

LEGAL STUDIES

Consumer Law Exam Essay

Question 18A:

Historically, the concept of *laissez-faire* was used by government in the area of consumer law. The lack of government intervention in this area, however, resulted in an imbalance of protection between consumers, and manufacturers or suppliers. The divergence from this through common and statute law and independent bodies has ensured a greater equality between the two. This has occurred in a number of areas including advertising, occupational licensing, the introduction of standards, addressing discrimination, unfair contracts and consumer watchdogs. Although the law still may not cover consumers in all areas, it has vastly improved since the beginning of the twentieth century.

Prior to the twentieth century *laissez-faire* meaning 'allow to do' resulted in little intervention of governments into consumer contracts. Instead, the philosophy of *caveat emptor* "let the buyer beware" prevailed. This law limited protection for individual whom were expected to examine the quality and suitability of products before purchasing. Although this was not particularly effective during the 19th century, an expected moral standard existed. However with the advent of mass production and packaging, this *laissez-faire* philosophy was not longer adequate for protecting consumers from unmerchantable products as the moral standard diminished.

As mass production and packaging occurred, the use of advertising became necessary to educate consumers on products to allow them to distinguish the most appropriate. The regulation of advertising was brought about under the Trade Practices Act 1984 (Cwth) and the Fair Trading Act 1982 (NSW) which worked simultaneously to protect consumers from misleading or false advertising (section 52) – among other things. This is evident in the case of Eveready Pty Ltd v Duracell Pty Ltd [1992] where misleading claims by Duracell that batteries would last "up to four times longer" would lead a "reasonable person" to believe that the batteries would last four times the length of competitors batteries of the same size. Independent testing also found that the batteries never lasted 'four times longer' and that this was also a breach of section 53 of the TPA. The regulation of advertising was to limit the false claims, or 'puffery' of manufacturers to allow consumers to obtain the best product. The breach of advertising may lead to excessive finds or correcting advertising and therefore encourages suppliers to do the right thing.

The advent of occupational licensing also aims to protect consumers from substandard professionals. An occupational licence is a licence to work in a particular profession – such as a travel agent, used car dealer or mechanic. The Motor Dealers Act regulated the motor dealers' profession to ensure a high standard is set by those in the profession – ultimately aiming to protection consumers from substandard service. The introduction of independent bodies such as the Motor Trader Commission, regulates the industry further.

The introduction of standards was brought under the Sale Of Goods Act (1923) however applied only to goods and exempt services. The act stated that products should be of a merchantable quality, be fit for purpose, and match the product sample or display. This is to ensure advertising of products is truthful and not misleading. The SMH article 'Shoppers misled at online checkout' (march 2010) concerned the introduction of mandatory unit pricing and the incorrect prices on the Woolworths online store. The consumer watchdog group CHOICE called for on-the-spot fines for business breaching the unit price measurement and, in addition, the creation of a grocery ombudsman. This is to ensure consumer rights are balanced with large corporations such as supermarkets, and to encourage fair and just companies.

Anti-discrimination laws brought about under the Anti-discrimination Act 1977 aim to reduce discrimination against minorities or marginalised groups of consumers. The Act prohibits discrimination on the basis of age, race, gender, religion or sexual orientation and applies to goods and services, as well as accommodation. This aims to provide greater equality for all groups of society and therefore makes the law more efficient at protecting consumers.

The law has become more effective as a result of new reform brought in during July 2010. Laws to address the unfair contracts have been addressed under this Act, which, as stated in 'Money' Magazine Article New Unfair Contract Terms that the ACCC will have greater power to prosecute companies with unfair terms – predominately banks. This change aims to better protect consumers from set contracts for areas such as phone contracts.

This has somewhat been previously covered, however, as the government had the right to overturn terms which were “unnecessarily harsh or oppressive.” This may be demonstrated in Thornton v Shoe Lane Parking Ltd which excluded personal injury from its terms. As a result of Thornton injuring himself, a case was brought before the company. It was established in the court that the ambiguous nature of the clause could not be binding and was therefore could be overturned.

The imbalance between consumers and suppliers still exists in some areas – such as online shopping. This was demonstrated in Smythe v Thomas (2006) where the High Court established that the implied online contract from the eBay site was not binding. This could therefore cause concern for consumers whom are unprotected in this area.

The law has become more effective as it aims to balance the protection of all groups in consumer law. The great inequality between consumers and manufacturers has been greatly filled from the introduction of common and statute law.

Accessibility has been improved through the allowance of class actions – which allow consumers to launch a case without excessively large court fees. This is also more resource efficient as it saves money on numerous law suits. Accessibility is also increased from self-help groups such as the ACCC informational website provided for consumers.

Although, despite this, some manufacturers and suppliers have argued that the new rights and laws are at the mercy of their own. Although tariffs and regulations exist, the consumers are also mandated with expectations and duties, to allow the rights of the manufacturer and supplier to exist. The system encourages positive customer feedback and can benefit the service of manufacturers and suppliers. Therefore the justification for these claims are limited in their truth.

Overall, the introduction of government intervention through acts and common law precedent has allowed greater protection for numerous groups of society. The *laissez-faire* philosophy was inadequate at protecting consumers, however the advent of a range of laws aim to balance the needs of consumers and manufacturers and suppliers to create the more effective consumer law system.