

INTRODUCTION

Although the use of credit has its roots in Biblical times, not until recent years has there been a rapid and widespread growth of the credit industry. The advent of this new expansion has facilitated the distribution of wealth of the American economy to more consumers and at a faster rate than ever before possible; however, with the new innovations in the consumer credit industry and that industry's prodigious growth have come serious problems for not only the consumer but for the legislator, the attorney, and the legal scholar as well. *Legal Problems of Consumer Credit* is a compilation of articles analyzing various legal aspects of the consumer credit phenomenon. The articles examine various legislative enactments and their effectiveness, describe practical approaches to existing problems, and formulate new proposals in an effort to provide guidelines and remedies for the utilization and growth of consumer credit and its many legal ramifications.

The Unruh Act: A Legislative History surveys the development of the Unruh Act which regulates the retail installment sale of consumer goods and services in California. The article is divided into three parts. The first is concerned with the legislative study of the practices of retailers which lead to its adoption. Next, there is a discussion of the original provisions of the Act in the context of how they were meant to correct abusive practices in retail installment sales. The final part looks at the major amendments to the Act, the reasons for them, and the effects of those amendments. While theory is discussed throughout the paper, the article is primarily intended as a vehicle for enabling the practitioner to better understand what the Unruh Act is designed to accomplish.

The Role of California's Attorney General and District Attorneys In Protecting the Consumer analyzes the function performed by the California Attorney General's Consumer Fraud Unit and local district attorneys in protecting the consumer. Initially, the need for public action is examined—first by viewing the scope of consumer problems in the marketplace and second by evaluating the consumer's ability to seek reparation through either an individual or class action. The ability of the public enforcement agencies to fulfill this need is then examined by analyzing the statutory authority for action by public agencies in areas where consumers most commonly experience problems such as false advertising, unfair competition, retail installment sales, and automobile sales. The manner in which these statutes are being enforced is also discussed.

Attachment and Garnishment in California—In Need of Reform discusses the current problems in the law of garnishment and attachment in California. The article stresses California's judicial and legislative responses to the *Sniadach* decision and the federal garnishment regulations imposed by Title III of the Federal Consumer Protection Act, pinpoints specific problems in the law of garnishment and attachment remaining to be solved in California, and proposes legislative solutions to these problems. These proposals include: (1) elimination of attachment of all property sought to satisfy debts incurred in the purchase of personal, family, or household goods as opposed to debts incurred in the purchase of commercial goods; (2) enactment of a state statute which complies with the federal garnishment regulations so as to bring the administration and enforcement of the act under state control; (3) alteration of the state's procedural mechanism for wage garnishment so as to provide service of levies on employers by mail rather than by personal service by sheriffs as well as guarantee debtors notice of impending garnishment, information of possible exemption from garnishment, and a simple procedure for claiming that exemption.

California's Automobile Deficiency Judgment Problem looks at current abuses of the deficiency judgment. The article discusses the history and present practice of the deficiency judgment in California. It also presents arguments for and against the deficiency judgment. In addition, the article offers and evaluates various proposals to alleviate the problems created by the deficiency judgment. It concludes that the automobile deficiency judgment, as it now exists in California, should be either eliminated or at least restricted.

Consumer Credit Sale Disclosure in California looks at consumer credit sale disclosure in California as affected by the Federal Truth in Lending Act and Regulation Z. The article compares and contrasts the provisions of the Truth in Lending Act and California's Unruh Act and Rees-Levering Act in the following areas: (1) the *scope* of the Acts to determine what transactions covered by the California Acts also come within the coverage of the Truth in Lending Act; and (2) the *disclosure requirements* to determine inconsistent California provisions.

The Impact of Truth-in-Lending in Automobile Financing: An Empirical Study surveys the effect that truth-in-lending disclosure has had upon the financing habits of consumers. Empirical in nature, this study focuses upon the automobile transaction and explores such subjects as consumer awareness of the truth-in-lending disclosure and the use of that disclosed information. Further, the article seeks

to evaluate the impact of disclosure by examining consumers' shopping habits as they relate to financing.

Regulation Z, Rescission, and Real Estate attempts to provide information for the real estate lender encountering technical difficulties in complying with the Truth in Lending Act. The allocation of many of the charges found in real estate transactions between the finance charge and the amount financed is explored. Other questions considered include the role of the real estate agent as an arranger of credit and the general disclosure requirements including the proper time for making disclosures. Following the discussion of credit cost disclosure, attention is turned to the right of rescission created by the Consumer Credit Protection Act and Regulation Z. Questions explored include the broad definition given to the term "security interest," the consequences of rescission, and the effect on statutory lienholders. The final section examines the right of rescission when the credit transaction subject to rescission is an advance by the issuer of a bank credit card to a cardholder; it is argued that the problems in this area call for new rulings by the Federal Reserve Board.

The Effect of Truth-In-Lending on Agricultural Transactions comments on the Truth in Lending Act and Regulation Z as they apply to agricultural transactions. It questions the original inclusion of agricultural transactions within the Act and the treatment of a farmer as a consumer rather than as a businessman. Also discussed is the distinct body of law relating to these transactions which evolved in recognition of their difference from ordinary consumer purchases and to mitigate the problems which arose from the initial, singular treatment. Finally, an effort is made to delineate the problems which remain under the current treatment of agricultural transactions and to discuss proposed remedial action.

The Attorney as an Extender or Arranger of Credit is a practical analysis of the application of the Truth in Lending Act to attorneys. The focus is on situations in which a practitioner may become an arranger or extender of consumer credit. The article, using a series of hypothetical situations, develops a discussion concerning consumer predicaments, such as billing arrangements, repayment of judgment debts, real estate transactions, etc. The article concludes that practitioners should be aware that the Truth in Lending Act applies to professional persons—especially attorneys.

Debtor's Dilemma: Status of the Secured Creditor Under Chapter XIII of the Bankruptcy Act looks at the role of the secured creditor in wage earner proceedings commenced under Chapter XIII of the Bankruptcy Act. It is submitted that current judicial interpretations of the statutory provisions dealing with the secured creditor have

reduced the effectiveness of Chapter XIII as an alternative method of debtor rehabilitation. An extensive analysis of case law is undertaken to illustrate this development and to define the legal status of the secured creditor within the statutory framework. Policy considerations dictating the need for legislative revision of the present statutory scheme are then discussed within the context of a recent American Bar Association proposal for amendment of Chapter XIII.

Number 8 and Still Trying Harder—An analysis of Chapter XIII in Sacramento discusses Chapter XIII of the Bankruptcy Act in general and focuses on how Sacramento has 'twisted and bent' Chapter XIII to develop an efficient method for handling Chapter XIII bankruptcies. The Article is intended to provide a model to attorneys and bankruptcy trustees in other parts of the country seeking changes in bankruptcy proceedings as well as to serve as a practical guide for attorneys in the northern California area when confronted with a Chapter XIII bankruptcy proceeding.

Bank Credit Cards and the Usury Laws examines a rapidly expanding source of consumer credit, the bank credit card, and considers whether state and federal usury laws can be used to regulate their interest charges when state retail installment legislation is either absent or inapplicable. The article reviews recent cases applying usury laws to revolving credit plans and considers whether their reasoning can in turn be applied to three party bank card plans. Also discussed is the problem of applying state usury laws to regulate interest charges by national bank plans. It concludes that the use of usury laws, one of the oldest of consumer protection methods, to bank credit cards, the newest major consumer credit source, may be a valuable control on interest rates until legislation dealing directly with this seemingly unique credit plan can be developed.

Three Party Credit Card Transactions: Legal Rights and Duties explores the two predominant theories used to define the legal relationships involved in three party credit card transactions: the letter of credit and factoring concepts. It discusses these theories and their application and misapplication to a credit card transaction. It is submitted that if the transaction must be placed in some existing legal pigeonhole, it belongs with factoring. However, the article concludes that this hybrid of commercial realities deserves a more precise legal definition.

The Apportionment of Credit Card Fraud Loss concerns the unauthorized use of credit cards and how the resulting monetary loss should be allocated between card issuers and cardholders. It demonstrates that neither the courts nor the legislatures have thus far arrived at a means to best minimize this loss and to equitably distribute

it among the parties. Attention is also given to the “liability-until-notice” system of loss apportionment. In conclusion the article puts forth suggestions for legislative remedies to the problem of fraud loss apportionment.

Protecting Consumers from Arbitrary, Erroneous, and Malicious Credit Information analyzes the legal remedies afforded consumers for harms caused by misuse in the collection and use of credit information by credit bureaus and other credit reporting agencies. The article discusses the need for such an industry in our increasingly credit-oriented economy and explains how credit information is gathered and used. It then explains how credit bureau practices have wrongfully harmed consumers and have caused serious breaches of privacy. Finally, the article deals with legal remedies to correct improper credit bureau practices and to protect consumers from the misuse of credit information. It explores the adequacy of these remedies and how they can be improved.

A Federal Usury Law—Uniformity At Any Rate focuses on the increasingly apparent need for uniform usury laws that has arisen with the continued growth and integration of the national economy. Because the intransigence of some of the states may preclude uniform state action, the only remaining avenue to uniformity would seem to be federal preemption of the field. Whether the matter is of sufficient importance to warrant federal intervention into any area historically under state control and whether there is enough national purpose for such action remains to be seen. However, the article submits that the inherent discriminatory effects of usury laws when compounded with diverse state control would imply that federal action is neither impossible nor unjustified. The article also explores some of the rationales for federal control and the weakening arguments for state control. Among the areas explored are the economic effects of usury, the conflicts of laws issue, new federal initiative in the area of consumer credit regulation, and the federal interest in rate regulation.

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