

Contents

Preface to the third edition v Table of statutes xvii List of cases xxv

CHAPTER 1

Introduction: the context of consumer protection

- Problems facing consumers 1
- 2 Vulnerable consumers 4
- 3 The consumer as citizen 8
- 4 Consumer protection and developing countries 11
- 5 Consumer groups and the consumer interest 12
 - (a) A theory of consumer groups 13
 - (b) Consumer groups in practice 15
 - (c) Legal requirements for consumer involvement 19
- 6 Competition, market economics and consumer protection 22
 - (a) Competition policy and consumer protection 23
 - (b) The Chicago school 26
 - (c) Criticisms of the theories: rationales for consumer protection 30

PART I BUSINESS SELF-REGULATION 37

CHAPTER 2

Business self-regulation 39

- 1 Defining self-regulation 39
- 2 Approved codes of practice 42
- 3 Advertising self-regulation 51
- 4 The British codes of advertising and sales promotion 55



x Contents

- 5 Regulation of broadcast advertising 60
- 6 Injunctive powers 60
- 7 The development of advertising regulation norms 61
- 8 Self-regulation in perspective 66

PART II PRIVATE LAW 71

CHAPTER 3

Private law in perspective 73

- 1 Standard form contracts and legal control 74
 - (a) 'Freedom of contract' 74
 - (b) The judicial response 79
 - (c) Extortionate credit bargains 81
- 2 Unfair contract terms legislation 84
 - (a) The Unfair Contract Terms Act 1977 84
 - (b) The Unfair Terms in Consumer Contracts Directive 89
 - (i) Scope of UTCC 90
 - (ii) Unfair terms 93
 - (c) The alternative legal techniques 96
- 3 Implementation of private law rights 102
- 4 Small claims 110
- 5 New mechanisms for implementing private law rights 120
 - (a) Class (or multiparty) actions 120
 - (i) A rule for class (multiparty) litigation 121
 - (ii) Multiparty litigation procedures in England and Wales 122
 - (iii) Class (multiparty) rules elsewhere 129
 - (b) Alternative dispute resolution and Ombudsman schemes 133

CHAPTER 4

Minimum quality standards for products: retailers' liability 141

- 1 Background to product standards 143
- 2 Product quality 147
 - (a) Misrepresentations about quality 148
 - (b) Implied conditions in the Sale of Goods Act 1979 and the prospects for reform 153
 - (c) The current law 155



Contents xi

- 3 Correspondence with description 156
- Satisfactory quality 158 4
- Fitness for a specified purpose 161 5
- Remedies 163
 - (a) Rejection 164
 - (b) Damages 167
 - (c) Reform of remedies 170

CHAPTER 5

Minimum quality standards for products: manufacturers' liability 173

- 1 Contractual liability for manufacturers' statements and guarantees 174
- Tortious liability for property damage, personal injuries and 2 death 180
 - (a) Background to the current regime
 - (b) Reform 184
 - (c) Strict liability and negligence today 187
- 3 Conclusion 195

CHAPTER 6

Minimum quality standards for services 197

- General principles 198
 - (a) Contract or tort? 198
 - (b) Contractual standards and liability
 - (c) Tort standards and liabilities 204
- Quality standards in particular service sectors 207
- The provision of investment services 208 3
- Insurance 214
- 5 Holidays 218
- Public and privatised services 220
 - (a) Privatised services 221
 - (i) Contractualisation 222(ii) Self-regulation 223

 - (iii) Grievance-handling 223
 - (iv) Regulation, service quality and price controls 226
 - (b) Public services and service first 226
- 7 Conclusions 227



xii Contents

CHAPTER 7

Consumer credit 230

- 1 The development of consumer credit 230
 - (a) Forms of consumer credit 232
 - (b) The law of consumer credit 237
- 2 Obtaining credit 241
 - (a) A right to credit 241
 - (b) Creditworthiness and credit reference agencies 244
 - (c) The right to copies and to cancel 246
- 3 Credit agreements 249
 - (a) The contents and form of an agreement 250
 - (b) Control over credit 253
 - (c) Rate regulation and extortionate bargains 254
 - (d) Creditors' liability for retailers' breach 259
- 4 Determination of a consumer credit agreement 263
 - (a) The nature of the default 264
 - (b) The creditors' remedies 269
 - (c) The consumer's position 276
 - (d) Enforcement of the judgment debt 279
 - (e) Reform of the law 281
- 5 Institutional changes in consumer credit 283

PART III PUBLIC CONTROL 287

CHAPTER 8

Broad statutory standards 289

- 1 Trade descriptions 292
 - (a) Misdescribed products 294
 - (b) Misdescribed services 302
 - (c) Mispricing 306
 - (d) Property 313
 - (e) Other misstatements 316
- 2 The quality of food 318
- 3 Quantity 323
- 4 Corporate criminal liability and the statutory offences 325
 - (a) Liability of individual officers 326
 - (i) Top management 326
 - (ii) Employees 327
 - (b) Corporate liability 327
 - (i) Personal liability of company 327



Contents xiii

(ii)	Vicarious liability of company	328

- (c) Statutory defences: the company 329
- (d) Statutory defences: suppliers 332
- (e) Statutory defences: manufacturing processes 333
- 5 Conclusion 334

CHAPTER 9

The provision of information 337

- 1 Channels of information disclosure 340
 - (a) Product labelling 340
 - (b) Advertisements 341
 - (c) Terms of sale 342
- 2 Types of information disclosure 343
 - (a) Safety 343
 - (b) Quality 346
 - (c) Quantity 347
 - (d) Origin 349
 - (e) Use 349
 - (f) Contractual terms and parties 350
 - (g) Post-contractual rights 352
 - (h) Environmental impact 353
- 3 Food labelling 354
- 4 Price information 359
 - (a) Credit disclosure 362
 - (b) Disclosure in the provision of investment products 367
- 5 Disclosure regulation in perspective 372

CHAPTER 10

Product standards: regulating for consumer health and safety 377

- 1 Introduction 377
- 2 Setting standards 380
- 3 Detailed legal standards 384
- 4 Alternatives to classical regulation: voluntary standards and soft law 391
- 5 General standards 395
- 6 Defences to product standards offences 400
- 7 Monitoring, enforcement and sanctions 401
- 8 Conclusion 407



xiv Contents

CHAPTER II

Controls of trade practices 409

- The formulation of controls 411
 - (a) Statements as to consumers' rights 413
 - (b) The identity of mail order advertisers 415
 - (c) Disclosure of business character 416
 - (d) Other matters 416
- 2 Techniques of control 417
 - (a) Banning or severely limiting a prejudicial practice 418
 - (i) Mock auctions 418
 - (ii) Pyramid schemes 420
 - (b) Creating new consumer remedies 424
 - (i) Compensation levels 424
 - (ii) New property rights 426
 - (iii) Cooling-off periods 427
 - (iv) Protecting prepayments 436
 - (v) 'Cease and desist' orders 439

CHAPTER 12

Prior approval by licensing 447

- 1 The technique of licensing 448
- 2 Occupational licensing 451
 - (a) Monopoly effects 454
 - (b) The standards required of licensees 457
 - (c) Licensing, certification and registration 460
 - (d) Utilities licensing 462
 - (e) Consumer credit licensing 464
- Product licensing, a case study: drugs 469
 - (a) The aftermath of Thalidomide: prior approval for drugs 471
 - (b) Licensing: the European regime 477
 - (c) Restrictions on sales and promotions 483
 - (d) An evaluation of present controls 492

PART IV CONCLUSION 505

CHAPTER 13

Conclusion 507

Surveying the techniques of consumer protection 508



Contents xv

- (a) Self-regulation 508(b) Private law as a technique of consumer protection 512
- (c) Public regulation 517
- The future regulation of consumer markets 522 2

Index 529