

13 The law and consumers

indirect speech 2
Suppose you are buying a television set. Can you be sure that the set you take home will be of the same type and quality as the one you have looked at in the store? If the TV breaks down after you have bought it, who should pay for the repair—you, the shop or the manufacturer? What should you do if you are not satisfied with the repair or with the fee that the engineer charges? If you are very unlucky and the set catches fire, who should pay for any damage to your house? These are questions of consumer law.

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Anyone who buys goods or services, whether an individual shopper or a large business, is a **consumer**. However, consumer law is mostly concerned with the rights of private individuals. Consumer rights are not a new concept. Pre-industrial societies throughout the world have imposed punishments on traders who overcharge or otherwise deceive their customers, even if they make honest mistakes. Bakers in Medieval England were so worried about the laws against selling underweight bread that they developed the custom of adding an extra roll free to a batch of twelve. Even today the expression “a baker’s dozen” means thirteen of something, not twelve.

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In the last thirty years, consumer law has grown at an unprecedented rate and is often studied as a branch of law in its own right. The principles of contract and tort are particularly relevant to consumer matters, but in addition to these, new legislation is passed every year to clarify the law and deal with specific problems.

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Not surprisingly, consumer law has grown most quickly in wealthier industrialized countries where people are accustomed to asserting their rights and have a wide range of information available to them. In Britain, the magazine *Which?* has been publishing independently researched information about products, services and legal rights for thirty years, and popular television programs discuss consumer complaints. If a discontented consumer is forced to take legal action, there are judicial institutions which enable him or her to do this without spending a lot of money. In developing countries where manufacturers often have low profit margins, consumers often have to accept lower standards unless they are rich or have important friends. But there are changes here, too. The Chinese government, for example, has responded to a growing demand for better quality goods by setting up special courts to deal with complaints.

Contracts

A lot of consumer law is basic contract law. The consumer must show that he had a contract with the supplier of goods or services, show that the supplier is in breach of this agreement, and convince the supplier that he would have a good chance of winning if he took the case to court. As mentioned in Chapter 6, contracts between businesses are usually full of detailed agreements about who should supply what, when, where and at what price, but everyday transactions involving private individuals are more informal. Very little is written down or even spoken, and the consumer must show that a contract has been implied by law. To help him there are consumer laws implying certain terms into consumer agreements.



Figure 13.1 Consumer law is growing to keep pace with consumerism.

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In English law, for example, the 1979 Sale of Goods Act implies a term that the seller has a right to sell. This protects the honest buyer from a seller who had no right to sell goods because they had been stolen. Another implied term is that goods correspond to any description given to the buyer. Another is that they be of “merchantable quality”—but this only applies if the seller is in business. When buying from a private seller the buyer may have to rely on express terms about quality. The 1982 Supply of Goods and Services Act implies similar terms regarding services. It also implies that services be provided with reasonable care at a reasonable cost and within a reasonable time. In deciding what is reasonable an English court will refer to similar previous cases. However, the most important guideline is usually common sense in the context of the transaction in question.

8

Where goods are concerned, the implied terms are **conditions**. This means that the buyer has the right to **discharge** the contract—to refuse the goods—if the terms are breached. He may also be entitled to damages (see Chapter 6). But where services are concerned, the implied terms are **intermediate stipulations**. This means that the consumer may only refuse the services if this is reasonable in the circumstances. The court may decide that he must accept work which has been done, but award him damages where the work has been done badly or too slowly or at too high a cost.

9 A difficult problem in consumer law is deciding who is responsible when goods are lost in delivery or delivered late. If no express agreement has been made about this, the Sale of Goods Act provides complicated rules. In general, the buyer has no responsibility until the time he takes possession of the goods. If goods arrive late he may be able to discharge the contract (refuse delivery) if he can show that time was of the essence (of vital importance). Sometimes this is implied by the nature of the transaction—for example, a contract to deliver fresh food or newspapers. In other cases, the consumer may make time of the essence by specifying a time for delivery. In the 1950 case of Richards vs. Oppenheimer, the buyer of a car continued to ask for delivery even after the date in the contract had passed. This implied that he had given up (waived) his right to discharge the contract for late delivery. However, he then gave the supplier another 30 days to deliver. Time was once again of the essence and when the car was finally delivered more than 30 days later the buyer was entitled to refuse the car and to refuse to pay any money.

Exemptions

10 Another difficult problem is that of **exemption clauses**. These are warnings to the consumer by the supplier that no responsibility will be accepted in the case of loss, damage or injury. For example, dry-cleaning businesses often have notices on a wall or on the back of tickets refusing responsibility for damage to clothes. Parking lots have sign saying that customers park at their own risk. Sports clubs warn that they are not liable if members injure themselves using their equipment. The law about exemption clauses varies from country to country, but in general it is important for the consumer to know that not all such clauses are valid. In Britain and the United States, for example, a party trying to avoid responsibility must show that the exemption clause was part of the contract with the customer and that it covered the problem in question.

The clause is more likely to be part of the contract if it is in a document signed by the customer or was written in a place all customers could read it. However, in the 1964 Scottish case of MacCutcheon vs. MacBrayne, a ferry company was unable to rely on a notice on a wall because it normally also asked customers to sign a form warning about risks of damage and injury but had failed to do so in the case of Mr. MacCutcheon. The 1977 Unfair Contract Terms Act makes it illegal for a business in Britain to try to limit responsibility for death or personal injury resulting from negligence. Responsibility for loss or damage or loss can only be avoided if this would be deemed reasonable.

Product liability

One of the fastest-growing areas of consumer law is **product liability**—responsibility for damage or injury caused by faulty goods. During the 1960s, a series of cases in the United States established the principle that consumers need only to show damage, effect, and a relation between the two. In 1985, the European Community issued a directive setting similar standards leading to new laws in seven EC countries, such as the 1987 Consumer Protection Act in Britain. Before this directive, British consumers had to pursue an action in the tort of negligence (see Chapter 8). The new law simplifies the requirements of proof and allows action against the supplier and importer as well as the manufacturer. In Japan, consumers still have to prove not only that there was a defect leading to damage, but that this was a result of the producer's clear negligence. Consumers complain that it is extremely difficult for them to win cases, partly because rules of technological secrets allow companies to withhold important information about products.

But there are some people who think things have gone too far in America, where there are thousands of new cases every year (compared with 130 in the last fifteen years in Japan). American manufacturers complain that they have to raise prices because of increased insurance bills to cover legal cases. There have even been attempts to extend product liability beyond manufactured goods to movies, television programs and music. Defendants in criminal cases have tried to use the defence that their actions were the result of being influenced by something they saw on television. In 1988, parents sued rock star Ozzy Osbourne after their child killed himself; they claimed that he had been influenced by song lyrics. They lost the case, but the judge said that the principle of freedom of speech did not necessarily exempt rock stars from legal responsibility in such cases.

Another problem manufacturers now have to worry about is what to do when someone threatens to put poison or glass or some other harmful substance in a product to be consumed by the public. In Japan, organized crime associations and individual employees have often used such threats in order to get money from a company. Even when the company could find no evidence of the threat having been carried out, it has usually decided to pay the money rather than take the risk of losing its sales. But what happens if a company refuses to be threatened, leaves its products on the shelves, and a member of the public is consequently poisoned? In the United States the Food and Drug Administration has laid down guidelines for companies depending on the likelihood of harm to the public.

One of the difficulties for governments when they make consumer legislation is to balance the interest of the consumer against those of the producer. In Britain, food shoppers sometimes complain that they are underprotected because their interests are looked after by the same government ministry that looks after the interests of the farming and fishing industry. On the other hand, in the last 25 years, the government has passed legislation about description of goods, consumer credit, unsafe goods, and many other things in addition to the laws mentioned above. Citizen's Advice Bureaus give free advice not only about products but also about welfare benefits, health services, educational and other public services. There is a danger that consumer law is becoming so broad it is difficult to define what it is.