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Colin Scott and Julia Black

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Cranston's Consumers and the Law

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Preface to the Third Edition

It is sixteen years since the last edition of *Cranston's Consumers and the Law* appeared. We have retained the objectives of earlier editions—to provide a contextual and critical account of the consumer law of England and Wales with extensive comparison with solutions adopted in other jurisdictions. We have substantially retained the structure of earlier editions also, though we have removed the chapter on title, risk and performance and replaced it with a full chapter on services. Ross Cranston has no responsibility for any of the views expressed in the book, and we take entire responsibility for the text.

It is a tribute to Ross Cranston's vision that though nearly every aspect of legal doctrine analysed in this book has changed since the previous edition, the original structure and analysis continue to illuminate the topics. Ross was an early observer of such important phenomena as selective enforcement and self-regulation in the consumer domain, even though he was an advocate of neither. He believed passionately in strong public regulation as the basis for effective consumer protection and this was the primary basis for his critical approach both to the private law and self-regulation and to critics of public regulation.

We share Ross's interest in regulation—in different ways we would each claim it is our main field and we have both been closely involved in the development of graduate teaching and research in regulation at LSE. However, our own researches and understanding of the broader literature on regulation have led us to diverge to a certain extent from Ross's views on the respective merits of public regulation, self-regulation and private law. The contemporary emphasis of regulation research on institutional design is to find ways to mix a wide variety of instruments so as to promote development of and compliance with appropriate norms. We have followed this approach in examining regulation (broadly defined) in the consumer domain.

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We noted above that major doctrinal changes have occurred in the field of consumer law over the last sixteen years. There have been at least four major sources of reform. Firstly, the Law Commission made recommendations for reform of the law relating to sale of goods and privity, implemented by the Sale and Supply of Goods Act 1994 and the Law of Contract (Rights of Third Parties) Act 1999. Secondly, membership of the European Community has enabled the UK to participate in wider processes of consumer law reform with the consequent obligation to implement EC law in the UK. The importance of EC law in the consumer domain was hardly apparent at the time of the publication of the last edition. Now it is obvious that EC law is central to many developments. Major examples of such EC-inspired legislation include the Consumer Protection Act 1987 Part I (which introduced strict liability for producers of defective products), the Control of Misleading Advertisements Regulation 1988, the General Product Safety Regulations 1994 and the Unfair Terms in Consumer Contracts Regulations 1994 and 1999. There are numerous other examples discussed in the book, and other important EC measures such as the Injunctions Directive 1998 and the Consumer Guarantees Directive 1999 await UK implementation. Notwithstanding the importance of EC norms in the shaping of contemporary UK consumer law, it should be noted that we have taken the view that the history and institutions of EC consumer law and policy are substantially outside the scope of this work.

A third source of law reform is direct government initiative. While the Conservative governments in power from 1979–1997 were not noted for their enthusiasm for consumer law measures, they were responsible for important reforms on product safety and misleading price indications (introduced in Parts II and III of the Consumer Protection Act 1987 respectively), the Food Safety Act 1990 (parts of which implemented EC legislation) and for major new regulatory regimes in the areas of financial services (first under the Financial Services Act 1986, and now displaced by a Labour measure, the Financial Services and Markets Act 2000) and utilities services (currently undergoing major legislative reform).

The Labour government elected in May 1997 has committed itself to substantial reform of consumer law (in the 1999 White Paper *Modern Markets, Confident Consumers*) and to a number of related areas (including utilities and financial services regulation, noted above, and the Competition Act 1998). Consequently at the time of writing we are in the midst of major and welcome legislative reform. Some new measures have already been introduced, such as the creation of the Foods Standards Agency by the Food Standards Act 1999, and the reforms of utilities and financial services regulation mentioned above. New legislation is planned to reform the Trade Descriptions Act 1968 to align the principles relating to services with those applying to goods and to strengthen the capacities of the

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Office of Fair Trading to approve codes of practice and to secure injunctions against unfair trading practices. New powers are proposed also for the Secretary of State to criminalize unfair trading practices by statutory instrument and for local trading standards departments to enforce the provisions of the Fair Trading Act 1973 which relate to unfair trading practices. New independent consumer councils are to be established for the telecommunications, water and postal services and the existing Gas Consumers Council is to be replaced by an energy consumer council for gas and electricity. The final chapter provides an early evaluation of this work of reform.

A fourth source of law reform is the activity of the courts. Perhaps the most important area of judicial activism affecting consumers is in the field of professional negligence, where the House of Lords, having pulled away from the possibility of recovery in negligence for pure economic loss (in *Caparo v Dickman* and *Murphy v Brentwood District Council* in particular), subsequently surprised commentators by treating more generously third party beneficiaries to a will (*White v Jones*) and house purchasers adversely affected by a negligent survey (*Smith v Bush*). The density of the legislation in the consumer domain arguably gives to judges rather less scope for the development of judicial policy than might be true in other areas. This notwithstanding, the Court of Appeal played an important role in the development of the interpretation of the Trade Descriptions Act 1968, and more recently the House of Lords has occasionally had to consider consumer statutes, as in *Warwickshire County Council v Johnson* (clarifying the obvious, that employees were not to be prosecuted for pricing offences under s 20(1) of the Consumer Protection Act 1987) and *Dimond v Lovell* (a decision with very wide implications that a car hire agreement where payment was deferred was a consumer credit agreement under the Consumer Credit Act 1974, and invalid if not complying with the Act's requirements). Furthermore the importance of EC legislation gives to Community courts an important interpretive role, as with the effective neutering by the European Court of Justice (in *Commission v United Kingdom*) of the contentious wording of the state of the art defence in Part I of the Consumer Protection Act 1987.

Colin Scott would like to record the intellectual debt he owes to Iain Ramsay who taught him consumer law at Osgoode Hall Law School and to the discussions he has had with many consumer law students at the University of Warwick and the London School of Economics over the last ten years. We thank our colleague Joe Jacob for his assistance in getting to grips with the new Civil Procedure Rules introduced in April 1999. We are indebted to Ross Cranston for his support and encouragement. Julia Black revised and updated Chapters 1 and 12 and contributed the sections on financial services in Chapters 6 and 9. Colin Scott revised and updated

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Chapters 2, 4 and 6, wrote Chapters 5 and 10 and took responsibility for the overall editing and updating of the work. The concluding chapter of was written jointly by Colin Scott and Julia Black.

Colin Scott

Julia Black

July 2000

Cranston's Consumers and the Law on the internet

An internet home page has been established for readers of this book. This home page has two main purposes:

- firstly, it provides links to website containing important primary sources such as codes, consultation documents and reports which are not always easily accessible in law libraries;
- secondly it will be used to provide periodic updating information on key developments in law and policy.

The first update will appear in January 2001, with further updates in April and October.

To access the website go to the Butterworths academic home page—**www.butterworths.com/academic** and click on the *Cranston* link. You will be asked for a password. Please enter the password 'breadandale'.

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