

LEGAL STUDIES: *CONSUMERS*

Evaluate the effectiveness of the law in balancing the rights of consumers, suppliers and manufacturers?

Consumer law aims to balance the unequal power and interests of consumers, suppliers and manufacturers through government regulation, occupational licensing, redress measures and contract law. For the law to be effective in doing this the interests of all parties must be recognised and protected and the law must provide protection, equality and be enforceable. It must also be reformed to reflect community standards and contemporary influences such as technology, credit and marketing innovations.

Overall there has been a shift from little or no consumer recognition and protection under principles of caveat emptor and laissez faire to a highly regulated and competitive market with legislation giving substantial consumer protection, however increased risk for suppliers and manufacturers.

Common law principles provide protection to consumers. Most of the early consumer law came from were contract law cases, such as the case of *Gardiner v Grey* 1815 that established a product must be of merchantable quality and *Jones v Bright* 1829 which identified that a product must be fit for purpose. These were codified in The Sale of Goods Act 1923 (SOG), the first legislation that gave consumer protection. It introduced the concept of “implied terms” which effectively provides protection to consumers as there is an assumption that business will provide goods/services that meet normal usage and expectations and for manufacturers as they are protected against the consumer falsifying what was bought. The case of *Grant v Knitting Mills* 1936 recognised the binding force of implied terms, effectively increasing enforcement.

By intervening in contracts, common law increases enforcement and justice for the consumer as seen in the case of *Commonwealth Bank v Amadio* 1983 which showed that a contract under the Contracts Review Act 1980, was unjust through language barriers, age and education background was unenforceable.

The landmark case of *Donoghue and Stevenson* 1932 established a duty of care between consumers, suppliers and manufacturers that was binding without a contractual obligation, providing protection of consumers. However, non-compliance occurs due to the competing interests of each party, as compliance leads to compliance costs which decrease profitability for suppliers and manufacturers.

Beside common law, statute legislation also regulates consumer, suppliers and manufacturers, balancing the rights of each party. The Trade Practices Act 1974 (Cwth) (TPA) was introduced to prohibit restrictive trade which promotes competitive businesses and therefore reflects supplier interests of market share and increased sales. Effectively balancing the competing interests, this also promotes cheaper and better quality goods for consumers. To overcome jurisdictional issues of the TPA due to S51 which means that the legislation only covers companies, or interstate trade, the Fair Trading Act 1987 (NSW) covers sole traders and small businesses, increasing consumer protection when buying from these businesses.

As a response to the changing values of the international community the UN Guidelines for Consumer Protection was introduced, to which Australia is a signatory. Its principles such as the right to product safety is enforced due to Australian design rules and Standards Australia and the right to be informed is enabled through labeling laws and advertising regulations under the TPA. However the right to be informed increases costs for global manufacturers as a products packaging has to be changed to overcome language differences in different markets.

Consumer law remedies seek to redress some of the power imbalance between consumer and suppliers and manufacturers. There are a variety of remedies available to consumers which

increase equality and accessibility. The Australian Competition and Consumer Commission (ACCC) provides a resource efficient and equitable alternative to court proceedings. Most small consumer claims under the FTA are heard in the Consumer Trader and Tenancy Tribunal without legal representation which aims to increase consumer access to the legal system by reducing the cost.

The 2008 Productivity report, Review of Australia's Consumer Policy Framework, indicates that the ACCC cost consumers an average of \$30, highlighting its resource efficiency.

Non-legal means such as consumer groups and Law Reform Commissions are effective in highlighting consumer deficiencies to the awareness of the public and thus parliament, therefore attempting to balance the rights of consumers, suppliers and manufacturers. Although they are merely recommendations and have no legal weight, their effectiveness is demonstrated as 60% of recommendations are adopted by government.

According to the ABS (2011) 1 in 7 households spend more than they own, leading to consumer debt, but supplier and manufacturer profitability. This shows the conflicting interests of consumers and suppliers in regards to credit. The Uniform Consumer Credit Code (UCCC) was introduced as a response to the deficiencies evident in state regulation of credit under the Credit Act 1995, as many companies operate nationally and now globally. This greater consistency across states is effective in providing protection and equality to consumers due to accountability however, the SMH article "Credit files riddled with errors" (Feb 10) illustrates that states are allowed to independently introduce requirements separate from the code, which adds costs for businesses as they have to vary their practices and complete additional paperwork across states.

Recently the plain packaging of cigarettes was passed under the Tobacco Plain Packaging Act 2011 (Cth). Afterwards large cigarette companies lodged a case in the High Court (British American Tobacco Limited and Ors v. The Commonwealth of Australia) saying it the packaging was an international freedom of trade issue which would deprive them of copyright and is thus constitutionally valid. The Federal Government won. This demonstrates the problem of balancing the consumer interests of public health to the right of the supplier to market their goods.

The contemporary issue of technology created problems for both consumers and suppliers and manufacturers. As a response, the senate has just passed the Privacy Amendment (Enhancing Privacy Protection) Bill 2012. According to the SMH article "Technology amendment to tighten up online privacy rules" (May 2012), the reform aims to provide greater protection to consumers, as they will have greater awareness of how their online information is used, when it is collected and what third parties it is distributed to.

Online trade and global based business presents challenges as the supplier may be outside Australian jurisdiction. Legal reform will need to involve international cooperation and possible treaties.

Occupational licensing and bodies such as Advertising Standards board aims to protect consumers and business. Consumers are protected through standards being set and maintained, and reputable business benefits from their can trade from being a member of these organisations.

In essence, consumer law aims to redress the inequality and power imbalance that exists between consumers, suppliers and manufacturers, through law government regulation, law reform, occupational licensing, contract law and redress measures.