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BOOK REVIEW

HANDLING CONSUMER CREDIT CASES

BY BARKLEY CLARK,
JOHN R. FONSECA

Rochester, New York: The Lawyers Co-Operative Publishing Company; San Francisco, California: Bancroft-Whitney Company, 1972. Pp. xi, 738. \$35.00.

A literate well-organized book, *Handling Consumer Credit Cases*, by Professors Clark and Fonseca, is indeed a significant, fresh offering in the area of consumer credit law.

I heartily agree with the authors' prefatory comment that "consumer credit has now fully emerged as an independent area of the law." Their pioneer effort to delineate the scope of this new legal area is admirable. Earlier authors such as Homer Kripke in *Consumer Credit, Text-Cases-Materials* (West 1970), and William F. Young, Jr. in *Consumer Credit, Cases and Materials* (West 1969), seemed unsure of whether they were defining a new body of law or merely exploring a sub-area of the law of sales. Professors Clark and Fonseca correctly identify consumer credit as an independent, emerging body of law.

Instinctively knowing that the scope of "consumer credit law" is not narrow, the authors have incorporated deceptive trade practices, warranties, and right to privacy, *inter alia*, as part of the area. Logically, they could have swept even more broadly by including other current lively matters such as sex discrimination in credit, or anti-trust concerns in consumer credit.

Throughout the book, but with special focus in Chapters XII and XIII, the authors display their experience in the new area by insisting that consumer credit law must finally be reduced to a question of the effectiveness of the relief that complements the emerging substantive law.

Unfortunately, there are several troublesome features of *Handling Consumer Credit Cases*. The authors' intentions are puzzling. Their "Research References," which appear at the end of each section, suggest an intention to introduce consumer credit law to the unacquainted practitioner. If that is their aim, the mark is significantly missed. The practitioner

will find the chapters a lively overview, but not a research tool. Indeed, the authors' conundrum is their apparent assumption that the reader is already conversant with credit law enactments and jargon. They offer no real practical aid for credit counselling, such as checklists of problem areas, forms, sample complaints, or other tools of a true research piece. Without proper preguidance, I believe that the unfamiliar practitioner will be simply puzzled rather than instructed.

As a classroom tool for students, if that is intended, the book is again not in focus. It offers no case readings, queries, or problems, and without extensive editorial comments by an instructor, it is too sophisticated. Furthermore, its retail price is prohibitive for students.

I am particularly saddened that this book is not adaptable for classroom use, for I had so anticipated. The authors surely adapt these materials in some form for their own students, and I thus suggest that they publish their own course material in some usable textbook form for those of us who teach in this area.

Although the authors prefatorily state their hope that the book will be useful to banks, retailers, legislators, and so forth, for reasons suggested above that hope is ephemeral. Indeed, it seems the book is written for the authors themselves and for those of us who reflect on the materials to which the book refers as preparation for teaching the area in a more mundane way. A particularly obvious key to this seemingly overriding purpose is the emphasis on the National Consumer Act.¹ Comparing the Uniform Consumer Credit Code with the National Consumer Act is enjoyable as an academic exercise, but it can be no more than that — the credit industry will fight the National Consumer Act to its death. At the most, the National Consumer Act has inspired revisions of selected amendments to the Uniform Consumer Credit Code, as is now evident in Working Redraft No. 4 of the Code and its earlier Working Redrafts, or in a unique enactment such as the Wisconsin Consumer Act, passed in early 1972.²

If the National Consumer Act is relevant, then why have the authors omitted Senator Proxmire's proposed Fair Credit Billing Act,³ or the proposed federal Consumer Protection Agen-

¹ NATIONAL CONSUMER LAW CENTER, NATIONAL CONSUMER ACT (FIRST FINAL DRAFT 1969).

² WIS. STAT. ANN. §§ 421-27 (1972).

³ S. 652, 92d Cong., 2d Sess. (1972).

cy;⁴ or the numerous bills⁵ which would expand the jurisdiction of the Federal Trade Commission under section 5 of the Federal Trade Commission Act⁶ and permit private remedial relief, even class actions thereunder; or the studies and hearings of the National Commission on Consumer Finance; or the class action studies of the National Institute for Consumer Justice or the American College of Trial Lawyers?

Of course, any book in this swiftly changing field can only be of fleeting moment. Many suggestions in the book indicate the authors' awareness of its transient value. The Uniform Consumer Credit Code is under substantial revision after only six amended passages in relatively minor states since its promulgation in 1968.⁷ Although the National Consumer Act seems dead, Congress probably will not wait for the states to enact legislation to match rising consumer and consumer-advocate expectations. And every enacted statute seems to be undergoing proposed revision and constant (and often conflicting) judicial and administrative interpretations. All we can do is capture an overview sense of the present and be analytically prepared for the future. Professors Clark and Fonseca have made a contribution in that regard.

*L. Richard Freese, Jr.**

⁴ S. 1160, 93d Cong., 1st Sess. (1973); H.R. 564, 93d Cong., 1st Sess. (1973); H.R. 5389, 93d Cong., 1st Sess. (1973).

⁵ See, e.g., S. 986, 92d Cong., 1st Sess. (1972), which sets up rather elaborate provisions and particular language to be used for designation of warranties in consumer sales; and S. 1222, 92d Cong., 1st Sess. (1972), which would expand the availability of class actions.

⁶ 15 U.S.C. § 45 (1970).

⁷ Colorado, Idaho, Indiana, Oklahoma, Utah, and Wyoming.

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