

FOREWORD

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Consumer credit has received a great deal of attention in recent years. The courts have used the expanding concepts of product liability as well as liberal construction of express and implied warranties to assure that the purchaser in the market place receives goods of merchantable quality that will operate in the way they are expected to function and as they have been represented. Expanding case law is giving the consumer purchaser remedies which he did not have at an earlier day.

In legislative halls the consumer has also been the subject of many hours of debate. Legislative action has been caused, encouraged and criticized by many writers. A number of consumer organizations have demanded higher standards in the market place. The Congress of the United States has several times in recent years tried to equalize the bargaining position between the retail purchaser and the installment seller or financing party. It has set minimum requirements for imparting information to the purchaser who desires to acquire goods upon delayed payment. As yet federal law makes no attempt to regulate the amount of the credit, but it has required the seller or financier to disclose to the consumer certain basic facts about the transaction into which he is about to enter. Congress has prohibited certain terms in time-sale agreements and regulated remedies by limiting a buyer's right to contract away future earnings. It has also limited the amount that the unpaid seller or financier may collect out of current earnings of the debtor. In the past year Congress put absolute limits upon the liability which a credit card holder may suffer because of loss or misuse of his credit card. Most recently Congress has placed some limitations upon the compilation, storing and dissemination of information about the consumer.

All of these federal statutes have been hailed by supporters of consumer action as steps both needed and beneficial. This body has not gone far enough. Should the Congress regulate more of the terms of the agreement between purchaser and time seller; should they regulate the cost and amount of deferred payments? Past experience considered, the Congress will no doubt go further in future years to regulate more of the incidents of the debtor-creditor relationship at the retail level.

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Truth-in-lending legislation has been enacted upon the premises that if the buyer is supplied with accurate information about the actual terms and costs of the transaction he will stop and go elsewhere where the terms are more favorable or he will consider alternative ways of financing the transaction. Is there sufficient basis in fact for the assumptions which underlie these acts? Does the consumer know where to look for better terms? Is the mandatory information given to the purchaser during preliminary negotiations? Does he understand that he is free to stop the transaction at the time when the disclosures are made to him? We do not have enough information based upon actual studies to know the effect of disclosure. We do not know that he has a real choice. We do not know that there are in fact better terms available or alternative sources of credit. Although the sales finance industry and other credit suppliers fought hard against any disclosure legislation, there is no evidence that the new regulations have substantially changed the buying habits of the time-purchaser.

Legislation at both federal and state levels has been directed at the practice of permitting creditors to take current wages in satisfaction of debts. The federal Consumer Credit Protection Act limits the amount of money that may be taken by a creditor from the wages of a defaulting debtor. Most states also regulate the amount available from current wages for involuntary application to existing debts. The United States Supreme Court in a recent decision found the pre-judgment taking of current wages without notice or a chance to be heard to be in violation of the fundamental law of our society. There is some evidence that the taking of current income by creditors may result in either the dismissal of the debtor from his employment, or the filing of a petition under the federal bankruptcy act. The federal and some state garnishment regulations require that the debtor may not be dismissed from his employment for a single garnishment. However, after several such writs have been served upon the employer, the time-purchaser may be dismissed. An unemployed debtor is not able to pay.

As an out, the debtor faced with garnishment of his wages may file a voluntary petition in bankruptcy in order to avoid the consequences which normally follow the garnishment. In most cases this has the effect of dissolving the garnishment but not the debt. As a collection device the garnishment of wages is not very practical and it creates a severe hardship upon the debtor. The remedy ought to be completely barred both before and after judgment.

State legislatures have done much in recent years to assist the consumer in his unequal dealings with credit sellers. They too have required disclosure prior to the completion of the transaction, but state

disclosure provisions suffer from the same weaknesses as the federal. These statutes are also based upon untested assumptions of fact regarding the present habits of the consuming public.

Some of the more enlightened state legislatures, including California, have refused to allow the time-seller or financing party to use commercial paper in retail transactions. In these states the usually ignorant customer is protected from doctrines of negotiability which serve very useful purposes in commerce, but which are out of context in retail credit selling. The concept of holding in due course has no place in the retail market. However, if the legislature simply prohibits the use of commercial paper in retail transactions they have only done half a job. They must also prohibit the purchaser from promising not to plead his defenses against a purchaser of the contract from the original seller. Some states have done this, but unfortunately only a few. Unless these instruments and clauses are outlawed the credit buyer is deprived of his only immediate and practical remedy; simply withholding payment until a certain degree of satisfaction has been reached.

Another vexing problem for the unfortunate credit buyer is the loss of the goods by repossession and resale followed by a judgment requiring that he still pay a substantial amount of the debt. Such deficiency judgments can be real tools of oppression unless they are very carefully regulated. In most transactions it is desirable to refuse a deficiency to the unpaid seller who has resold the goods. If a complete refusal of deficiency judgments has not been made the legislature should regulate the place, manner and terms of sale. The right of the debtor to redeem from the retaking should be protected until the time of sale. Most state legislation has failed to assist the purchaser-debtor at the time of retaking and resale. Where regulation has been undertaken it has not, in many cases, provided a remedy which has a practical value to the debtor. Used consumer goods have no significant resale value and the remedy of repossession followed by a sale ought to be prohibited unless the time seller is willing to forgo the balance of the debt thereafter.

There are two major areas which have received almost no attention. The first is education of the consumer and the second is the creation of inexpensive practical remedies.

Can consumers be sufficiently educated to take advantage of the information that is furnished to them? Although few people are labelled "illiterate," there are a great many who are incapable of reading with sufficient comprehension to understand the terms of a note and securi-

ty agreement. Is it possible to train the consuming public to understand the terms of an installment sale or secured loan?

Many states have decided as a matter of policy that all public school students shall be exposed to certain subject matter such as civics. Certainly it would seem possible to require that students learn the rule of 78, or that they obtain some proficiency in the economics of retail installment purchasing. We can expose the young to the practices of the loan industry and the banking business. We can discuss with youthful consumers what creditors may do in the event of default upon a promise to pay money secured by an interest in goods.

Another necessary approach may be under the general heading of adult education. Through the use of the popular media, functionally illiterates may be reached. Perhaps it is easier to require uniform contract provisions and regulate the use of them so that it will only be necessary to teach the prospective consumer about a single set of provisions which he will encounter wherever he chooses to buy goods.

Much has been said about the necessity for education but little has been done. Informed buyers are a part of our mythical market place and much legislation is based upon the assumption that such educated buyers exist in great number.

The problems confronting the consumer who has been careful but who nevertheless has difficulty with the product or seller are very substantial. What remedy is there? There are remedies enforced by regulatory agencies of the state or federal government. What form do these remedies take? The authority to prohibit certain kinds of conduct by sellers or lenders is a protection to the public at large. However, it is frequently no remedy at all for the consumer who has spent a substantial amount of money and is not satisfied with the particular transaction or the goods. Many statutes make conduct in violation of the prescribed actions a misdemeanor or even, in rare cases, a felony. Is it realistic to think that the busy prosecutors will spend any substantial amount of time preparing cases against local businessmen?

The consumer does have private remedies. He is free to use the machinery of our court system, but who is to pay the expenses of the litigation? The high cost of traditional litigation hits very hard at the consumer who makes purchases of items costing usually less than five hundred dollars. When a dispute arises, can the amounts involved justify full-scale legal proceedings? Lawyers cannot afford to take very many such cases. To charge usual rates for altercations over hard goods or appliances simply makes no sense. Consumers in the lowest economic brackets may receive assistance through various publicly

sponsored legal services programs. And even where free legal services are supplied, it is most uneconomic to use the court system for settlement. For those who are in a slightly higher income bracket there are no legal services supplied. So an inexpensive, quick and accessible means of settling these problems should be worked out to replace the present system which amounts to unilateral determination by the maker of the warranty or the grantor of the credit.

The public has become more aware of the pitfalls of the marketplace. Much progress was made in the last decade. Hopefully, and determinedly, much more will occur in the '70s.