious,”¹⁹⁴ are “so ridiculous that they are unconscionable,”¹⁹⁵ are “egregiously unreasonable in terms of what people would believe to be reasonable,”¹⁹⁶ are “ridiculous,”¹⁹⁷ and are “beyond the norm.”¹⁹⁸

Examples that judges provided for this kind of standard included lease agreements that contained “exorbitant amounts of late fees and notice fees that [the judge] had never seen in any eviction hearing,”¹⁹⁹ or interest rates for payday loans that approached 300 percent.²⁰⁰ On the 300 percent interest rate point, that judge elaborated, “[I] [h]ad a lady who was paying \$20k for a car that was worth \$3k, and the only reason she was still paying was because of the interest.”²⁰¹

Others had slightly looser visions of what unconscionability meant. Those judges believe that unconscionability was about “the reasonable person standard,”²⁰² or “something that’s quite unreasonable,”²⁰³ a contract “that has no common sense,”²⁰⁴ or a contract “that says no matter what happens,” the contracting party is “not liable.”²⁰⁵ An example one judge provided for this kind of lowered standard is if a “plaintiff comes in and has signed the contract, but what the defendant did was grossly negligent, so will say I understand it’s in the contract, but the person can’t sign away all their rights, and then will compensate the person for the gross negligence.”²⁰⁶

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191. See Telephone Interview with Local Court Judge M, *supra* note 98.
 192. Telephone Interview with Local Court Judge T, *supra* note 163.
 193. Telephone Interview with Local Court Judge A, *supra* note 59.
 194. Telephone Interview with Local Court Judge G, *supra* note 181.
 195. Telephone Interview with Local Court Judge I, *supra* note 172.
 196. Telephone Interview with Local Court Judge M, *supra* note 98.
 197. Telephone Interview with Local Court Judge U, *supra* note 115.
 198. Telephone Interview with Local Court Judge P, *supra* note 98.
 199. Telephone Interview with Local Court Judge C, *supra* note 101.
 200. Telephone Interview with Local Court Judge N, *supra* note 103.
 201. *Id.*
 202. Telephone Interview with Local Court Judge F, *supra* note 131.
 203. Telephone Interview with Local Court Judge L, *supra* note 98.
 204. Telephone Interview with Local Court Judge W, *supra* note 72.
 205. Telephone Interview with Local Court Judge P, *supra* note 98.
 206. *Id.*

Another example is a lease where the rent is \$1,000 per month, with a late fee of \$500 if rent isn't paid by the fifteenth day of the month.²⁰⁷ As this judge put it, “[i]t’s something that has no common sense. Can’t be something that, if you think about it, you’re just doing this to punish the person, not just to recover some type of fee.”²⁰⁸ Or situations where “a contract is drawn up and somewhere along the line there are changes made that the buyer is not aware of, in small print, and then they owe more money than they thought they did.”²⁰⁹ In one landscaping dispute, for example, a “woman was very specific with the types of shrubbery and desert plants” that she wanted, “to the tune of fifty thousand dollars. And when the landscaper did it, it wasn’t anywhere near what she wanted. The contractor had subcontracted to another, and she didn’t know it would be subcontracted.”²¹⁰ That unknowing subcontracting was unconscionable, according to the judge.²¹¹

Others understood unconscionability specifically to describe situations where power imbalances exist between the contracting parties. These judges said that unconscionability came into play with “contracts that are so one-sided” where “[p]eople feel forced to be into them,”²¹² where there is a “dynamic of power” between the litigants,²¹³ where the contract is “so one-sided,”²¹⁴ or where “the lack of equality of bargaining power result[s] in a term of adhesion that no person would have consented to had the bargaining power been even.”²¹⁵

These are varied approaches, some of which fit under the legal definition of unconscionability more than others. But interestingly, you can see how the way that these judges articulate the nature of unconscionability encompasses an amalgam of doctrinal language and more fairness-based language that reflects how adjudication happens in these courts. Some judges adhere closer to the language of the law (as they understand it), some adopt a more flexible standard, and most engage in some form of equitable or doctrinal balancing.

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207. Telephone Interview with Local Court Judge W, *supra* note 72.
208. *Id.*
209. Telephone Interview with Local Court Judge D, *supra* note 159.
210. *Id.*
211. *Id.*
212. Telephone Interview with Local Court Judge P, *supra* note 98.
213. Telephone Interview with Local Court Judge R, *supra* note 71.
214. Telephone Interview with Local Court Judge P, *supra* note 98.
215. Telephone Interview with Local Court Judge Y, *supra* note 164.

III. IMPLICATIONS

It is often the case that the law on the ground looks quite different from the law on the books.²¹⁶ Looking to the bottom provides new facts and perspectives that provide insight into older theoretical conversations.²¹⁷ Local institutions “explode our traditional categories”²¹⁸ and can provide insights that help us to shape what we think we know about existing disciplines. In other words, “[t]he status of [these] local courts as the judicial bodies closest to our lives demands that they not merely be incorporated into our most conceptual conversations, but that they drive them.”²¹⁹

In this Part, we bring the novel facts we gathered and previously described to bear on existing civil law theories. In Section III.A, we suggest that although we might worry that informal adjudication defeats some of the values contract law doctrines are meant to vindicate, local judges do informally incorporate some of those values into their decision-making. In Section III.B, we address the consequences of our findings for civil justice and argue that our findings demonstrate the surprising potential that local courts have for incorporating civil justice into their decision-making. In Section III.C, we discuss how our findings counsel in favor of changing both judicial education programs on contracts and law student education.

A. *Contract Theory and Design*

Values-driven adjudication. It is helpful to think of contract law as encompassing both contract law *doctrines* and contract law *values*. Doctrines include laws, rules, and principles such as the plain meaning rule, the parol evidence rule, and canons of construction.²²⁰ Values include, for example, efficiency, equity, predictability—and many others.²²¹ Vast literatures discuss why these doctrines exist, what values they supposedly vindicate, and whether those values make sense.

These discussions are outside of the scope of this Article, but for our purposes, we note simply that contract doctrines can reflect contract

216. See generally Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12 (1910) (providing examples of the divergence between law in the books and law in action).

217. See Matsuda, *supra* note 23, at 326 (“The method of looking to the bottom can lead to concepts of law radically different from those generated at the top.”).

218. Weinstein-Tull, *Traffic Courts*, *supra* note 13, at 1221.

219. Justin Weinstein-Tull, Power and Promise in Local Courts, *supra* note 65, at 8.

220. See, e.g., Kraus & Scott, *supra* note 130, at 1046, 1086.

221. Meredith R. Miller, *Party Sophistication and Value Pluralism in Contract*, 29 TOURO L. REV. 659, 660 (2013).

values.²²² Consider, for instance, the parol evidence rule. Some scholars argue that a strict parol evidence rule helps to further the value of efficiency by motivating the contracting parties to put what they want to say into the contract, rather than sending courts on expensive fishing expeditions for meaning supported by extrinsic evidence.²²³ Others might say that the parol evidence rule ought to be softer, thus allowing courts greater opportunity to see all the evidence, thereby increasing accuracy.²²⁴ A doctrine like parol evidence can be used to further the value of efficiency or accuracy—and it can even be calibrated to balance the two.

But what happens when judges, like many of the ones we interviewed, are unfamiliar with doctrines like the parol evidence rule? In other words, what happens to contract law when it is no longer guided by contract doctrine? One response is to say: This is a problem. When courts are not consistently applying well-worn contract theories, not only are people not being protected from flawed contracts and flawed contract interpretation, but also the values inherent in these doctrines—like efficiency and autonomy—are not being vindicated in the local civil space. Other scholars have expressed this concern, finding that some of the laws and legal norms familiar to ivory tower dwellers are foreign to those who administer law on the ground.²²⁵ In this Section, however, we provide a counterpoint to this concern.

Elevating values over doctrine. Although judges we interviewed had trouble articulating the formal boundaries of the unconscionability doctrine, they almost all had a lay understanding of the word and intuition about the kinds of contracts that might be unconscionable. As it turns out, the very instincts that they have—that very unfair contracts ought not to be enforceable—are the ones that motivate the formalization of a concept like unconscionability in the first place. Because these underlying values already seem to be in the background of judicial decision-making, even in the absence of a strong judicial understanding of the formal doctrine, we suggest that education on contract law values may be more fruitful and effective.

The judges who resisted unconscionability did so on other, familiar, values-driven grounds: autonomy, or the freedom to contract. One judge, for example, stated that “[t]he bottom line is, it’s a contract, and

222. Cf. Melvin Aron Eisenberg, *The Principles of Consideration*, 67 CORNELL L. REV. 640, 641 (1982) (discussing how contract law doctrines—like unconscionability, for example—can mediate and effectuate contract law values or principles).

223. See Posner, *Parol Evidence Rule*, *supra* note 128, at 559.

224. *Id.*

225. Carpenter, Mark, Shanahan & Snyder, *The Field of State Civil Courts*, *supra* note 12, at 1165; Greene & Renberg, *supra* note 10, at 1291–95.

somebody signed it.”²²⁶ Another said that “[a] deal is a deal. There’s a duty to read, and I’m not here to say that it’s a good economic deal or not.”²²⁷

The values-driven adjudication that lower courts embrace appears, at least observationally, to be paying dividends on vindicating yet another classic contract law value: efficiency. Decisions by limited jurisdiction courts are appealable. But while federal district court decisions are appealed at a national rate of approximately 11 percent,²²⁸ the data suggest that decisions from limited jurisdiction courts are in some contexts appealed at 0.1%.²²⁹

One possible explanation for this low rate of appeal is that litigants either do not know that they have the right to appeal or that they cannot afford to appeal. We suspect this partly explains the low appeals rate, although many of the judges we spoke with talked about how important it was to them to make sure that litigants understood they had a right to appeal.²³⁰

Another possible explanation, however, is that many litigants find no reason to appeal these decisions: The outcomes are good enough.²³¹ And we did hear from judges that they at one time prioritized outcomes that “split the baby,” either via pre-trial mediation or post-trial judgment.²³² One might argue that the amounts in dispute at the lower courts are less, so litigants are less likely to see a point in appealing any decision. But that still means that lower court judges are finding solutions that meet the needs of the litigants before them.

In this way, we tell a surprising story about how contract cases are adjudicated at lower courts: While judges lack understanding of *doctrine*, they may still be vindicating the backbone *values* that motivated the formalization of those doctrines in the first place. Between approaches that prioritize fairness, autonomy, and efficiency, local court judges vindicate a surprising pluralism of contract law values in their contract jurisprudence.

226. Telephone Interview with Local Court Judge M, *supra* note 98.

227. Telephone Interview with Local Court Judge T, *supra* note 163.

228. See Theodore Eisenberg, *Appeal Rates and Outcomes in Tried and Nontried Cases: Further Exploration of Anti-Plaintiff Appellate Outcomes*, 1 J. EMPIRICAL LEGAL STUD. 659, 659–60 (2004) (considering cases from 1988 to 2000).

229. See Justin Weinstein-Tull, *Power and Promise in Local Courts*, *supra* note 65, at 15.

230. See, e.g., Telephone Interview with Local Court Judge T, *supra* note 163.

231. In other work, one of us has discussed the possibility that even sophisticated litigants sometimes choose to live with good-enough results in one case because they expect to be in situations of repeat play with the same counterparties. See Cathy Hwang & Benjamin P. Edwards, *The Value of Uncertainty*, 110 NW. U.L. REV. 283, 291–92 (2015).

232. See Telephone Interview with Local Court Judge Y, *supra* note 164.

This pluralism does not mean that all is well, or that local court litigants will not be severely harmed by local contract jurisprudence. Repeatedly choosing efficiency over fairness, for example, could result in quickly resolved but deeply unjust outcomes. And we address this possibility in the next section on how the local law of contract affects civil justice. We only observe that, according to the interviews we conducted, the values inherent in the local law of contract are not foreign to the theory of contract law—in fact, just the opposite.

Community justice. Limited jurisdiction courts are community courts—centers for community dispute resolution—rather than places where law is strictly interpreted and judgments meted out. In fact, the legal work these courts do is dramatically less important than the results they come to. This is because local courts are *aprecedential*: They do not produce written opinions—and, indeed, their legal reasoning isn’t even always audio recorded.²³³

These facts mean that local judges have a great deal of flexibility in adjudication. Consider an example: Suppose a judge in a limited jurisdiction court decides that a 70 percent interest rate does *not* make a contract unconscionable. And suppose they encounter another contract with a 60 percent interest rate the next week. They are free now to decide that the new contract *is* unconscionable. And those two decisions may not be unprincipled; instead, they may rely on a balancing between various contract law values that happened to come out in two different directions. Values-driven adjudication allows local court judges to incorporate community values, as well as differences in circumstances between two different cases, into their decision-making.

Contracts and regulation. Many of the judges we spoke to discussed predatory contracts. Indeed, we know that middle- and lower-income people are the ones who appear in these limited jurisdiction courtrooms,²³⁴ and these individuals are also the ones targeted most by predatory contracts.²³⁵

233. For more on the lack of precedent in certain realms of private law, see generally Danielle D’Onfro, *Private Law Without Precedent*, 78 VAND. L. REV. 1385 (2025).

234. See Greene & Renberg, *supra* note 10, at 1291–92 (“[T]he phenomenon of judges without J.D.s is a symptom of a much larger problem in our justice system: the devaluation of the legal problems of the poor, who are disproportionately Black and Latinx.”).

235. *Predatory Lending*, NAT’L ASS’N OF CONSUMER ADVOCES., <https://www.consumeradvocates.org/for-consumers/predatory-lending/> [https://perma.cc/679G-88J2] (last visited Jan. 29, 2026); see generally Abbye Atkinson, *Borrowing Equality*, 120 COLUM. L. REV. 1403 (2020) (discussing marginalized groups’ unequal access to the loan market).

Doctrines like unconscionability are meant to be a final backstop against predatory contracting.²³⁶ But given our interview subjects' differing responses about unconscionability, we suggest that, as a matter of institutional choice, if we prefer consistency around predatory contracts, legislators and regulators are best suited to defining what is and what is not a predatory contract.²³⁷ The local judges we interviewed were more likely to consult statutes than case law, and we already see some legislative standard-setting in consumer law, landlord/tenant law, and other areas. Clear rules about what is or what is not allowed could help to guide judges, such as these lower court judges, into making the legally correct decisions.

Contract design. For contracting parties engaged in the making of private law—outside of areas typically legislated or regulated—there is a similar lesson. There is a robust literature on the use of vague or specific terms in contracting, with sophisticated parties in particular sometimes opting to use vague terms if they believe their contracts are unlikely to be litigated.²³⁸ But these conceptions of litigation assume that judges are well equipped to adjudicate contract disputes—and that they will consider such commonly understood doctrines like the plain meaning rule and parol evidence.

When judges are less attuned to those legal norms—as we have documented here—we argue that the cost of litigation is higher, or perhaps that judicial error is higher and less predictable. Instead of counting on judges to adjudicate from a shared legal vocabulary that includes common doctrines, we suggest that contracting parties would do well to write these concepts directly into their contracts. Indeed, many of the judges we interviewed, while taking on community values and broad ideas like fairness, also described themselves as textualists.²³⁹ Thus, if a contracting party wants the contract to be interpreted according to standard contract law doctrines, they should write those doctrines into the contract itself, where judges are most likely to look.²⁴⁰ Of course, this suggestion comes with practical obstacles; the parties that end up

236. See generally *Williams v. Walker-Thomas Furniture*, 350 F.2d 445 (D.C. Cir. 1965) (discussing unconscionability as a reason not to enforce a contract).

237. Cathy Hwang & Emily Winston, *The Limits of Corporate Governance*, 47 SEATTLE U. L. REV. 677 (2024) (arguing that in some circumstances, regulators are best-suited to effect policy changes).

238. See generally Choi & Triantis, *supra* note 40 (arguing that material adverse change clauses in acquisition agreements are vague in part because they are often not litigated); Scott & Triantis, *supra* note 40 (arguing that parties sometimes use vague contract terms in anticipation of low likelihoods of future litigation).

239. See *supra* Section II.B.1.

240. This suggestion is likely only relevant to more sophisticated drafters who employ counsel. See Teri J. Dobbins, *The Hidden Costs of Contracting: Barriers to Justice in the Law of Contracts*, 7 J.L. SOC'Y 116, 117 (2005) (“[L]ower-income persons are excluded from the creation and development of contract law.”).

litigating in these courts may not, as a practical matter, be able to write contracts with that kind of precision.

B. Civil Justice

The local law of contract is, or should be, an important part of the project of civil justice. Cases involving debt collection, housing, consumer purchases, and neighbor disputes can deeply affect people's lives, and especially poor people's lives.²⁴¹

Scholars of civil law and justice are skeptical of local courts as an effective venue for addressing law's unequal impacts—and for good reason. Pamela Bookman, for example, has written about how in the vast majority of debt contract collection cases, which occur in local court, debtors lose by default because they don't show up.²⁴² As a result, courts rarely have the chance to consider the substance of the contract claims themselves, which are often “meritless, frivolous, or fraudulent, involving debts that were never incurred or were paid, discharged in bankruptcy, expired, or inflated.”²⁴³ Carpenter, Shanahan, Steinberg, and Mark have written about how judges in lawyerless courts regularly fail to help pro se litigants, instead maintaining complexity and opacity in their courtrooms.²⁴⁴ Diego Zambrano has noted that “state courts are mired in relative decay.”²⁴⁵ Daniel Wilf-Townsend has noted that state civil “courts are top-heavy, flooded by the claims of megafilers who bring cases in the thousands or tens of thousands within single jurisdictions every year, generating economies of scale to permit the profitable submission of masses of small-dollar cases.”²⁴⁶

This skepticism is understandable. Inequality abounds in these courts. Despite civil suits being, in theory, “voluntary disputes among private parties, . . . many racially and economically marginalized

241. See generally Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473 (2015) (studying the impact of court procedures on low-income litigants and suggesting a new framework for accessing justice); Tonya L. Brito, *Producing Justice in Poor People's Courts: Four Models of State Legal Actors*, 24 LEWIS & CLARK L. REV. 145 (2020) (examining how legal actors affect outcomes for low-income fathers in child support cases).

242. Pamela K. Bookman, *Default Procedures*, 173 U. PA. L. REV. 1419, 1421–24 (2025).

243. *Id.* at 1425–26 (footnotes omitted).

244. See Carpenter, Shanahan, Steinberg & Mark, *Judges in Lawyerless Courts*, *supra* note 62, at 539.

245. Diego A. Zambrano, *Federal Expansion and the Decay of State Courts*, 86 U. CHI. L. REV. 2101, 2103 (2019).

246. Wilf-Townsend, *Assembly-Line Plaintiffs*, *supra* note 92, at 1708; see also Marc Galanter, *Why the “Haves” Come out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 95, 97–101 (1974) (describing how state court litigation favors “repeat players” over “one-shotters”).

litigants, particularly Black individuals, enter the civil legal system involuntarily, often in a defensive or vulnerable posture.”²⁴⁷ As Tonya Brito, Kathryn Sabbeth, Jessica Steinberg, and Lauren Sudeall have argued, “[t]he civil court system is characterized by racial disparities in access, treatment, and outcomes, all of which deserve increased attention.”²⁴⁸ Llezlie Green has described small claims courts as “lawless” courts that “revert to simplified breach of contract analyses that ultimately disfavor workers.”²⁴⁹ Many have written about how eviction cases systematically disadvantage poor tenants.²⁵⁰

Our data provide a different perspective—or perhaps a reason for hope. Many of the judges we interviewed describe interpreting contracts in ways that *help* disadvantaged litigants. Some said that they take litigants’ circumstances into account when ruling on contract matters, including litigants’ lack of resources.²⁵¹ Another stated that companies had special obligations to ensure they did not take advantage of individuals when providing contracts to sign.²⁵² We spoke with judges who described looking beyond the letter of the contract to correct what they understood as injustice, like bad behavior on the part of one litigant²⁵³ or the relative circumstances of the two litigants.²⁵⁴

Our findings on unconscionability provide an illustration. Although some of the interviewed judges provided definitions of unconscionability that track the formal legal definitions of the term, many others treated unconscionability as a doctrine that simply prevents *unreasonable*

247. Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1246 (2022).

248. *Id.* at 1245. Sabbeth and Steinberg argue that the state civil court system may have gender-discriminatory effects as well. Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1130, 1135 (2023) (noting that “[t]he vast majority of criminal defendants with a constitutional right to counsel are men,” whereas women “appear much more often as defendants in civil proceedings, where they enjoy no such right”).

249. Llezlie L. Green, *Wage Theft in Lawless Courts*, 107 CALIF. L. REV. 1303, 1307 (2019).

250. See Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97, 121 (2019) (“[C]ourts calculate damages using methods that fail to measure accurately the injuries that poor people suffer. Specifically, the law of torts and contracts incorporates biases of class, race, and gender that depress poor tenants’ awards.”). In the small claims context, scholars have written about how their impact on those who litigate in those courts is unclear. See Arthur Best et al., *Peace, Wealth, Happiness, and Small Claim Courts: A Case Study*, 21 FORDHAM URB. L.J. 343, 344 (1994) (“They do some good work and some bad work . . . no one knows how helpful their existence is to the entire group of people whose welfare they are intended to improve; and it is hard to determine whether the individuals they actually do serve are better off for having been able to use their processes.”).

251. See, e.g., Telephone Interview with Local Court Judge U, *supra* note 115.

252. Telephone Interview with Local Court Judge D, *supra* note 159.

253. Telephone Interview with Local Court Judge E, *supra* note 105.

254. Telephone Interview with Local Court Judge S, *supra* note 177.

contract terms²⁵⁵ or contracts that lack common sense.²⁵⁶ To these judges, unconscionability seems to act as a kind of tool that allows them to think in equitable terms, avoiding results that feel unjust or wrong to them, even if those unjust results would otherwise appear legally sound or unproblematic.²⁵⁷

We argue that resolving contract disputes in ways that ameliorate inequality between the litigants is a legitimate practice for local court judges. In particular, judges who choose to prioritize the value of equal opportunity or fairness are behaving jurisprudentially no differently from judges who choose to prioritize fidelity to law. Neither is likely to possess a complete understanding of contract law doctrines; both are choosing values that shade their reading of the contracts at issue.

Moreover, unlike federal or even higher-level state judges, local court judges primarily work close to the ground, adjudicating disputes between neighbors and community members. Several of the judges we spoke with cited their ties to the community as important to their identity as judges,²⁵⁸ echoing existing scholarship on the links that local judges feel to their communities.²⁵⁹ This, we feel, is a good thing. As a vast scholarship on relational contracting documents, relationships within communities can be thick and multifaceted, with neighbors seeing each other not only over the fence, but also at schools, religious institutions, and around the neighborhood more generally.²⁶⁰ Informal dispute resolution, whether done privately through informal community mediators or even through informal sanctions like reputational shunning, can take into account the fact that the parties to the dispute will continue to interact with each other across multiple local dimensions. Having judges who understand their roles within the context of community norms and multifaceted relationships may help maintain community relationships.

One final caveat: Our data came from interviews and not observations of judges in actual practice. It is possible that, when faced with actual contracts and litigants, the judges who claim to promote

255. See Telephone Interview with Local Court Judge F, *supra* note 131 (“Bring it back to the reasonable person standard.”); Telephone Interview with Local Court Judge L, *supra* note 98 (“To me, it’s something that’s quite unreasonable that they’re trying to put on a person.”).

256. See Telephone Interview with Local Court Judge W, *supra* note 72.

257. Cf. Justin Weinstein-Tull, *Finding Equality in Local Government*, 4 AM. J. L. & EQUAL. 525, 541 (2024) (noting that equality is a “shared endeavor,” achieved not solely by federal courts but in conversation with “community members, advocates, and local government”).

258. See Telephone Interview with Local Court Judge R, *supra* note 71.

259. See Ethan J. Leib, *Local Judges and Local Government*, 18 N.Y.U. J. LEGIS. & PUB. POL’Y 707, 725–26 (2015).

260. See *infra* Section I.A.

fairness and an even playing field actually rule in favor of the better-resourced parties. Further research on actual trial transcripts is necessary to know how accurately judges' stated approaches track with their practice. Nevertheless, in the context of courts that do not create written opinions, our interview data do provide insights into the decision-making process of the judges we spoke with, at least as to their intentions and philosophies.

C. Judge Education

As we discussed earlier, local court judges receive some form of training before taking the bench, which varies by state.²⁶¹ And although these training courses are closely guarded by the state judicial agencies that administer them, the syllabi we were able to track down describe courses that combine substantive law on the topics that these judges are likely to be presented with and management strategies for running a courthouse.

The sessions on substantive law cover substantive legal doctrines. In Arizona, as we have mentioned, the course on contract law covers each of the six contract law concepts that we asked judges about in our interviews.²⁶² In Pennsylvania, prospective local court judges who do not possess law degrees must take a four-week course that certifies them as eligible to run for judge²⁶³—suggesting that this training course is in some sense a substitute for legal training, a crash course in the legal doctrines that nonlawyers would have no reason to know.

Despite the substantive nature of these trainings, our interview data show that local judges have varied understandings of the legal doctrines they had been taught. As previously described, the interview respondents reported that, on average, they think about 3.4 of the six concepts we presented to them. On average, our judge respondents are not engaging with three of the six foundational contract law doctrines.

The question is what to do about it. One possible approach is to improve judge education to help core concepts percolate more effectively into lower-court adjudication. We are skeptical of this approach. The judges we interviewed already receive training prior to beginning their work—sometimes extensive. And it is challenging—not to mention a bit unfair—to ask judges, who are often nonlawyers, to grasp the nuanced doctrines that law students and lawyers take much longer to understand. In fact, we may even prefer local judges to have an imperfect grasp of legal doctrine if we believe that their role is to dispense lay justice in

261. *See supra* Section I.B.1.

262. *See supra* Section I.B.1.

263. *See supra* notes 81–82 and accompanying text.

ways that enforce community norms, rather than strictly enforcing the law as it exists on the books.

Instead of more judicial education on doctrines, we offer a different approach. We ought to spend more time imbuing judges with things that they can grasp, perhaps intuitively: that is, the background values that motivate contract doctrine in the first place. For example, the Statute of Frauds is meant to prevent people from being defrauded by those they are not in a contractual relationship with.²⁶⁴ The parol evidence rule encourages efficiency and certainty in contracting.²⁶⁵ Unconscionability is meant to prevent deep unfairness and abuses of power in contracting.²⁶⁶

Each of these concepts serves important values in contract resolution. And a judge could reasonably decide that those values are outweighed by some other value, like general fairness, common sense, or local practice. But they are values that judges should at least consider in determining which method of contract interpretation to privilege. That decision—to look past contract language, doctrine, or value in favor of broader values or other priorities—should be an informed one.

And it is not only the values of contract doctrines that local judges should be informed about. It is the other side of the equation as well: the panoply of values and roles local judges have license to adopt. Each judge that we spoke with had their own individual approach to their role, but they were not always aware of the variety of approaches that existed. The local judges who believed in “the law” should be taught that it is also perfectly appropriate for a local judge to prioritize fairness, or community values, over contractual text. Similarly, judges who prioritize “fairness,” perhaps at the expense of the economic and efficiency values inherent in contract law doctrines, should be aware of those values in order to make an educated decision.

Local judges as a group take a diversity of approaches, and we believe it is neither possible nor desirable to standardize their administration of justice. But we can construct guardrails by ensuring they have as full a set of contract law tools available to them as possible.

CONCLUSION

Local courts are where most people’s contract disputes are resolved, but contract law largely misses these cases. In this Article, we draw the curtain back on local court contract disputes.

Most of the disputes we know about occur in state and federal court, where hearings are more formalized, opinions are written and published, and there is, in general, much more transparency. Drawing on original

264. *See supra* notes 116–18 and accompanying text.

265. *See supra* notes 126–30 and accompanying text.

266. *See supra* notes 121–25 and accompanying text.

interviews with local court judges, we show that local court adjudication of contract disputes looks quite different from what we generally expect contract adjudication to look like. Local judges are often not aware of basic contract law doctrines and rely instead on a set of values—like supposed fidelity to law, fairness, common sense—to resolve these disputes. But despite this oddity—of judges not knowing much contract *law*—we find that their decision-making can still vindicate meaningful and reasonable values and community norms.

But no single study can do everything, and there is more to learn. Although this Article provides a look into how contemporary local judges think and reason about contract law, further research in this area could involve gathering transcripts of local court contract adjudication and forming them into legal opinions. Another fruitful approach might be to interview repeat players in the local court space who litigate contracts, such as counsel for landlords and tenants, legal services counsel, counsel for debt collection corporations, and the like. They may provide new insight on litigating contracts in local courts, drafting the underlying contracts for interpretation in local courts, and how different judges' approaches affect their litigation and drafting strategies.

Looking to the bottom for insights into legal practice and theory—as we have done here—brings us closer to human experience. Searching out human experience can also serve as a new methodology or direction for legal research.²⁶⁷ Humans have too often been omitted from legal analysis, and that omission carries danger. As John Noonan recognized, “the neglect of the person by legal casebooks, legal histories, and treatises of jurisprudence . . . ha[s] led to the worst sins for which American lawyers were accountable.”²⁶⁸ The alternative—incorporating human experience into traditional legal analysis—provides a more pluralist, diverse understanding of existing legal theory.

267. See Justin Weinstein-Tull, *The Experience of Structure*, 55 ARIZ. ST. L.J. 1513, 1550–54 (2024).

268. JOHN T. NOONAN, JR., *PERSONS AND MASKS OF THE LAW: CARDOZO, HOLMES, JEFFERSON, AND WYTHE AS MAKERS OF THE MASKS*, at vii (1976).

APPENDIX 1: METHODOLOGY

We used both quantitative and qualitative methods in this Article, and we discuss those details here.

Quantitative Data

The best public source of data for state and local courts comes from the NCSC. The NCSC relies on states to self-report certain judicial data, resulting in a database that is incomplete. Nevertheless, it does provide data that “captures the work of these courts in states where the vast majority of the population lives.”²⁶⁹ However, the data that it reports is raw, consisting of case numbers rather than percentage comparisons. We created the percentages that we provide in this Article by using NCSC’s raw data.

Because the data provided by NCSC does not include numbers from every state, our data is a necessarily incomplete picture of contract law disputes across the United States. With the help of research assistants, we attempted to gather similar data from non-reporting states. In doing so, we reviewed state data dashboards and contacted many states’ court administrators. In the end—because of the paucity of standardized state-level case data—we were unable to add meaningfully to the NCSC numbers.

That said, we believe our data to be the most complete data available on contracts cases in state courts. And it shows that the vast majority of these cases filed in the United States are being filed and heard in limited jurisdiction courts.

Qualitative Data

Because of gaps in the quantitative data and lack of transparency in limited jurisdiction courts in general, qualitative data is an important way to understand how these cases are handled.

We interviewed judges from two states—Arizona and Pennsylvania. Both states administer limited jurisdiction courts: Justice Courts in Arizona²⁷⁰ and Magisterial District Courts in Pennsylvania.²⁷¹ Neither state requires their local court judges to possess law degrees, though many do.

To identify subjects to interview, we started by contacting judges in our professional networks and then used the snowball sampling method

269. Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *The Institutional Mismatch of State Civil Courts*, 122 COLUM. L. REV. 1471, 1484 (2022).

270. *Today’s Court System Has Three Levels*, ARIZ. SUP. CT., <https://www.azcourts.gov/guidetoazcourts/Todays-Court-System-Has-Three-Levels> [<https://perma.cc/DWM2-7RGB>] (last visited Jan. 29, 2026).

271. *Learn*, *supra* note 53.

to find additional subjects.²⁷² The interviews were unpaid and ranged from twenty to ninety minutes. Several of the Arizona judges we interviewed were Small Claims Hearing Officers who resolve exclusively small claims cases, including contracts cases. This project was approved by the Institutional Review Board at Arizona State University.

We asked the judges a combination of narrowly tailored and open-ended questions. The narrowly tailored questions included questions about the kinds of contract law cases they hear and the doctrines they employ in resolving them. The open-ended questions included questions about their process for resolving contracts cases and the underlying values they employed in doing so.

Below, we note some biographical information about the judges, while also maintaining their anonymity via a reference term.

Judge Identifier	Received Juris Doctor?	State	Date Interviewed
A	Y	Arizona	April 15, 2025
B	N	Arizona	April 18, 2025
C	N	Arizona	April 23, 2025
D	N	Arizona	April 23, 2025
E	N	Arizona	April 24, 2025
F	N	Arizona	April 25, 2025
G	N	Arizona	April 28, 2025
H	N	Arizona	April 29, 2025
I	N	Arizona	May 8, 2025
J	N	Arizona	May 14, 2025
K	N	Arizona	May 15, 2025
L	N	Arizona	May 15, 2025
M	N	Arizona	May 16, 2025
N	N	Arizona	May 20, 2025
O	Y	Arizona	May 22, 2025
P	N	Arizona	May 29, 2025
Q	Y	Pennsylvania	June 4, 2025

272. See ROBERT S. WEISS, *LEARNING FROM STRANGERS: THE ART AND METHOD OF QUALITATIVE INTERVIEW STUDIES* 25 (1994) (describing the contours of the snowball sampling method); Lisa Webley, *Qualitative Approaches to Empirical Legal Research*, in *THE OXFORD HANDBOOK OF EMPIRICAL LEGAL RESEARCH*, *supra* note 14, at 926, 934 (same).

Judge Identifier	Received Juris Doctor?	State	Date Interviewed
R	Y	Pennsylvania	June 5, 2025
S	Y	Pennsylvania	June 5, 2025
T	Y	Pennsylvania	June 11, 2025
U	N	Pennsylvania	June 12, 2025
V	N	Pennsylvania	June 12, 2025
W	N	Pennsylvania	June 13, 2025

APPENDIX 2: UNCONSCIONABILITY

We asked local court judges about six concepts, including the doctrine of unconscionability. For unconscionability specifically, we asked those judges who were familiar with the concept to tell us what it meant to them. Some judges provided definitions; some provided examples. We compile those answers here for illustrative purposes.

Definitions:

- “[S]hocks the conscience”
- “Bring it back to the reasonable person standard.”
- “Egregious.”
- “That the terms of the contract are just so ridiculous that they are unconscionable.”
- “To me, it’s something that’s quite unreasonable that they’re trying to put on a person.”
- “It’s a difficult issue. I’ve not seen a written contract where that comes into play. . . . The bottom line is, it’s a contract, and somebody signed it. To me it means something that is just egregiously unreasonable in terms of what people would believe to be reasonable.”
- “[T]here are contracts that are so one-sided. People feel forced to be into them. Beyond the norm. . . . [also] where there’s a contract that says no matter what happens, I am not liable.” Example: “[T]he plaintiff comes in and has signed the contract, but what the defendant did was grossly negligent, so will say I understand it’s in the contract, but the person can’t sign away all their rights, and then will compensate the person for the gross negligence.”
- “[T]o the point that it’s not enforceable.”
- “[T]hat concept comes up less often because we generally don’t see a whole lot of cases with that dynamic of power.”
- “[T]he contract is phrased in such a way that it cannot be enforced.”
- When the contract is “really one-sided.” Otherwise, “[a] deal is a deal. There’s a duty to read, and I’m not here to say that it’s a good economic deal or not.”
- “[W]hen the contract is ridiculous.”
- A contract “that has no common sense.” Example: A lease where the “[r]ent is \$1,000 per month, and if it’s not paid by the fifteenth, it’s another \$500 [c]an’t be something that, if you think about it, you’re just doing this to punish the person, not just to recover some type of fee.”

- “[T]he lack of equality of bargaining power resulting in a term of adhesion that no person would have consented to had the bargaining power been even.”

Examples:

- The terms of a lease were unconscionable because of exorbitant late fees and notice fees that the judge had never seen in any eviction hearing.
- When “a contract is drawn up and somewhere along the line there are changes made that the buyer is not aware of, in small print, and then they owe more money than they thought they did.” In a landscaping dispute, a “woman was very specific with the types of shrubbery and desert plants” that she wanted, “to the tune of fifty thousand dollars. And when the landscaper did it, it wasn’t anywhere near what she wanted. The contractor had subcontracted to another, and she didn’t know it would be subcontracted.”
- “The common application for me is the payday loan industry. Yes, the argument can be made that it’s legal to make a stupid decision for a 400 percent interest rate on a contract, but that would be a circumstance where I wouldn’t grant 150 percent post-judgment interest, [that] would be unconscionable.”
- Charging more than the usury rate for payday loans.
- “Had a lady who was paying \$20k for a car that was worth \$3k, and the only reason she was still paying was because of the interest.”
- “That comes up in terms of liquidation clauses, excessive late fees.”

* * *