

Consumer Credit Text-Cases-Materials

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BOOK REVIEW

Consumer Credit: Text—Cases—Materials. HOMER KRIPKE. St. Paul: West Publishing Company. 1970. Pp. xxxii, 454. \$10.00.

All of the hills and valleys of consumer credit are explored here. The topography includes fourteen chapters, a valuable bibliography, and appendices. The range is from a chapter on historical background through materials on reform in the 1960's, rate regulation and disclosure, licensing and free entry, restrictions on contracts and creditors' practices, limitations on liability, credit and collection agency practices, to a final chapter on the vexing and unsolved problem of fashioning a sensible structure to vindicate the rights of the consumer.

The book is not a simple atlas of the area, but a provocative display of the difficult policy problems inherent in protecting the consumer from abuse while assuring a continuing and adequate flow of reasonably-priced credit. The provocation comes from Professor Kripke himself, who seldom restrains his impulse for dealing with hard questions and for dealing with them from a creditor-oriented viewpoint. Needless to say, students in this age of consumerism will be stimulated to respond to Kripke's positions. The notes and questions alone make the book worthwhile for the student, the teacher, and the practitioner.

I do not mean to accuse the author of being unfair—he is equally hard on consumers and on creditors. Some consumer representatives are criticized for the tone and strategy of their attack on the Uniform Consumer Credit Code (UCCC)¹ in that they: (1) impugned the good faith of the UCCC drafting group; (2) assumed that they would win a forced confrontation in which they abandoned the support of more moderate reformers; and (3) took substantive positions that may be of questionable soundness.² Although some sales creditors cling to the insulation from consumer defenses believed to be offered by the holder-in-due-course doctrine and waiver-of-defense clauses, the author forthrightly agrees with consumers who are outraged by financing agencies' claims of freedom from defenses in the underlying deals.³ This sort of open- and tough-minded presentation of the author's views marks each segment of the book.

The material is drawn from federal, state, and even local sources and ranges from the Federal Consumer Credit Protection Act⁴ through existing and proposed state legislation, such as the UCCC and the

1 UNIFORM CONSUMER CREDIT CODE (Rev. Final Draft 1969).

2 Pp. 58-62.

3 P. 230.

4 15 U.S.C. §§ 1601-77 (Supp. V, 1970).

proposed National Consumer Act,⁵ on to a local law of New York City.⁶ New York materials are prominently featured; they do not give a myopic local flavor to the work, but rather provide a realistic view of the hodgepodge of law that may exist within a single state.

Case developments are not ignored. The evolution of the doctrine of unconscionability is traced through the cases and the rather skeletal statutory provision in the Uniform Commercial Code.⁷ In other areas, such as harassment in collections, the cases show the power of a common law system to adjust to new demands and new social phenomena.⁸

The book is a timely and unique addition to the teaching materials for consumer credit. It is time for law schools to offer a concentrated course in this area because three converging developments make the subject particularly significant in the present decade.

First, it is clear that both legislatures and courts are increasingly concerned with new developments in consumer law. The enactment of the Federal Consumer Credit Protection Act portends future activity by Congress. The states are studying the proposed UCCC and other proposed reforms such as the National Consumer Act. In the cases, we find increasing hostility to the traditional escape routes from the usury laws, and the law is moving to bar many creditor practices through the concept of "unconscionability" in the Uniform Commercial Code.⁹

The second major development is the revolution in the form of credit extension itself. Bank credit cards, retail revolving charge accounts, and leasing all compete with the more traditional sales finance and small loan devices. Each new device provokes a search for appropriate law to govern the creditor-debtor and sometimes third-party relationships. For example, to what extent is the issuer of a bank credit card free from defects in the sale transaction between the merchant and the cardholder?

Finally, the increased availability of legal services to the consumer and particularly to the poor means that questions are litigated when they might previously have been forgotten. The consumer need no longer forego litigation of hard questions because of the expense or his lack of knowledge of potential legal rights. Interesting classroom

⁵ NATIONAL CONSUMER LAW CENTER, NATIONAL CONSUMER ACT: A MODEL ACT FOR CONSUMER PROTECTION (1970).

⁶ Consumer Protection Law of 1969, New York City Law No. 83, *reprinted in* App. 8, pp. 437-41.

⁷ Pp. 199-229. The relevant provision is UNIFORM COMMERCIAL CODE § 2-302.

⁸ Pp. 315-28.

⁹ Pp. 199-211.

questions are more and more often featured as the issues in significant cases.

When legal, economic, and social changes occur simultaneously in a single area, we often find a need for guidance through the accompanying maze of technical and policy confusion. Professor Kripke's material offers such guidance in a scholarly, yet practical, fashion. Teachers and students will be challenged by the book. Lawyers, whether they represent consumers or creditors, will be shaken and educated, not by a simple-minded, black-letter text, but by a hard-driving, penetrating analysis of the policies in the field.

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