

**BRAZIL AND GERMANY: A BEHAVIORAL
LAW AND ECONOMICS APPROACH TO
STANDARD FORM CONTRACTS**

BRASIL E ALEMANHA: UMA ABORDAGEM
COMPORTAMENTAL DOS CONTRATOS DE
ADESÃO

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Abstract: Consumer relations are strongly influenced by the market economy, which can be seen as a reflection of the globalization faced by contemporary society. Standard form contracts appear as a demand of this economic and globalized world, since they can provide greater uniformity, rapidity, efficiency and dynamism to contractual relations. Behavioral economics assumes that consumers suffer from cognitive limitations in processing information. Considering this and relying on a theoretical framework, the biases that influence the choices of a consumer who concludes a standard form

contract will be studied from the point of view of Behavioral law and economics.

Keywords: Behavioral Law and Economics. Standard form contracts. Biases.

Resumo: As relações de consumo são fortemente influenciadas pela economia de mercado, o que pode ser visto como um reflexo da globalização enfrentada pela sociedade contemporânea. Contratos de adesão aparecem como uma demanda deste mundo econômico e globalizado, pois eles podem fornecer uma maior uniformidade, rapidez, eficiência e dinamismo às relações contratuais. A economia comportamental assume que os consumidores sofrem de limitações cognitivas no processamento de informações. Diante do exposto e com embasamento teórico, os vieses cognitivos que influenciam as escolhas do consumidor que celebra um contrato de adesão serão estudados sob o ponto de vista do direito e economia comportamental.

Palavras-chaves: Direito e Economia comportamental. Contratos de adesão. Vieses cognitivos.

INTRODUCTION

Standard form contracts are a frequent phenomenon in commercial relations. Currently, consumer relations are strongly influenced by market economy, which is nothing more than a reflection of globalization faced by contemporary society. Consumption depends on the progress of the market economy, and contracts are instruments of wealth circulation. Thus, the economy has an intrinsic relation to consumer contracts.

As a requirement of this economic and globalized world, standard form contracts appear as a way of providing greater uniformity, rapidity, efficiency and dynamism to contractual relations, especially consumption relations. The contemporary world could not support that all consumer contracts were still parity, ie that there would always be a prior discussion between the consumer and the supplier.

The standard form contracts are characterized by terms which have been unilaterally established by the provider of products or services without giving the consumer the possibility to discuss or modify its content. An example would be contracts concluded with electric and telephone companies. Due to the fact that they contain standardized and previously stipulated terms; they constitute themselves as a mechanism of cost reduction that also enable the celerity of the transactions.

Even though standard form contracts arise as a necessity of the globalized world, they bring with them a danger; the possibility of unfair terms in which only one party is benefited: the one that is proposing the contract. Behavioral economics assumes that consumers suffer from cognitive limitations in processing information, which prevents them from making great choices on the market. In this circumstance, it is

possible that the supplier includes in their contracts ineffective clauses, and therefore the regulation of these contracts, for example, by the judiciary would be appropriate.

Consequently, this article aims to scrutinize the behavioral biases that can influence the choices of a consumer who wants to conclude a standard form contract. It uses the law of two different countries; Germany and Brazil, as practical example. It is understood, also, that not all the decisions of individuals are taken in accordance with standards of rationality, but that they also adopt heuristics, both in negotiations and in the solution of problems. Considering that the scope of this article is not to study the standard form contracts specifically but the biases which influence the consumer, relevant aspects of behavioral law and economics and standard form contracts will be studied, in order to enable the comprehension and presentation of the behavioral biases that can permeate the negotiation of a standard form contract.

1 BEHAVIORAL APPROACH TO LAW AND ECONOMICS

Behavioral Law and Economics is a branch of the discussions on law and economics that focuses on the study of human behavior and understands that our rationality can be limited by a number of biases and heuristics. In the past decades, social scientists have acquired knowledge on how people actually make decisions. Much of these works require changes in the models of rational choice, which has dominated the social sciences, including the economic analysis of law. According to Cass R. Sunstein (2000), people are not always rational in the sense that economists assume. That does not mean that people's behavior is unpredictable, systematically irrational, random, free of

rules or incomprehensible to social scientists, but that these skills can be described, studied and used.

A basic assumption of the economy is that men are rational beings and “[...] the choices people make to increase their welfare are predicted using Rational Choice Theory (RCT). When several choices are available, individuals are assumed or hypothesised to opt for the alternative that yields the most expected welfare” (LUTH, 2010, p. 17). Posner (2007, p. 16) says, “[...] the task of economics, so defined, is to explore the implications of assuming that man is a rational maximizer of his ends in life”. Thus, a conception of rationality claims that the rational agent can sort alternatives according to the level of satisfaction provided, but bumps into his maximum budget. A rational consumer can sort alternative packages of consumer goods, but his budget may restrict the desired option. Neoclassical economic theory argues that in competitive markets, exchange relations are economical and aware, while state intervention mechanisms should be used, in exceptional cases and are only justified when we see market failures and imperfect competition (LUTH, 2010).

Robert Cooter and Thomas Ulen (2014) in their manual of Law and Economics say the rational choice theory has been questioned in the past 30 years, mainly due to empirical studies of experimental nature, suggesting that the behavior of individuals do not follow the predictions of this theory. In this sense, behaviorists believe that individuals possess a rationality and power of limited choice, in a conduct that intends to be rational but does not transcend the balance of costs implicit in rationality, and therefore, in the heuristics of common decisions and behavioral economics, replace the goal of maximization for the satisfaction, and also replaces the requirement of “optimal” by merely “sufficient”, from

what it takes to be able to act (ARAÚJO, 2012).

It should be noted that according to Russell Korobkin and Thomas Ulen (2000) the purpose of behavioral law and economics would not be to replace the rational choice theory with an inconsistent paradigm, but instead modify the elements without plausibility of the theory, and supplement inappropriate elements, so as to create a tool with the greatest predictive power in specific situations. Also, “[...] the task of behavioral law and economics, simply stated, is to explore the implications of *actual* (not hypothesized) human behavior for the law” (JOLLS; SUNSTEIN; THALER, 1998, p. 1476). The behavioral law and economics suggests that the economic models of analysis should include psychological variables, and this argument also applies to the relations of Law and Economics, because the results of the normative activity are perceived taking into account also conceptions of human rationality.

Jolls, Sunstein and Thaler (1998) understand that human behavior can show three characteristics: bounded rationality, bounded willpower, and bounded self-interest. Bounded rationality refers to the fact that human cognitive abilities are not infinite and have limitations. In addition to bounded rationality there is the bounded will-power, which means that people often take actions that they know to be in conflict with their own long-term interests. And, finally the term bounded self-interest refers to the utility function of most people: “[...] they care, or act as if they care, about others, even strangers, in some circumstances” (JOLLS; SUNSTEIN; THALER, 1998, p. 1479). The authors mentioned above believe that these bounds on human behavior are important, because they “[...] draw into question the central ideas of utility maximization, stable preferences, rational expectations, and optimal processing of information” (JOLLS; SUNSTEIN; THALER, 1998, p. 1476).

Despite this scenario, and taking into account that we are dealing with a recent study, there have been some objections to the approaches of the behavioral law and economics, because there would not be evidence in the sense that the commitment of rationality proposed by the behavioral law and economics would have enough impact to discard the concepts already established in the economic literature. So, it is understood that the behavioral law and economics would introduce new variables that must be considered. Richard Posner (2007) states that limited information should not be confused with irrationality. It is also worth pointing out the contributions of Daniel Kahneman, who by introducing the insights of psychological research in economic science, especially concerning the assessment and decision making under uncertainty, showed how much interest this issue arouses in the specialized environment.

The classical economic theory has a more protective nature regarding the consumer and considers the intervention of the State/Judiciary in contractual relations justified, especially when the standard form contract contains unfair terms (MICELI, 2004). In competitive markets contracts tend to be efficient, since they reflect the economic options of the parties involved; in other words, consumers seek to maximize the utility function and satisfaction in the selection. The rationality of the individual is a key element to understand consumer preferences. If the individual while deciding on the consumption of goods, does not maximize the expected benefits, the violation of the behavioral assumptions of the rational choice theory will occur (ULEN, 1999).

In simple words, rationality means to act with good reasons and with as much information as possible in order to consistently apply appropriate means to achieve specific purposes. But to economists, “to be rational” means to choose according to a complete and transitive

preference, subject to perfect information and acquired at the lowest possible cost. Thus, the preference relations represent a crucial role in the decision process because they synthesize the wishes of the decision maker (ARAÚJO, 2012).

The authors Russell Korobkin and Thomas Ulen (2000) list five logical requirements of what is expected from a rational behavior: a) Commensurability: consumer must be able to compare all the alternatives of goods and services. This hypothesis rarely happens, since we don't have all necessary information for an effective evaluation; b) Transitivity: preferences need to be sorted and prioritized in a unique way. If an option is preferable to the other, it also has greater utility than the other; c) Invariance: the preference between the choices should not depend on how the choice is presented, since the outcome possibilities are constant; d) Cancellation: a choice between options should not depend on features of identical options; e) Dominance: an actor should never choose an option in which every feature is only as good as the features of the other options, and at least one feature is not as good.

However, it is necessary to clarify that behavioral economics shows some disconformities with these parameters of rational choice, since there is a possibility that consumer preferences might simply not comply with the requirements indicated above. The main argument of behavioral economics is the affirmation that individuals generally do not make decisions in accordance with the standards of rationality established by classical economic theory, but, instead, they adopt shortcuts or heuristics, that are simplified solution mechanisms of complex problems (ARAÚJO, 2012). In this way, “[...] a heuristic can be defined as a strategy for making decisions that simplifies the problem through elimination of possible options [...]” (DOWLING; CHIN-FANG, 2007,

p. 38), or, in other words, they are decision-making methods that seek close results to optimal through simpler rules of conduct. Therefore, they can be used in most cases to solve the problems identified in contractual negotiations, but in other cases they can move away from the expected rational decision.

But there is also what is called behavioral biases. They can generate situations that individuals will tend to adopt irrational and anomalous behavior, reducing the efficiency in economic relations. In the following section, standard form contracts and the types of behavioral biases that can make consumers deviate from rational choice when concluding a standard form contract will be presented.

2 BIASES AND STANDARD FORM CONTRACTS

According to the traditional economic perspective, contracts, when free of nullity, are good tools to make efficient exchanges. The standardization of contractual relationships is a mechanism that reduces the cost of transactions and enables the achievement of a greater number of exchanges. Consequently, standard form contracts can generate positive effects in terms of economic welfare, as well as they have considerable practical significance in contract law, since many companies, professionals and associations use these standardized legal tools when concluding contracts with their customers.

Standard form contracts are largely used by companies that work directly in the final consumption sectors. They rely on this tool to reduce negotiation costs and risks of legal contingencies, as well as to produce coherent balance sheets. These contracts are characterized by the unilateral drafting of contractual terms. There is no negotiation,

or if there is, it is through predetermined models that significantly limit the will expression of one contracting party. Standard form contracts are often not even read by consumers before being signed, and when they are read, they are often not understood in its totality (ZHANG, 2007).

Recognizing the consumer's vulnerability in this type of economic relation, the legislature has laid out specific rules for contracts and consumer relations, containing specific rights that aim to protect consumers against possible abusive practices. In Germany, Standard terms of contract (*Allgemeine Geschäftsbedingungen* or *AGBs*), including the standard form contracts (*Formularverträge*) were regulated under the former Act on Standard Terms of Business (*Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen, AGBG*), but in 2002, these rules were integrated into the German Civil Code (§§ 305-310, *Bürgerliches Gesetzbuch, BGB*) by the Act on the Modernization of the Law of Obligations (*Schuldrechtsmodernisierungsgesetz vom 26.11.2001*). In Brazil, consumer protection is established in the Constitution, by the principle of consumer protection (Articles 5, XXXII, and 170, V) and it is regulated in the Law 8078 of 1990, also called the Consumer Protection Code (*Código de Defesa do Consumidor, CDC*).

With the emergence of mass production came the need to develop a model contract for all purchasers of certain products or services. After all, if every consumer would negotiate contract terms with the supplier, there would be a great obstruction in the large scale flow production. Thus, the law followed this industrial movement and created models and rules adequate to the industrial process that arose. Suppliers and providers began to create standardized formula and standardized contractual clauses: real consumer contracts (NUNES, 2009).

The classical theory of contract law has as basic premise the principle of autonomy of the will, in which contracting parties have flexibility and autonomy to choose whether or not to contract any kind of obligation and how. But it is not what occurs in a standard form contract, in which the consumer can just decide to contract or not, because it is not possible to discuss contractual clauses. Basically, the difference between a standard form contract and a normal contract is that in the latter, we have this freedom of will and the possibility of carefully negotiating all the terms that will be included in the contractual instrument (NUNES, 2009).

In Germany, we find on § 305 Abs. 1 of the BGB the definition of what standard terms of contracts are:

Standard business terms are all contract terms pre-formulated for several contracts which one party to the contract (the user) presents to the other party upon entering in the contract. It is irrelevant whether the provisions take the form of a physically separate part of a contract or are made part of the contractual document itself, what their volume is, what typeface or font is used for them and what form the contract takes. Contract terms do not become standard business terms to the extent that they have been negotiated in detail between the parties (DEUTSCHLAND, 2002).

In the definition above we can see that if one party uses its own set of standard business terms and unilaterally proposes a pre-formulated contract without any negotiations about these terms, they will become, after been used in several contracts, standard business terms and why not to say a standard form contract. It is important to notice that in German law these terms may include the full content or parts of the contract and the statutory rules of BGB will not be applied if the terms will be

used only for one contract. In this way German Courts considered them standard terms when they are used for at least three times. However, according to § 310 Abs 3 of BGB consumer contracts, when they do not have terms introduced by consumer's initiative, are considered standard terms even if used only once, because they are pre-formulated by an entrepreneur (DEUTSCHLAND, 2002).

Paragraph 308 of BGB has prohibitive clauses with the possibility of evaluation and paragraph 309 of BGB has prohibitive clauses without the possibility of evaluation. By the rules of § 308, one party, for example, cannot unilaterally change obligations on the contract, unless the other party agrees to it and these changes are also reasonable. Paragraph 309 lists some terms that are considered null, without the need of further examination. One example is the duration of service contracts such as Internet and telephone (309 Abs 9). Their duration cannot be of more than two years and their prolongation cannot be of more than one year (DEUTSCHLAND, 2002).

Unlike Germany, Brazil defines specifically the standard form contracts in Article 54 of the Consumer Protection Code (CDC).

Art. 54. Standard form contract is that one in which clauses have been approved by the competent authority or unilaterally established by the supplier of goods or services without giving the consumer the right to discuss or substantially modify the content (BRASIL, 1990).

The Law 8078/90 (CDC) in its article 51 also lists the abusive clauses in consumer relations, which are considered null, for example, clauses that allow the supplier to, directly or indirectly; change unilaterally the price of the service. These clauses can undermine the

contractual balance and cause damages to the contractor. Therefore, the CDC represented an evolution in the Brazilian law, from the normative point of view, by protecting consumers, and recognizing the rule of objective responsibility for product risk, which does not require analysis of guilt by the supplier (article 6, CDC).

It is worth pointing out that in the Brazilian scenario, the judicial activism and the interference of judiciary are constant. According to data from the annual survey “*Justiça em números*” (*Justice in numbers*) made by the National Council of Justice (*Conselho Nacional de Justiça – CNJ*) and published on September 15th, 2015; Brazilian courts had 99,7 million cases in 2014. In state courts, cases concerning consumer law appear as the second most demanded subject (BRASIL, 2015). This protective nature of the State and Judiciary, may explain why there is not too much research on behavioral law and economics in Brazil.

Studies of Behavioral Law and Economics point in the direction that consumer behavior is driven by several biases. Becher (2007) understands that “[...] cognitive biases and consumers’ actual behavioral patterns have central roles - both descriptively and normatively in the law of Standard form Contracts [...]” and that “[...] those biases can have an important role in drafting specific standard form contracts terms and in regulating consumer transactions”.

Behavioral biases that can influence the choices of a consumer who seeks to conclude a standard form contract are: sunk cost effect, the cognitive dissonance theory, the confirmation bias, and the low-ball technique¹.

¹ Division based on Becher (2007). See also Luth (2010), who bases her division on Becher (2007), but classify the biases on information overload and propensity to read, perceptions of selfcommitment, risk perceptions and emotional status or social pressures

The importance of sunk costs has been discussed in two ways in the literature: from a structural point of view, as a cost that would estimate prices of products and would make barriers to the entry of new investors; and from a behavioral point of view, in which information about sunk costs would affect the judgment in decision-making situations.

The term “sunk cost” is used by economists to refer “[...] to preceding investments which cannot affect the expected marginal utility from future activities or decisions” (BECHER, 2007, p. 125). Thus, sunk costs are past costs that have been spent and are no longer recoverable. Conventional analysis expects decision makers (considered rational individuals) to ignore these costs and don’t let them affect their choices. But behavioral economics has shown that sunk costs can be significant. In the case of standard form contracts, the consumer has already sustained the costs of searching and selecting the product, which makes it advantageous to sign the aforementioned contract to avoid future costs of searching or readjusting the contract. In this way, the sunk cost effect is “[...] manifested in a greater tendency to continue an endeavor once an investment in money, effort, or time has been made” (ARKES; BLUMER, 1985, p. 124).

To understand this behavioral pattern and its implication to the law of SFCs, it is important to clarify why people allow sunk costs to influence their decisions. The main explanation is based on motivational grounds—that the sunk cost effect can be best justified as a self-esteem maintenance device. People might feel compelled to maintain a past-chosen course of action as a means of preserving some aspects of self-perception. Hence, the sunk cost effect is predicted, in part, because of people’s

aspiration to not be--or appear-wasteful. [...] Since the sunk cost effect exists in conjunction with the amount of resources previously invested, its effect varies substantially among different kinds of transactions. [...] Yet, as a general argument, in most cases vendors present their SFC only after the shopping process has actually ended. Since the consumer is likely to spend a considerable amount of time in order to become acquainted with the good or service she is about to purchase before the SFC is presented, the sunk cost effect may contribute to her decision to ignore the accompanying contract (BECHER, 2007, p. 127-129).

Thereby, it is understood that sunk cost effect is an important factor in standard form contracting, since consumers will not always have the opportunity to rationally inspect the content of the contract. Shmuel I. Becher (2007, p. 130) points out that “[...] this is particularly true in those cases where buyers incur substantial sunk costs or where sellers manipulate the transaction so as to exploit the sunk cost effect”.

The expression “cognitive dissonance” is related to the discomfort caused by the simultaneous apprehension of ideas. Individuals seek to reduce the dissonance by changing their attitudes, beliefs and actions. In some cases, cognitive dissonance occurs when the subject’s experience comes into conflict with his expectations. An example is the buyer’s remorse when buying an expensive item that he had high expectations from.

With regard to standard form contracts, after choosing and having expectations from a product or service, it is very unlikely that the consumer will change his mind because of unfavorable contractual terms. Professor Shmuel Becher (2007) believes that at the time the standard

form contract is presented and the consumer decides to make any kind of economic transaction, cognitive dissonance can prevent him to assess, in a rational manner, contractual clauses which are not efficient for him.

If a SFC is introduced when the purchaser has already decided to enter a transaction, cognitive dissonance may prevent him from rationally evaluating the contract terms he finds in the pre-drafted form. Where the contract terms he encounters undermine the utility he hopes to derive from the transaction at issue, cognitive dissonance may preclude efficient evaluation. Moreover, the natural human desire to avoid cognitive dissonance might imply that consumers are likely to prefer, consciously or not, *not* to read the form contract and realize that they may be about to enter into a poor contract, knowing that they are probably going ahead with the transaction anyway (BECHER, 2007, p. 131).

The two behavioral biases described above, sunk cost effect and cognitive dissonance, can be also related to another one called the confirmation bias. It concerns a predisposition of the individuals to select information that confirms their hypotheses or previously established opinions. “According to this bias, individuals who form an opinion appear to search for data that supports and confirms their existing opinion rather than information that might challenge or contradict it” (BECHER, 2007, p. 132). In general, individuals select the information and evidence in an incomplete and insufficient manner. Equally, they prioritize their beliefs and emotional issues, which certainly affects rational decision making. In the case of standard form contracts, the consumer has the tendency to confirm his expectations from the product chosen, and ignore the disadvantageous terms of the contracts being offered.

Tversky and Kahneman (1981) indicate that the perception of a problem is affected by its presentation. In other words, when assessing a problem, individuals may have consistency and coherence errors, especially because of their personal perception of the actions and consequences of the problem. Their evaluation of the problem can also be affected by their principles, habits and personal characteristics.

An example of adverse selection in standard form contracts concerns the contraction of health insurance plans. It is important to highlight that unlike Germany, in Brazil and most South American countries having a health insurance plan is not mandatory. People generally have better knowledge of their health condition than companies that offer such plans. Older people are more likely to contract a disease and therefore use medical and hospital care, leading to the demand for health plans. Service providers will increase their prices according to age, because in this case they have asymmetric information of the real health condition of people. That causes an adverse selection by inhibiting the entry of healthy people in the plans. Thus, there is the increasing participation of elderly and sick people in health insurance plans, which impacts the industry by reducing its profitability.

The confirmation bias can also explain why consumers who read standard form contracts are not likely to evaluate their content rationally. According to the confirmation bias, people not only seek information that reinforces their previous belief, but also process the information they find in a way that enhances their existing viewpoints (BECHER, 2007).

Bakos, Marotta-Wurgler and Trosse (2014) state that very few consumers choose to read and become informed about standard form contracts. In this way, the confirmation bias can also explain why consumers who read standard form contracts are not likely to evaluate

their content rationally, since “[...] people predictably not only search for information that reinforces their previous belief, but also process information they encounter in a way that strengthens their already existing viewpoints” (BECHER, 2007, p. 132). And, because of this “[...] even if consumers read SFCs they should not be expected to evaluate them objectively” (BECHER, 2007, p. 133).

The low-ball technique is a selling tactic in which an agent is underestimating or understating a price. This technique can be related to standard form contracts, because has been used widely by companies that want the consumer to purchase long-term services such as internet and telephone. According to Shmuel I. Becher (2007), a typical case of the low-ball technique occurs when salesmen, or advertisements, get a consumer to agree, or at least consider, to purchase an item at a discounted price. However, later on, the discount is removed, but the initial decision to enter the transaction can still lead the person to agree to the new price, even if it is higher.

In such cases, consumers are more likely to assent to the amended price than they would have been had the seller stated the actual price from the very beginning. Accordingly, subjects that are exposed to the low-ball technique may enter a transaction even though the true, long-term price can no longer be considered a “good deal”; or, using the economists’ terminology, it does not maximize the subject’s utility (BECHER, 2007, p. 134).

Another behavior already mentioned above and that also accompanies standard form contracts and the use of low ball technique is the following: because most of the consumers do not read the contracts

they are signing they do not realize that sometimes there can be a gap between what was promised and what is actually written in the pre-drafted contract (BAKOS; MAROTTA-WURGLER; TROSSE, 2014).

Using the low-ball technique, salesmen can induce buyers to go ahead and sign SFCs that the buyers would not enter had they fully realized the terms and substance beforehand. This is true because a consumer's prior decision to agree to a specific set of terms is based on what was orally promised or otherwise advertised. Consequently, consumers' preliminary commitment might result in a greater tendency to enter SFCs while ignoring - or devaluing - what is actually incorporated in print and imposed in practice (BECHER, 2007, p. 135).

Sellers can take advantage of consumers' biases, in their own interests. "Consumer decision making is likely to be affected by biases and heuristics that provide an opportunity for sellers to take advantage of consumers" (LUTH, 2010). It is possible to say, by the behavioral approach of law and economics applied to the study of standard form contracts, that consumers can make bad choices even where good information is available.

CONCLUSION

The present article had as its starting point the fundamentals of behavioral law and economics and aimed at reflecting on the behavioral biases that influence the decision of a consumer before signing a standard form contract. Based on the division proposed by Becher (2007), the sunk cost effect, the cognitive dissonance theory, the confirmation bias,

and the low-ball technique were considered.

To achieve the proposed purpose, it was necessary, first, to provide some explanations on behavioral law and economics as well as on the rational choice theory. Second, behavioral biases were studied. It was demonstrated that biases affect the decisions of consumers and because decisions are made under the influence of these biases, consumers can fail to maximize their own welfare.

In order to demonstrate that even if the law changes, some behaviors end up being the same, the legal basis of the standard form contracts in two different countries were presented. In Brazil there is a consumer protection code, while in Germany rules are integrated into the German Civil Code. Despite the difference between these countries legal rules, consumers are influenced by the same types of biases, and it is also possible to say that cognitive biases and consumers' behavioral patterns have influence not only on the drafting of the standard form contracts but also on the regulation of these transactions. Thus, the comprehension of standard form contracts can be enriched by the interdisciplinary study with behavioral law and economics.

The study of the subject also showed that individuals deviate themselves from rational choice and that predictions of human behavior can be improved by taking these deviations into account. It is also understood that in the regulation of standard form contracts in consumer relations, and in order to protect certain consumer rights from restrictions, it is not only convenient, but necessary to correct the behavioral biases that affect the choices of consumers and prevent them from making bad choices. This does not mean that current laws are not efficient. Rather, it means that they should continue evolving when needed, in order to follow the demands, evolution and transformation of society. Therefore, the

interdisciplinary study of law and economics, under the behavioral point of view, and in the particular case of standard form contracts, is relevant since it helps to predict and understand behaviors and situations that can occur. As stated by Becher (2007, p. 179), “[...] any general theory of and practical approach to consumer contracts must take cognitive biases and actual behavioral patterns into account. To do otherwise would be unconscionable”.

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