

Business Strategies in the Computer Age

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Shmuel I. Becher & Sarah Dadush, *Relationship as Product: Transacting in the Age of Loneliness*, __ U. Ill. L. Rev. __ (forthcoming, 2021), available at [SSRN](#).

Articles on contract law contribute to our understanding of the subject in many different ways. Professors Becher and Dadush's article, [Relationship as Product: Transacting in the Age of Loneliness](#) is a must read, not because it resolves a legal issue or presents a novel way of looking at a problem, but because it raises a red flag about business practices with consumers that requires attention. Becher and Dadush argue that businesses have new methods of taking advantage of consumers in contracts brought about in part by technological advances and the concomitant social isolation and loneliness of people in our 21st century society. The authors write that "[B]usinesses increasingly utilize big data, sophisticated technology, and psychological vulnerabilities to design and tailor highly personalized and emotionally charged messages. Such messages are meant to signal, and instill in consumers, a sense of mutuality, care, compassion, intimacy, love, and affection." (P. 4.) And more: "The loneliness epidemic makes it easy for firms to succeed in offering deep relationships to consumers—and to profit from doing so." (P. 25-26.)

According to Becher and Dadush, businesses seek to create caring social relationships with consumers, at least superficially, to benefit their bottom line. The authors call this strategy "relationship as product." The authors worry that this businesses strategy exploits consumers, among other things, by lulling them into making emotional instead of rational decisions about their contracts. This culminates in consumers making unwanted purchases of goods and services that "undermine social trust and decrease overall well-being." (P. 7.) Moreover, consumers resistant to "relationship as product" do not go unaffected: "Relationship as product may thus result in higher prices for goods and services for all consumers, not just those who fall for love promises." (P. 44.)

The authors set forth numerous examples of "relationship as product." For example,

A company sends an e-mail titled "A Love Note from Everyday Oil," greeting its customers with "Hello to this beautiful community of people we love!" A telecom company greets a customer returning from a trip overseas with an unsolicited text message that simply says "Welcome home! We hope you had a safe trip." An oil and gas company e-mails a customer, congratulating him on being "a great customer" and informing him that "we thought we'd return the favor" by offering a few cents discount on fuel. (P. 5.)

Relationship as Product: Transacting in the Age of Loneliness is well-documented and contains numerous insights, including a helpful discussion of the reasons for 21st Century isolation (which includes the amount of time we spend on our devices) and the manner in which businesses may exploit consumer cognitive biases. The article also usefully sets forth and develops the various stages of the business and consumer relationship that helps establish "relationship as product."

Simply put, Stage 1 includes B2C communications and interactions up to the point at which a consumer decides to transact. Stage 2 encompasses the communications and interactions during the transaction itself. Stages 3 and 4 relate to interactions and communications between the parties once the transaction is completed (P. 16.)

Becher and Dadush recognize the need for more work that documents the effect on consumers of the business strategies they identify.¹ In fact, the authors acknowledge that some of these business practices actually may benefit consumers. Consider another example reported by the authors:

In case you missed tomorrow's local weather memo for the NY/Philadelphia area, it's going to rain . . . and quite a lot we hear. This could easily put a damper on your travel plans. Wear your galoshes, remember your umbrella, and be sure to give yourself extra time getting to and from the airport tomorrow, August 7. If your travel plans are flexible, you may want to consider flying on a different day or connecting in a different city. The good news is that we'll waive all the change fees. So, visit the United app or united.com to check out your options instead of holding for one of our busy call centers. Thank you for flying with us! (P. 21.)

Although Becher and Dadush seem troubled by this communication, it does not strike me as the kind of opportunism that cries out for regulation.²

Another topical example of "relationship as product" identified by the authors is firms' response to the Covid 19 epidemic.

Consider, for instance, the many firms that cancelled contracts with their consumers in the wake of Covid-19. Often, these firms asked consumers to accept a credit or a voucher rather than a refund, or to wait patiently for months to be refunded. Consumers who believe they share an emotional connection with these firms may be more tolerant of such requests and may not protest them. (P. 37.)

A good argument can be made, however, that these firms are suggesting a valid compromise of a problem currently vexing contract law, namely how to allocate the risk of the pandemic that has disrupted countless contracts across the globe.

Even assuming such communications are problematic, as Becher and Dadush suggest,³ lawmakers would face lots of additional challenges acknowledged by the authors.⁴ Isolating the potential problem does not mean there is a ready solution. The authors suggest reviewing whether contract law should relax the age-old distinction between "puffing" and promise or warranty.⁵ In addition, they worry about whether the "reasonable consumer" standard should be applied to this problem. The authors do not hide their sympathy for change here.⁶ But line drawing will be difficult. Should the already shifty car sales person be sanctioned for trying to establish a friendly rapport with the potential buyer? For that matter, what about the university president or dean meeting with potential donors?

Becher and Dadush sum up their concerns thusly: "By their nature, firms' promises of love, intimacy and friendship are impossible to keep. As such, they are false." (P. 46.) And further: "The law neglects to police this reality properly. It adopts a narrow and outdated view of B2C relationships and consumer behavior . . . the law tends to assume that consumers can maximize their welfare and their well-being." (P. 56.) Whether or not the reader agrees with their concerns and suggestions for reform, *Relationship as Product: Transacting in the Age of Loneliness* is food for thought that should not be ignored.

1. "This Article sounds the call for empirical and theoretical research into the relationship as product phenomenon." (P. 56.)
2. Another example, "[f]irms often e-mail consumers with 'friendly' warnings that their cart is about to expire." My reaction to such an e-mail is to want to thank the sender for the reminder. (P. 11.)
3. The authors write that "[t]he law has an important role in protecting consumers from unethical practices by firms." (P. 38.) Further, they seek to apply Section 45(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (2006), which "provides the Federal Trade Commission (FTC) with a mandate to act against 'unfair or

- deceptive acts or practices in or affecting commerce.” (P. 38 n. 199.)
4. “[S]ketching a new regulatory framework to police the grey line between legitimate and illegitimate emotional promises is no simple task.” (P. 39.)
 5. “One main strategy for drawing this line is to ask whether the claims at issue are ‘capable of measurement’ or otherwise verifiable. The more verifiable, the less likely to be treated as puffery. We join others in criticizing this methodology and in calling for a different approach.” (P. 42.)
 6. “[T]he law should acknowledge that consumers cannot always remain rational. In fact, firms often push consumers into irrationality.” (P. 39.) And further, “[f]irms should be restricted in their ability to humanize the B2C relationship in ways that manipulate consumers.” (P. 39.) Finally, “the law is under-equipped to police the subjective and emotionally qualitative appeal—and harm—of relationship as product.” (P. 44.)

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