

8a) In order for the effectiveness of the law to be evaluated it is imperative that some key terms be defined. Justice is a difficult word to attempt to define, it incorporates so many concepts. Justice is usually described as fairness, what people see as fair is just and likewise what is unfair is unjust.

There are many areas within consumer law, such as marketing and advertising, consumer credit and credit contracts as well as occupational licencing. This essay will deal with these issues separately for the purpose of simplicity.

In order for the effectiveness of the law to be evaluated a certain criteria must be established by which to assess the law. These criteria are, equality before the law, access to the law, the enforceability of the law, resource efficiency, and how the rights of individuals are balanced against the rights of society.

Advertising is often seen as a twentieth century phenomenon, but this is not true, it

is the advertising industry itself that is new.

Marketing and advertising regulations are imposed by both statute and common law. The Commonwealth legislation, consisting primarily of the Trade Practices Act 1974 is the most important piece of legislation in protecting consumer rights in regards to marketing and advertising.

The Trade Practices Act contains general provisions as well as specific provisions to protect consumers from deceptive advertisements and misleading marketing practices. Specific provisions contained in the Trade Practices Act are the prohibition of bait advertising and deceptive conduct.

Bait advertising occurs when a vendor advertises a product at a low price, but upon buying the goods, the vendor reveals that there are none left, and attempts to sell the customer another product at a higher price. The common law case of *Reardon v Morely Ford* demonstrates this. When Reardon went to buy a product



Morely Ford attempted to sell Reardon a more expensive product. This is illegal under the Trade Practices Act. The Fair trading Act 1987 (NSW) also contains provisions for protecting consumers against misleading and deceptive practices. This piece of legislation was introduced to provide a greater range of consumer protection provisions, as societies values and attitudes had to be reflected in new legislation. The Sale of Goods Act 1923, provided some protection in the sale of goods but this was very limited.

Community values and attitudes towards advertisements have changed enormously over the past century and it was necessary to enact legislation that would protect and reflect community values. The newspaper article "Shopping and Shocking" in the Sydney Morning Herald 7/11/00 highlights the fact that what the general community ~~see~~ accepts in contemporary society, is very different from community

attitudes even in the 1950's.

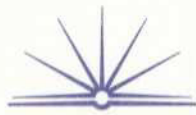
The area of consumer credit and consumer contracts is another area of consumer law that has responded to changes in community standards and attitudes.

Excluding North Americans, Australians spend the most amount of money of credit in the world. Since the introduction of credit cards the law needed to provide provisions through legislation that provided greater protection for consumers.

The introduction of the Credit Act 1984 at the time was seen as a major leap forward in consumer credit protection, although this Act only protected about 20% of the entire credit lending market. It was due to this statistic that the Consumer Credit Code was introduced on the 1 November 1996, implemented through the Consumer Credit Act 1995. This Act gave a much broader range of protection.

Consumers may find redress through the





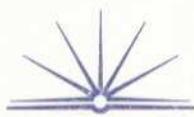
Contracts Review Act 1980. This provided many provisions, that were deemed unlawful, nearly all of which were challenged by a common law decision.

The Case of *Blomely v Ryan* supported the notion that some contracts were deemed void if one party was taken advantage of. In this case Blomely was drunk at the time of signing the contract, and so was deemed unfit to enter into a contract.

The case of *Balfour v Balfour* supported the notion that domestic arrangements did not constitute a legally binding contracts.

The famous case of *Donoghue v Stevenson* established the precedent of duty of care towards manufacturers of goods, even though they were not necessarily privy to the contract.

Other cases such as *Amadio v Commercial Bank of Aust*, *Booth Cash Chemists v Society of Great Britain* and *the Balmain New Ferry Co v Robertson* all relate to contracts.

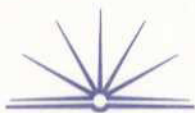


Occupational licensing can either be self regulated or state regulated. An example of self regulation is the Australian Broadcasting Authority while an example of State Regulation is the Travel agents Act 1986.

As stated earlier a criteria must be established in order to fully analyse the effectiveness of the law.

Firstly, access to the law. Peoples access to the law has been greatly improved through mediation and alternative dispute resolution. The provision of legal Aid has also helped in improving access to the legal system. The law has been effective in adapting to community values and attitudes through providing other forms of dispute resolution other than the formal courts, who are often time consuming and expensive, which is not resource efficient. The ACCC regulates actions, under the Trade practices Act while, the Fair Trading Tribunal regulates under the NSW



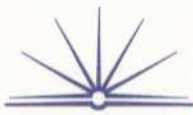


Fair Trading Act. This brings us to the next point enforceability. The enforceability of these two bodies is seen as effective as they are willing to impose fines on large corporations. This is proved by the ACCC v Nissan Motor Co. 1998 Case. The ACCC imposed fines on Nissan for false advertising and deceptive practices.

Equality before the law has effectively changed to suit community value and attitudes. Anti discrimination laws such as the Antidiscrimination Act 1977, provide greater equality among members of society which complies to updated community standards and attitudes.

The equality before the law is also evident in the case of women and children in relation to contracts regulated by the Minors (Contracts & Property) Act 1980, although children are protected from unscrupulous dealers when in contracts.

Resource efficiency is achieving greater



effectiveness through the implementation of alternative dispute resolution mechanisms. The communities changing values on the issues of justice and equality has led to these more cost effective methods of resolution.

As is the case with any area of the law, law reform is essential to keep up with changing community attitudes and ideals.

Advertising in regards to genetically modified foods as well as internet shopping and the associated problems need to be further regulated in order to comply with the general communities values and attitudes.

The rights of society need to be balanced against the rights of the individual in terms of consumer law, the need for individual justice and the need for the wider community to see justice occurring, need to be in balance.

In conclusion the changing nature of society and their ever changing values and



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8cont.) attitudes has required some legislative changes as well as common law changes. The effectiveness of these changes through improved accessibility and equality under the law is improving, although a long way from perfect.