

Consumer Protection Law

GERAINT G. HOWELLS

Department of Law, University of Sheffield

STEPHEN WEATHERILL

Department of Law, University of Nottingham

Dartmouth

Aldershot • Brookfield USA • Singapore • Sydney

Contents

<i>Dedication</i>	<i>ii</i>
<i>Table of Cases</i>	<i>ix</i>
<i>Table of Statutes and Statutory Instruments</i>	<i>xvii</i>
<i>Preface</i>	<i>xxi</i>
1 The Map of Consumer Protection Law	1
1.1 Introduction - The Nature of the Law of Consumer Protection	1
1.2 The Place of Private Law	7
1.3 Contract Law and its Function in the Market Economy	8
1.4 Tort Law and the Consumer	31
1.5 The Costs of Consumer Protection Through Private Law	34
1.6 Redress and Access to Justice	39
1.7 Rationales for Public Intervention	42
1.8 Choices Between Forms of Public Regulation	43
1.9 State Regulation and Individual Freedom	64
2 European Community Consumer Policy	79
2.1 The Development of the European Community and its Legal Order	79
2.2 Community Trade Law	85
2.3 The Shaping of EC Consumer Policy under the Treaty	94
2.4 Community Law Within the National System	103
3 Private Law and Consumer Protection	111
3.1 The Private Law Background	111
3.2 Classification of Consumer Transactions	113
3.3 Topics Covered	120
3.4 Debates on Private Law as a Technique of Consumer Protection	121
4 The Quality of Goods and Services	123
4.1 Implied Terms	123
4.2 Commercial Guarantees	153
4.3 EC Green Paper on Guarantees for Consumer Goods and After-Sales Service	164
4.4 Reflections on the Law Relating to Quality	173

5	Title and Risk	175
5.1	Introduction	175
5.2	Title	176
5.3	Duty to Pass Good Title	192
5.4	Passing of Property	193
6	Product and Service Liability	197
6.1	The Nature of the Debate	197
6.2	Product Liability	205
6.3	Service Liability	225
6.4	Alternatives	229
7	Consumer Credit: Private Law	233
7.1	Introduction	233
7.2	History of Consumer Credit	234
7.3	Law Reform	237
7.4	Structure of the Consumer Credit Act 1974	240
7.5	Formalities and Copy Provisions	249
7.6	Withdrawal	254
7.7	Rescission and Repudiation	255
7.8	Cancellation	256
7.9	Termination	262
7.10	Early Settlement and Rebate	263
7.11	Connected Lender Liability	264
7.12	Extortionate Credit Bargains	271
7.13	Creditor Remedies	276
7.14	Powers of the Court	282
7.15	Appropriation of Payments	285
7.16	Lost, Stolen or Misused Credit Cards	285
7.17	Conclusion	286
8	Doorstep and Distance Selling	289
8.1	Doorstep and Distant Selling - Policy Reasons For Intervention	289
8.2	Doorstep Selling	291
8.3	Distant Selling	295
8.4	Conclusion - The Balancing of Interests	303
9	Unfair Terms	305
9.1	Rationales for Controlling Unfair Terms	305
9.2	Judicial Intervention	306
9.3	Public Intervention to Control Unfair Terms	310

9.4	The Scope of the UK and EC Interventions Compared and Contrasted	313
9.5	The Scope of Control	316
9.6	Definitional Issues	320
9.7	Insurance and Employment Contracts	330
9.8	Enforcement	331
10	Trade Descriptions	333
10.1	The Policy of the Law of Trade Descriptions	333
10.2	False or Misleading Descriptions of Goods	334
10.3	False or Misleading Descriptions of Services	346
10.4	Misdescriptions and Interests in Land	351
10.5	Misleading Price Indications	352
10.6	Advertising	356
10.7	Reform	360
11	Public Regulation of Consumer Credit	361
11.1	Licensing	361
11.2	Seeking Business	366
11.3	Conduct of Business	369
11.4	Advertising and Quotations	369
11.5	Credit Reference Agencies	371
11.6	Defences	373
11.7	Private vs Public Controls	373
12	Consumer Safety	375
12.1	Rationales for Consumer Safety Regulation	375
12.2	The Development of Consumer Safety Legislation in the UK	379
12.3	European Community Product Safety Law	382
12.4	The Post-1994 Pattern of Product Safety Law	386
12.5	Detailed Aspects of the Law	388
12.6	Enforcement	395
13	Food Law	399
13.1	Origins	399
13.2	Rationales for Intervention	400
13.3	Enforcement	400
13.4	Regulations	401
13.5	Food Safety	403
13.6	Consumer Protection	409
13.7	Due Diligence Defence	412

14	The Regulatory Offence	415
14.1	The Nature and Purpose of Strict Liability Under the Regulatory Offence	415
14.2	The 'Due Diligence' Defence	417
14.3	Enforcement	431
15	Competition Policy and the Consumer Interest	441
15.1	How Competition Policy Falls Within the Scope of Consumer Law	441
15.2	Cartels	445
15.3	Monopoly Law	467
15.4	Merger Law	480
15.5	The Pursuit of Market Integration in EC Law	495
15.6	Competition Policy and the Consumer Interest Reasserted	498
16	Office of Fair Trading	499
16.1	Background	499
16.2	Rule-making under Part II of the Fair Trading Act 1973	502
16.3	Codes of Practice	507
16.4	Part III, Fair Trading Act 1973	511
16.5	Reforms	516
16.6	Reflections on the Function of the Office of Fair Trading	525
17	Access to Justice	527
17.1	Is There an Access to Justice Problem?	527
17.2	Consumers and Lawyers	529
17.3	Group or Class Actions	534
17.4	Small Claims	550
17.5	Ombudsmen	558
17.6	Arbitration	566
17.7	Complaining	572
17.8	Utilities	574
17.9	Access to Justice - The European Dimension	575
17.10	Some Final Remarks on Access to Justice	582
17.11	Some Final Remarks to the Reader	582
	<i>Index</i>	585