

PRE-SESSIONAL HOUSTON LAW CENTRE

Comparative Consumer Law (EU focus)

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Taught from 04 January to 11 January 2010

Examined by unseen exam on 12 January 2010

The course will start with a study of Constitutional European Consumer Law to enable students to fully understand the legal framework within which consumer protection operates in Europe. The classes will then focus on substantive European Consumer Law and some key areas of study including trade practices, unfair contractual terms and access to justice. Where appropriate students will be invited to compare and contrast American protection to that of the EU.

Outline of the European Consumer Law Course

Learning outcomes:

The module provides opportunities for students to develop and demonstrate knowledge and understanding, qualities, skills and other attributes in the following areas:

(A) Knowledge and Understanding

Learners are expected to demonstrate that they have acquired an appropriate level of competence in a number of areas of knowledge and understanding. In particular, they will be able to:

1. Demonstrate very good understanding of EU consumer law relating to some topical consumer law issues and, to a lesser extent, laws applicable in different Member States. In particular students will show a very good understanding of constitutional as well as substantive law.
2. Explore the connection between the substantive and theoretical issues involved in a number of topics relating to consumer policy in the studied areas.
3. Be able to compare and contrast EU consumer law and American consumer law in some relevant areas

(B) Cognitive (thinking) Skills

Learners are expected to be able to:

4. Read and analyse judicial decisions and interpret statutes to a high level of competency emanating from the EU or the US.
5. Apply legal knowledge to scenarios in order to provide sustainable conclusions to the problems raised in the scenarios. Students should be able to solve complex scenarios and give reasoned advice.
6. Make appropriate and effective use of secondary sources, particularly periodical articles and monographs from a wide range of sources.
7. Demonstrate developed analytical skills and an ability to make critical judgements of the merits of particular arguments. We expect learners to be able to develop a sustained argument throughout the course of their essays.

8. Demonstrate a good ability to undertake independent research and produce essays that show developed research and writing skills including sustained and developed analysis of legal principles derived from judicial decisions and/ or legislation of a EU or US origin.

(C) Other Skills and Attributes (Practical/Professional/Transferable)

Learners are expected to be able to demonstrate:

9. Their autonomy and ability to learn.
10. Good written and oral communication and good information technology skills as well as an ability to make use of numerical and statistical information as necessary.

Indicative Reading list:

Recommended textbook:

We will use this textbook to teach the course –

- Iain Ramsay, Consumer Law and Policy, Text and Materials on Regulating Consumer Markets, Hart Publishing (2007), second edition, ISBN: 978-1-84113-505-2

For the parts on constitutional EU law, students may find the below most useful – but this is not an obligatory purchase.

- Nigel Foster, Foster on EU law, 2nd edition, Oxford University Press (2009)

Students will also be directed to a series of academic articles – the references for these will be communicated before the start of the course. Some articles will be provided to students via email before the start of the course.

Other readings:

Readings will also be taken from a wide range of books, academic journal articles, reports, legislation and cases. The below shows a sample of the books, students may be referred to:

- Micklitz, Reich and Rott, Understanding EU Consumer Law, Intersentia 2009, ISBN: 978-90-5095-776-2, web: www.intersentia.com
- Howells & Weatherill, Consumer Protection Law, second edition, Ashgate Publishing (2005)
- Howells and Schultze (eds), Modernising and Harmonising consumer contract law, Sellier European Law Publishers (2009)
- Stephen Weatherill, EU Consumer Law and Policy, Edward Elgar (2005)
- P Craig and G de Burca, EU law, 4th edition, Oxford University press (2008)
- Nigel Foster (ed.), Blackstone's EU Treaties & Legislation 2009-2010, Oxford University Press (2009)

Course outline:

Block A – Constitutional European Consumer Law

1. Introduction to European Consumer Policy Making
 - a. Historical development of European Consumer Policy in the EU (from the Treaty of Rome to the Lisbon Treaty)
 - b. Key European Institutions involved in the making of Consumer Law
 - i. Commission (incl. DG SANCO)
 - ii. Council of Ministers
 - iii. Council
 - iv. Parliament
 - v. ECJ
 - vi. Other specialized bodies (incl. Economic and Social Committee, BEUC)
 - c. Sources of Law
 - i. Treaties
 - ii. Acts of the Institutions (Directive, Regulation, Decisions)
 - iii. Soft law
 - iv. Judicial sources

2. Role of the ECJ in the development of European Consumer Policy
 - a. Development of principles (incl. supremacy, proportionality)
 - b. Preliminary rulings under article 234
 - c. Judicial Review under article 230
 - d. Actions against Member States under article 226 and 228
 - e. Direct effect, indirect effect and State Liability
 - f. Protection of the four freedom
 - i. Free movement of goods
 - ii. Free movement of services
 - iii. Free movement of persons and workers
 - iv. Free movement of capital
 - g. Protection of consumers: the example of article 28-30 on free movement of goods

3. Shared competence in the development and adoption of European Consumer Law
 - a. Law Making procedures
 - i. Legal basis
 - Article 94 and 95
 - Article 153
 - ii. Legislative technique – regulatory choices
 - Directive or Regulation?
 - Maximum or Minimum harmonisation?
 - Vertical or horizontal approach?
 - b. The impact of the principle of Subsidiarity on EC Consumer law making
 - c. Role of Member States in the making and enforcement of European Consumer Law
 - i. Implementation of Directives
 - ii. Co-operation between authorities

Block B – Substantive European Consumer Law

1. The protection of EU consumers through the control of trade practices
 - a. Inertia sales
 - i. Rationale for prohibitions
 - ii. Criminal offence
 - b. Doorstep selling
 - i. Sale technique restricting consumer's choice
 - ii. Definitions of consumers and business within the scope of legislated field
 - iii. Contracts caught and contracts excluded
 - iv. Right to cancel
 - v. Discrepancies in implementation and reform perspectives
 - c. Distance selling & e-commerce
 - i. Key definitions
 - ii. Scope of application of legislated field
 - iii. Cancellations
 - Period and exercise
 - Exceptions
 - Online auctions and other anomalies
 - d. Unfair commercial practices
 - i. Scope
 - ii. Assessing unfairness
 - iii. Enforcement and compliance
 - iv. Practices prohibited in all circumstances
 - 31 practices
 - Automatic ban
 - Sanctions
 - v. Prohibition of misleading and aggressive practices
 - Notion of average and consumer and vulnerable consumer
 - Misleading by omission or by action
 - Aggressive practice
 - vi. General prohibition of unfair commercial practices
 - Professional diligence
 - Material distortion
2. The protection of EU Consumers through the control of unfair terms in consumer contracts
 - a. Rationale for control
 - i. Freedom of contract
 - ii. Strength in negotiation
 - iii. Adhesion contracts
 - iv. Exclusion clauses
 - b. Methods of control
 - i. Judicial route
 - Caveat emptor principle
 - Incorporation of terms method

- Lack of consumer protection in individual legal action
 - Comparison with the concept of unconscionability in American Law
 - ii. Statutory route
 - Contracts covered
 - Types of terms covered
 - “significant imbalance” as a means to test consumer detriment
 - c. Required harmonisation
 - i. Changes in the proposal for a Directive on Consumer Rights
 - ii. Impact of changes in Member States legislation
3. Access to Justice for EU Consumers
- a. Alternative dispute Resolution
 - i. European development of alternative dispute resolution methods: a recent trend
 - ii. Active push towards more ADR/ ODR for consumer disputes
 - iii. ADR types (including mediation and ombudsmen)
 - b. Consumer arbitration
 - i. Unfairness of pre-arbitration clauses
 - Globalisation of business practices pushing towards clauses finding their way in EU consumer contracts despite prohibition – de facto application
 - Dangers of the US influence
 - Divergence in unfair terms legislation across the EU as a factor for lax protection
 - Proposal for reform
 - Intervention of the ECJ
 - ii. Post dispute arbitration lacking safeguards
 - Commercial push towards arbitration
 - Deficiencies of court system as a promoter of arbitration
 - Repeat player effects
 - Big bucks effects
 - Lessons from US practice
 - c. Small claims courts
 - i. Discrepancies across member states
 - ii. Reduced costs and other attractive features
 - iii. Need for reforms
 - iv. Enforcement issues and co-operation agreements across the EU
 - d. Consumer Class actions
 - i. Current EU project
 - ii. Policy resistance
 - iii. Proposal for deployment
 - iv. Lessons from the USA