Community banks and financial technologies: strategies for credit consumption

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Abstract: Access to credit can contribute to freedom expansion, widening the social opportunities that someone has. Credit might improve quality of life by financing education, housing and all kind of goods and services we need. It can also heat up economy, financing business activities.

The successful experience of the community development banks shows that credit may improve human lives by promoting economic inclusion guided by solidarity and mutual support. The pioneer Grameen Bank, created by Muhammad Yunus in Bangladesh, helped millions of people to cross the poverty line by using credit to undertake business.

Different from ordinary banks, community banks do not grant credit directly for consumption but for applying in income increase. Credit is granted with guidance and support, avoiding asymmetric information. Concerning the costs of credit the more poor, the lower the rates of interest. They grant credit based on trust and do not require collateral.

In Brazil there are nowadays nearby 150 community development banks creating social and economic opportunities in their neighborhood by microcredit. Despite these successful examples that run locally and since Brazil is a huge country, most part of population only access credit by ordinary banks.

Credit plays a central role in Brazilian economy, whether as indispensable means for consumption, whether encouraging entrepreneurship. However, the extremely high rates of interests in Brazil aggravate the risk of the reverse side of credit: over-indebtedness, a social phenomenon whose negative effects can affect consumers themselves, their families and the whole society.

The high costs of credit in Brazil derive from the lack of competition in financial sector in which 4 banks run 90% of credit supply. In this scenario, the emergence of new financial technologies might increase the competition in financial sector leading to reduction of the rates of interest.

The new financial technologies (fintechs) might widen access to financing and credit by digital platforms. Brazilian authorities had recently regulated three modalities of fintechs: Equity Crowdfunding, Peer-to-Peer Lending and a modality named “Direct

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Credit Society", which grant credit through on line platforms using own capital. So it is expected that these new models of credit supply might increase the competition in financial sector in Brazil.

Trough literature review and data analyses, it is concluded that community banks and the new financial technologies have a role to play in credit supply, economic opportunities creation and consumer protection in Brazil. Whether granting credit under low costs and with guidance and mutual support, whether increasing the competition in the financial sector through digital platforms, both alternatives can give consumers other alternatives to access credit than the ordinary financial systems.

Key-words. Credit Consumption. Community Development Banks. Financial Technologies. Consumer Protection.

Anne Fleming
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The Transformation of U.S. Consumer Bankruptcy in the 1930s

In 1938, in the midst of the Great Depression, the U.S. Congress created the first federal system for amortization of wage-earners' debts when it adopted Chapter XIII of the Bankruptcy Act. This paper will explore how American policymakers' views about consumer debt in the 1930s shaped this transformation of the bankruptcy system to allow for debt composition and extension through the bankruptcy courts. In contrast to prior studies, which have compared present-day chapter 13 to its 1938 predecessor, this paper describes how the 1938 system overlapped with and diverged from then-existing federal and state debt collection and debt forgiveness procedures. It concludes that Chapter XIII's origins in the American South explain some of the system's innovations, as well as why today almost all of the judicial districts with the highest Chapter 13 filing rates are located in southern states.

THE WEAPONIZATION OF TECHNOLOGY

FACILITATES STUDENT LOAN RELIEF SCAMS

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Ana Couceiro, a long-time nurse, incurred about $100,000 in student loan debt to obtain a master's degree in nursing.[1] When her master's degree did not result in her obtaining a job with substantially higher pay, she started to get desperate about repaying her loan.[2] As she did an online search for help with her student loan debt, she found the website for Student Aid Center.[3] Reading the promises to reduce her debt, Ms. Couceiro thought the relief program was sponsored "through the federal government."[4] "It was very legitimate," she thought, and was just about to sign up for a program that would have cost hundreds of dollars.[5] She stop to mention it to a co-worker, who then told Ms. Couceiro that she could get the same relief elsewhere for free.[6] Stunned to hear this, Ms. Couceiro thought Student Aid Center was providing "an incredible service to help" lower her student loan debt.[7] Recalling how close she came to being duped, Ms. Couceiro said: "That was lucky!"[8]

Thousands of financially-distressed consumers are not as "lucky" as Ms. Couceiro. By the time they realize they have been scammed, they have parted with hundreds, even thousands of dollars and have collectively been defrauded millions. Student Aid Center is no longer in operation,[9] but the defendants in charge of it where held liable for violating federal and state consumer protection laws and ordered to pay over $35 million in damages for their bogus student loan relief

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[1] Christina Veiga, *Student Debt Relief Comes with Price, and Doral Company under Scrutiny,* Miami Herald, Oct. 19, 2015, *available at* https://www.miamiherald.com/news/local/education/article40340676.html.

[2] *Id*. At the time of the news story, Ms. Couceiro was a nursing instructor at Barry University.

[3] *Id*.

[4] *Id*. Student Aid Center's website had logos very similar to a legitimate page accessible through the U.S. Department of Education. *Id.*

[5] *Id*.

[6] *Id*.

[7] *See id*. (stating that Ms. Couceiro filed a complaint against Student Aid Center).

[8] *Id*.

[9] *See F.T.C. v. Student Aid Center, Inc.*, 281 F. Supp. 3d 1324 (S.D. Fla. 2016) (mentioning that the company had filed for bankruptcy relief after being sued by the State of Minnesota and recommending denial of the motions to dismissed filed by the individual defendants).

programs.[10] What Ms. Couceiro and most consumers do not realize is that companies are able to entice consumers with fraudulent student loan relief services by harnessing the power of 21st century technology.

As explained in Part I of this Article, old-school fraudulent practices (e.g., oral misrepresentations) are being combined with telecommunication and digital technologies and, together, are deployed to deceive consumers into agreeing to pay for phony loan consolidation, modification, and forgiveness programs. For instance, some companies use technology to make millions of robocalls, that is, unsolicited calls made via the automated-dialing of messages that promise consumers relief from student loan debts.[11] Companies can also inexpensively "blast" millions of student loan borrowers with loan relief ads via text messages and emails.[12] Many companies market their fraudulent loan relief practices by purchasing web advertising, usually in the form of banner ads or paid search results, so that their ads and website links appear at or near the top of internet searches on Google, Bing, or other search engines.[13]

Companies that use modern technology to peddle false promises of relief have millions of potential targets. Student loan debt is the second largest consumer debt, right behind mortgage debt. Exceeding $1.4 trillion,[14] student debt has surpassed credit card debt, auto car loans, and home equity credit lines.[15] With the exponential increase in the cost of a college education, over 70% of Americans that attend college each year have to borrow annually to help cover at least part of the cost.[16] This has resulted in over 44 million Americans with student loan debt.[17]

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[10] *See, e.g.*, *F.T.C. v. Student Aid Center, Inc.*, 2017 WL 6987749, at *7 (S.D. Fla. 2017) (Plaintiffs, the FTC and the Florida attorney general, were awarded equitable monetary relief against Defendant Fernandez-Moris in the amount of $35,332,438.).

[11] See, e.g., FTC v. Good Ebusiness, LLC, 2016 WL 3704489 (C.D. Cal. July 12, 2016); FTC v. Springtech 77376 LLC, 2013 WL 5955395 (N.D. Cal. 2013) (stating that the defendants advertised their student loan relief services primarily via unsolicited telemarketing calls to consumers and granting the FTC's application for default judgment against the defendants).

[12] *Id*.

[13] *See*, *e.g.*, Complaint, State of Minn. v. Student Aid Center, Inc., No. 27-CV-15-11307S, July 1, 2015, ((Minn. Dist. Ct.), *available at* 2015 WL 3987746 (hereafter "Minn AG vs. SAC").

[14] *A Look at the Shocking Student Loan Debt Statistics for 2017*

[15] Illinois v. Navient.

[16] *Id*. (stating that after exhausting funding from scholarships, grants, or help from family members, many students still have to obtain student loans)

[17] *A Look at the Shocking Student Loan Debt Statistics for 2017.*

Millions of borrowers are struggling to make loan payments.[18] Every 28 seconds, a borrower defaults on his or her student loan debt.[19]

As explained in Part II of this Article, student loan borrowers are more vulnerable to relief scams because, in comparison to individuals with other types of consumer debt. For instance, student loan borrowers with federally-guaranteed loans have limited and confusing options to manage their massive debt. Student loan borrowers are also vulnerable, in part, because, according to several governmental lawsuits, loan servicing companies subject borrowers to widespread unlawful practices. Contrary to the expectations of borrowers and state enforcement authorities, Betsy DeVos, since becoming the Secretary of the United States Department of Education, has taken steps to insulate loan servicers and other companies from liability. Such actions include Secretary DeVos asserting that state consumer protection laws are preempted by federal law.[20] Such an assertion, if accepted by federal courts, would prevent state attorneys general from protecting consumer borrowers from unlawful practices. Upon realizing that loan servicers and the Education Department are against them, some consumers are left susceptible to being duped by companies fraudulently promising to help them obtain relief.

Student loan borrowers are also more vulnerable to relief scams because federal laws make it nearly impossible for them to reduce their debts and subject to draconian collection laws. Student loan borrowers usually cannot obtain relief from student loan debt by filing bankruptcy. In contrast, a person who gives up possession of her home or car in bankruptcy usually receives a discharge of the related mortgage or auto loan debt. Unable to obtain a discharge in bankruptcy,

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[18] *See* Shahien Nasiripour, *More Americans are Falling Behind on Student Loans, and Nobody Quite Knows Why*, BLOOMBERG (Sept 28, 2017, 5:00 AM EDT), https://www.bloomberg.com/news/articles/2017-09-28/more-americans-are-falling-behind-on-student-loans-and-nobody-quite-knows-why.

[19] See Rohit Chopra, *Sallie Mae's Stock Has Soared Since the Election. But Will Donald Trump Really Deliver?,* THE WASHINGTON POST (Jan. 9th, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/01/09/sallie-maes-stock-has-soared-since-the-election-but-will-donald-trump-really-deliver/?utm_term=.4ecdf0568ae4, (Rohit Chopra, the former Federal Trade Commissioner and current senior fellow expert on student loans at the Consumer Federation of America, details the statistics regarding the current situation regarding student loans).

[20] *See* "Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers," 83 Fed. Reg. 10619 (dated Mar. 7, 2018) (hereafter "DeVos' Preemption Notice").

student loan borrowers, already burdened by staggering amounts of debt, are subject to extreme debt collection laws. Loan servicers and collection companies can use federal laws to extract from student loan borrowers payments via collection remedies such as garnishment of their wages, interception of their income tax refunds, and offsetting of their social security benefits –all without the collector having to first obtain a judicial court order. Some borrowers who have been subjected to any of these remedies are receptive to messages from companies that falsely promise borrowers that they can stop wage garnishments, get back their tax refunds and obtain other forms of relief.

Because millions of consumers with student loan debt are financially-distressed and vulnerable, they need additional legal protections from loan relief scams. To afford student loan borrowers real protection from loan relief scams, Part III of this Article asserts that the U.S. Department of Education should afford borrowers tangible relief, which includes the discharging of debts incurred by borrowers who have been victimized by the now-defunct Corinthian Colleges and other for-profit schools. By discharging such debt, the Department of Education would play a role in some borrowers not succumbing to the phony promises of relief in the online world of fraudsters. Part III also proposes a few solutions in the technology arena that can aid consumers in avoiding the fraudsters. For example, phone carriers are not required by law to use existing technology to prevent robocalls, especially those that spoof or conceal a company's actual number and identity. A federal law that covers telemarketing should be amended to require all carriers to use this technology to prevent robocalls and spoofing so that consumer borrowers have a better chance of avoiding student loan relief scams.

I. Operation Phony Student Loan Rescue

Fraudulent student loan relief programs unfold to a backdrop of enormous educational debt. Due to the dramatic increase in the cost of higher education in the United States and the substantial decrease in need-based grants and scholarships, most consumers have to borrow money to obtain a college degree. At the close of 2018, student loan debt was at a record level of over $1.56 trillion and is the second largest consumer debt.[21] Over 44 million consumers have student loans and

[21] *See* Quarterly Report on Household Debt and Credit, (Feb. 2019), at https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf/hhdc_2018q4.pdf (last visited Mar.27, 2019) Zack Friedman, *Student Loan Debt Statistics in 2018: A 1.5 Trillion Crisis*, FORBES (June 13th,

an estimated 13 million are either in default or delinquent on their student loans.[22] Among the millions that owe student loan debt, many are unemployed or under-employed. And some of those do not have a promising employment outlook after amassing student loan to attend for-profit schools, several of which were sued for deceptive practices and are now defunct.[23]

As explained later, those struggling to pay back student loan debt, in theory, can apply for *free* programs, through the Department of Education, that would reduce or eliminate their debt. However, as indicated in the introduction, some consumers are unaware of these programs. Other consumers have tried unsuccessfully to get help from the Depart of Education, which under the leadership of Secretary Betsy Devos, has taken actions to prevent students from qualifying for a debt discharge and obtaining relief through programs established during the administration of President Barack Obama.[24] Moreover, loan servicers and other companies that are contractually obligated to assist have been sued for widespread deceptive practices that keep consumers from qualifying for legitimate programs that reduce or eliminate student loan debt.[25]

2018 08:32 AM),
https://www.forbes.com/sites/zackfriedman/2018/06/13/student-loan-debt-statistics-2018/.

[22] *See, e.g.,* Second Amended Complaint, Com of Mass, et all vs. Devos, No. 17-1331, 2018 WL 1336012 Mar. 5, 2018. In 2018, a coalition of twenty attorneys general from nineteen states and the District of Columbia filed an amended complaint describing several actions taken by Secretary Devos to .C. sued her for delaying the Borrower Defense Rule). See also Seth Frotman, Broken Promises: How Debt-financed Higher Education Rewrote America's Social Contract and Fueled a Quiet Crisis, 2018 Utah L. Rev. 811, 29 (2018)

[23] *See* Com. Of Mass vs. The New England Institute of Art, LLC, No. 18-235614, 2018 WL 6790474 (July 30, 2018 Mass.Super.) (Trial Pleading) (stating that not only are significant number of attendees of for-profit schools unemployed and under-employed, but some become employed if fields completely unrelated to their education); *Association of Proprietary Colleges v. Duncan*, 107 F.Supp.3d 332 (2015) (upholding regulations by the Department of Education that may exclude from federal loan programs institutions whose students do not achieve "gainful employment" and stating that "[a]ttendees of for-profit colleges generally are less likely than attendees of traditional schools to graduate or otherwise complete their programs and more likely to be unemployed").

[24] See, e.g., Complaint, State of Minn. v. Student Aid Center, Inc., No. 27-CV-15-11307S, July 1, 2015, ((Minn. Dist. Ct.), *available at* 2015 WL 3987746; Complaint, State of Wash. v. Student Aid Center, Inc., No. 6-2-11955-7, Jun. 19, 2017, (Wash. Super.), available at 2017 WL 6039589 (alleging that one co-defendant "participated in the optimization of SAC's websites to appear high in Google search results with the intent and expectation that Washington consumers would see them, which in fact generated business for SAC").

[25] After completing investigations initiated during President Obama's administration, the CFPB and several states sued Navient Corp., the nation's largest student loan servicer for alleged deceptive practices. *See e.g.,* Complaint for Permanent Injunction and Other Relief at 9:39-9:40, Consumer Fin. Prot. Bureau v. Navient Corp., No.

A. Weaponization of Technology

With this backdrop of confusing and inaccessible programs to obtain help, student loan borrowers stand vulnerable at the center stage, and many become victims of fraud. Companies optimize 21st century technology to reach a massive number of consumer borrowers and perpetrate traditional deceptive practices to convince the consumers to sign up for costly but phony student loan relief programs. These companies target consumers by: (1) making millions, even billions, of robocalls, (2) creating websites with memorable domain names and positive testimonials, (3) advertising via online search engines and prominent social-media platforms, and (4) sending millions of messages via text and e-mail.

Because the cost of telecommunication services has become relatively inexpensive, many companies perpetrate fraud by making billions of calls to phone numbers in the United States. One study found that in 2018, companies made over 26 billion robocalls, which are telephone calls with pre-recorded advertisements sent via automated-dialing technology. Of these pre-recorded messages, debt relief, including relief from student debt, is the number one category of robocalls complained about by consumers to the Federal Trade Commission (FTC). Consider an enforcement action filed by the FTC against James Chrisiano and several corporations that allegedly facilitated the transmission of billions of illegal robocalls, selling an array of services, including student loan relief.[26] The magnitude of the calls alone is concerning, but the defendants allegedly made millions of robocalls to numbers on the National Do Not Call Registry.[27] The complaint does not allege to what extent consumers were tricked into signing up for student loan relief programs but no doubt some were defrauded. One study found that through illegal robocalls, companies defraud Americans of $9.5 billion each year.

For companies offering phony relief programs, robocalling is just a preliminary step to achieving the goal of making actual contact with financially-distressed consumers. To make it more likely that a consumer answering a robocall will press "1" to be connected, companies are also using spoofing technology.[28] This technology allows the company to block its actual number from appearing on a caller ID display and use, instead, a non-working phone number and a fake company name to "spoof" or conceal the company's identity.[29] In the FTC case against

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3:17-cv-00101 (M.D. Pa. Jan. 18, 2017), *available at* 2017 WL 191446 [Hereinafter CFPB Complaint]; .Complaint at 28:223, State v. Navient Corp., No. 2017CHOO761 (Ill. Cir. Ct. filed Jan. 18, 2017), *available at* 2017 WL 374522 [Hereinafter Illinois Complaint].

[26] Complaint, F.T.C. v. Christiano et al, No. SA CV 18-0936, (C.D.Cal.), May 31, 2018, *available at* 2018 WL 2463244.

[27] *Id*. at paragraph 84 (alleging that the defendants' software facilitated in excess of 93 million outbound calls to phone numbers listed on the DNC Registry).

[28] *Id*. at paragraph 70 (alleging that one company used the defendants' software facilitated many of its 64 million spoofed calls).

[29] *Id*.

Mr. Christiano, the defendants used a newer type of spoofing known as "neighbor spoofing."[30] With this type of spoofing, the company uses a telephone number that has an area code and three-digit exchange that are the same for a consumer's phone number so that the consumer thinks the call is coming from someone in his or her city or town.[31] Consumers are more likely to answer a call from an unknown local number than other types of unknown numbers. The FTC alleged that one defendant used outbound caller ID via neighbor spoofing to make 54 million robocalls.[32] The millions of robocalls sent via spoofing technology resulted in nearly 8,000 complaints to the FTC from consumers harassed by such calls.[33] Mr. Christiano and his co-defendants entered into a stipulated permanent injunction that requires them to pay over $1 million to the FTC for their alleged scheme using spoofed robocalls.[34]

In addition to targeting financially-distressed consumers with millions of spoofed robocalls, companies use search engines like Google to target consumers with advertisements of student loan relief scams.[35] [36] For instance, Student Aid Center, a now-defunct company sued by the FTC and several state attorneys general, paid for its websites to appear at or near the top of Google searches.[37] For instance, if a consumer searched for "student loan forgiveness," Student Aid Center's website at studentloanforgivenessplans.org appeared as a sponsored search result on Google, and the consumer would see the following hyperlink titled "Obama Loan Forgiveness:[38]

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[30] *Id*. at paragraph 68.
[31] *Id*.
[32] *Id*.
[33] *Id*. at paragraph 71.
[34] *See* Stipulated Final Order for Permanent Injunction and Civil Penalty Judgment as to Defendants James Christiano, NetDotSolutions, Inc., and TeraMESH Networks, Inc, F.T.C. v. Christiano et al, No. SA CV 18-0936, (C.D.Cal.) Mar. 26, 2019.
[35] *See*, *e.g*., FTC v. Good Ebusiness, LLC, 2016 WL 3704489 (C.D. Cal. July 12, 2016);
[36] See, e.g., Complaint, State of Minn. v. Student Aid Center, Inc., No. 27-CV-15-11307S, July 1, 2015, ((Minn. Dist. Ct.), *available at* 2015 WL 3987746; Complaint, State of Wash. v. Student Aid Center, Inc., No. 6-2-11955-7, Jun. 19, 2017, (Wash. Super.), available at 2017 WL 6039589 (alleging that one co-defendant "participated in the optimization of SAC's websites to appear high in Google search results with the intent and expectation that Washington consumers would see them, which in fact generated business for SAC").
[37] *See*, *e.g.*, FTC v. Student Aid Ctr., Inc., 281 F. Supp. 3d 1324, 1330-31 (S.D. Fla. 2016) (affirming the denial of defendants' motion to dismiss where the FTC sufficiently alleged that the defendants "marketed their services through inbound telemarketing calls from consumers responding to the defendants' Internet, social media, radio advertising, and through outbound telemarketing calls to consumers who responded to the defendants' website.").
[38] See, e.g., Complaint, State of Minn. v. Student Aid Center, Inc., No. 27-CV-15-11307S, July 1, 2015, ((Minn. Dist. Ct.), *available at* 2015 WL 3987746; Complaint, State of Wash. v. Student Aid Center, Inc., No. 6-2-11955-7, Jun. 19, 2017, (Wash. Super.), available at 2017 WL 6039589 (alleging that one co-defendant "participated in the optimization of SAC's websites to appear high in Google search results with the intent and expectation that Washington consumers would see them, which in fact generated business for SAC").

(Google search results captured in July 2015)

Once consumers click on the links to the company's websites, they encounter pages replete with promises or guarantees of relief from student loan debt and with professional-looking webpages and they, frequently, contained testimonials or representations from purported clients.[39] For instance, in a recent FTC case, the defendants operating a website with the domain name aidingstudents.com had a purported testimonial from Michael Martin, an entrepreneur who claimed the following: "Thanks to Aiding Student Relief, I am savings [sic] $250 per month."[40]

Similarly, websites for Student Aid Center claimed that it had helped thousands and featured young-looking individuals with captions such as "Forgiveness for Teachers" and "Forgiveness for Nurses."[41] Also, the websites for Student Aid Center had the picture logos of several television networks and implied that its programs had obtained positive media coverage "as reported on" on CNN, ABC, Fox and NBC News.[42] Student Aid Center had several different websites with similar domain names, but the content of them were largely the same.[43] The goal of all of these websites was to entice consumers to call the number on the webpage or submit contact information by completing an online form.

If the clickable searches on Google or Bing are not enough to lead consumers to a website marketing relief programs, some companies can effectively target consumers on Facebook and other social media platforms. Once again, Student Aid Center is notable because it targeted consumers via advertising on social media, including Twitter. Consider Carolina Garcia, who clicked on an ad that she spotted while on Facebook and then completed a pop-up

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[39] *See*, *e.g.*, FTC v. Student Debt Doctor , LLC, case no. 0:17-cv-61937-WPD (S.D. Fla., Dec. 7, 2018).
[40] See, Press Release, *FTC Seeks to Add New Defendants in Student Debt Relief Case*, Feb. 7, 2019, https://www.ftc.gov/news-events/press-releases/2019/02/ftc-seeks-add-new-defendants-student-debt-relief-case.
[41] *See* FTC & Florida AG vs. SAC, *supra* note __, at paragraph at _ .
[42] *See* FTC & Florida AG vs. SAC, *supra* note __, at paragraph at _ .
[43] *See Id.*

form for Student Aid Center.[44] A "counselor" then called her and promised to consolidate her student loan debts and lower her monthly payment if she paid an up-front fee.[45] Like many consumers, Ms. Garcia learned too late that digital technology via social media was used to entice her to contact the company and agree to pay an upfront fee.[46]

While Student Aid Center optimized advertising via social media to attract the attention of all financially-distressed consumers, other companies target only a subset of consumers with student loan debt. For instance, Alliance Document Preparation and several related companies (the "Alliance defendants") targeted consumers who were alumni of for-profit schools sued by governmental agencies and class action litigants.[47] According to the FTC, the Alliance defendants primarily targeted, via Facebook advertisements, consumers who were alumni of DeVry University, ITT Tech (now defunct), University of Phoenix, and the Art Institutes.[48] The FTC alleged that the Alliance defendants defrauded consumers of millions by claiming to get them approved for the "Obama Student Loan Forgiveness" program and eliminating their debts in exchange for their payment of up-front fees ranging from $400 to $1,000.[49] As the reader may recall, a legitimate program was established during President Obama's administration to allow attendees of for-profit schools to apply for discharge of their student loan debts. Consequently, some for-profit alumni may have erroneously concluded that the Alliance defendants had the ability to obtain a debt discharge for them. Similar to Student Aid Center, which defrauded consumers of $35 million,[50] the Alliance defendants allegedly were unjustly enriched over $19 million from its relief program targeted to alumni of for-profit schools via social media.[51]

In addition to the companies that target consumers via social media, some companies rely primarily on email and cell phone messages to target vulnerable consumers, presumably because

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[44] *See* Pam Zekman, *2 Investigators: Scam Artists Target Millennials With Offers Of College-Debt Relief*, at https://chicago.cbslocal.com/2016/11/17/2-investigators-scam-artists-target-millennials-offering-college-debt-relief/ (last visited Mar. 26, 2019).

[45] *Id*.

[46] *Id*. (stating that Ms. Garcia paid about $1,000 to Student Aid Center before she realized it was a scam).

[47] FTC v. Alliance Document Preparation, 296 F. Supp. 3d 1197, 1201 (C.D. Cal. 2017).

[48] Complaint, FTC v. Alliance Document Preparation, et al., 2:17-cv-07048-SJO-KS, (C.D. Cal. Sept. 27, 2017).

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[49] Id. A typical Facebook ad stated the following:

> Art Institutes Loan Forgiveness.
> Call (844) 478-8487 to see if you qualify
> for loan forgiveness due to the recent
> litigation against The Art Institutes.

Id.

[50] See, Press Release, *FTC, Student Debt Relief Operators Agree to Settle FTC Charges*, Sept. 28, 2018, https://www.ftc.gov/news-events/press-releases/2018/09/student-debt-relief-operators-agree-settle-ftc-charges (reporting that the defendants settled with the FTC for a total exceeding $19 million in monetary damages).

[51] The defendants settled after a federal court issued a preliminary injunction against them. FTC v. Alliance Document Preparation, 296 F. Supp. 3d 1197, 1201 (C.D. Cal. 2017). *See*, Press Release, *FTC, Student Debt Relief Operators Agree to Settle FTC Charges*, Sept. 28, 2018, https://www.ftc.gov/news-events/press-releases/2018/09/student-debt-relief-operators-agree-settle-ftc-charges

it is less costly than advertising on social media.[52] For instance, an FTC complaint alleges that A1 DocPrep Inc., ("A1"), doing business under several names, including Project Uplift Students, sent email messages claiming to be from the Department of Education and promising loan forgiveness.[53] A1 also sent millions of unsolicited text messages, including the following: "Your Student loan may be forgiven today, but Donald Trump may stop that[,] call now at 888-307-0680 Reply STOP to opt-out."[54] When consumers called the number, they were allegedly promised student loan debt relief in exchange for paying illegal upfront fees of as much as $4,500. The FTC alleged that A1 defrauded consumers in excess of $6 million.[55]

Whether the company has attracted the attention of consumers via text, email or telephone messages, via online searches, or via social media, once consumers make contact, the company makes promises of relief to all. The company then creates a sense of urgency to act. For example, the A1 defendants claimed that it was actually the Department of Education and, using the message below, claimed that consumers had to act urgently due the 2016 election of Donald Trump:

> This message is from the Department of Education. In regards to Donald Trump becoming President, all programs for student loan forgiveness will be stopped immediately as soon as he takes office in January. In order for you to qualify, you must apply within the next 24 hours or you will not be able to have your student loan payment reduced. Please contact us at [toll free number]. The number again is [toll free number]. Once again, you must get involved within the next 24 hours. Thank you.[56]

Given the activities that immediately followed Trump's inauguration, some consumers could have believed the claims that they need to act quickly and sign up in order to get student loan relief. Mainstream outlets reported stories about Betsy Devos' appointment and actions taken by her to curtail relief for borrowers.

The point of the forgoing discussion of fraudulent student loan relief programs is to demonstrate the fact that companies are effectively deploying technology to convince some consumers to pay millions for phony relief. Companies have optimized online search engines and invaded social media to taken advantage of consumers' familiarity and comfort in using social media and taken advantage of their lack of knowledge regarding how online platforms allow companies to use to target consumers based on their behavior. In the next section, the reader will learn that loan servicers and other companies that are contractually obligated to help

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[52] *See*, *e.g.*, Complaint, FTC vs. A1 Docprep Inc., No. LA17CV07044-SJO(JCx), Sept. 27, 2017, 2017 WL 4551515 (C.D.Cal.) (Trial Pleading).
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *See*, *e.g.*, Complaint, FTC vs. A1 Docprep Inc., No. LA17CV07044-SJO(JCx), Sept. 27, 2017, 2017 WL 4551515 (C.D.Cal.) (Trial Pleading).

consumer borrowers are accused of committing deceptive practices that are similar to the practices of fraudulent companies.

II. Harmful Actions by the Legitimate Companies and the Department of Education

Roadmap goes here

A. Loan Servicers and Debt Collectors are Credibly Accused of Committing Widespread Deceptive Practices Against Consumer Borrowers

This section will summarize the alleged unlawful practices committed by Navient, the largest student loan servicing company, and debt collectors.

B. Betsy Devos' Actions Taken Against Student Loan Borrowers

C. The State Attorneys' General: the Real Rescuers of Student Loan Borrowers

III. Proposed Solutions

Conclusion

Call for Papers

The 17th International Association of Consumer Law Conference

'*Innovation and the Transformation of Consumer Law*'

By

J.J. de Vogel LL.M (Ph.D Candidate)
&
Dr. W. Verheyen

Circular Economy: Greenwashing Consumer Credit?

The last decades consumption of materials, energy, and services rapidly increased. This strong consumption is a fundamental driver of global environmental change. As a result, several companies increasingly seem to emphasize their sustainable contribution by transforming from consumption-based models to service-based models. Such transition fits within the policy goals striving for a sustainable, circular economy. There appear however to be gaps in the protection of the user, which might deprive sustainable consumers of protection otherwise available to them and even allowing businesses to circumvent the law. This is apparent in the EU Consumer Credit Directive (CCD). Already at the implementation of this Directive there was a debate regarding the scope of the Directive. The applicability of the Directive to hiring or leasing agreements is explicitly excluded, unless such agreement is accompanied by an obligation to purchase the object of the agreement. As a result, there were concerns about the possibilities to circumvent the directive through the exclusion in article 2(2)(d) CCD because it is argued that leasing is an alternative form of financing and more specifically an alternative to consumer credit (Machiels&Penninks, 2015). There are for example credit providers that apply private lease when, due to the application of credit rules, a consumer is not eligible for a regular consumer credit.

The debate about the scope of the Directive becomes even more relevant in respect of the current trend towards sustainability and the growth of lease and service-based models. More and more retailers decide to offer their products, or a part of their products, as a service, which increases the risk of lacunas and even allows for circumvention. This allows the said service provider to invoice a (for the consumer unknown) interest rate for the remaining price of the product, without having to provide information to the consumer about such costs. Moreover, there will be no maximum costs in such services contract. Businesses effectively make use of this loophole. Our empirical research on mobility service providers (both long term bike lease companies as long and short term car lease companies) evidences that the costs for lease are at least equal to, or (more often) higher than the costs for the purchase of the good with a loan, including possible maintenance service contract. As a result, the interests of the consumer could be seriously harmed while they seem to be identical to that of the protected buyer. An additional interest of the lessee lies with the fact that the consumer does not become the owner of the good at the end of the lease and will thus be under a continuous obligation to pay the fees.

Taking into account the growth of these use-based models, the question arises to what extent the CCD has been adapted to the modern service-based business models and if not, whether an expansion of the current scope of

application is desirable and can be sufficient in order to provide equivalent consumer protection to consumers participating in hiring or leasing agreements.

TOWARDS REGULATORY MASS REDRESS SCHEMES

- MASS REDRESS IN FINANCIAL MIS-SELLING SCANDALS IN THE U.S., THE U.K. AND SOUTH KOREA –

The rapidly expanding digital environment has led to the rise of standardized and non-face to face financial transactions. Evasive digital sales techniques and aggressive telemarketing have amplified mass investment, mass consumption which, and mass consumer harm. In many cases, losses caused by financial transactions are widespread but inconspicuous. A consumer can easily overlook a small-amount fee for a mis-sold add-on financial product for years before she acts to remove it.

Collective action such as class litigation once hailed as the traditional go-to solution, has proven to be expensive inefficient, and ineffective as a remedy for mass harm.[1] Consumer ombudsmen systems such as alternative dispute resolution systems (ADR), online dispute resolution (ODR) systems, as well as collective forms of ADR/ODR[2] are increasingly gaining attention.[3] ***Regulatory redress schemes***, often used in tandem with consumer ombudsmen systems, is the newest redress "technology,"[4] and the focus of this paper. The term regulatory redress used here loosely refers to a generic term of the consumer being paid redress with the "intervention of a public authority."[5] Regulatory power may include "soft" influence (where a public authority might be able to persuade, conciliate or mediate redress) to "hard" enforcement (where a public authority requires a redress scheme).

This paper analyzes three nations which have recently used *regulatory redress schemes* to address widespread financial mis-selling scandals. In the United States, to amend widespread mis-selling of credit card add-on products, the Consumer Financial Protection Bureau (CFPB) ordered financial companies to repay consumers harmed by deceptive practices.[6] In the United Kingdom, the Financial Conduct Authority and the Financial Ombudsman Services ordered and managed consumer redress schemes to reimburse millions of consumers

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[1] *See generally,* CHRISTOPHER HODGES, STEFAAN VOET, DELIVERING COLLECTIVE REDRESS: NEW TECHNOLOGIES, HART PUBLISHING (2018).

[2] Some ADR bodies have the capacity to aggregate individual claims and decide them collectively while others do not. Hodges (2018) at 2.

[3] *See* Vicki Waye and Vince Morabito, Collective Forms of Consumer Redress: Financial Ombudsman Service Case Study, Journal of Corporate Law Studies, 12:1, 1-31 (2012).

[4] Hodges (2018) at 7.

[5] Hodges (2018) at 153.

[6] See Consumer Financial Protection Bureau, "Factsheet Consumer Financial Protection Bureau: Enforcing federal consumer protection laws," 2016; United States of America Consumer Financial Protection Bureau, Consent Order, In the Matter of Bank of America, N.A.; and FIA Card Services, N.A., 2014. 4. 9. (https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-727-million-in-consumer-relief-for-illegal-credit-card-practices/.

who were mis-sold payment protection insurance (PPI) policies.[7] In South Korea, the Financial Supervisory Service ordered financial companies to repay consumers for mis-sold credit cards add on products and PPI insurance policies.

Regulatory redress schemes operate in the broader milleu of each nation's unique civil justice system and financial regulatory architecture. The U.S. and the U.K., consumer restitution or redress schemes are imposed and operated per explicit legal mandates, guidelines, and procedures promulgated by financial authorities. The South Korean system, however, lacks the legal basis for the consumer redress schemes and is much less informal.

What these regualtory redress schemes have in common is that they can be very accesible, effective and efficient, particularly in small-amount financial mis-selling cases. Regulatory redress schemes are not without drawbacks. Critics would argue that consent replaces the rule of law, and administrative actions replace due process.[8] The right to fair trial by an independent judiciary considering the evidence and applying the law gives way to efficiency.[9] Thus designing an optimal regulatory redress scheme is a balancing act between efficiency gains and the retreatment of due process. This paper reflects on the implications drawn from case studies of the three nations and proposes what factors to consider when designing a regulatory redress scheme.[10]

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[7] *See generally* Eilis Ferran, "Regulatory Lessons from the Payment Protection Insurance Mis-selling Scandal in the U.K.," European Business Organization Law Review, Vol. 13, Issue 2, 2012, pp. 247- 270;

[8] Micheal Legg, Many wrongs can make a right: how mass redress schemes can replace court action, November 24, 2015 (at http://theconversation.com/many-wrongs-can-make-a-right-how-mass-redress-schemes-can-replace-court-action-51118).

[9] Id.

[10] When designing a redress scheme, we must address these policy decisions: should there be a ceiling to the amount of redress that can be awarded via regulatory redress schemes, can parties opt out of the redress scheme, what is the optimal balance in the discretion given to the financial companies vs. degree of intervention by authorities in managing the redress scheme.

Jurisdiction and Choice of Law in Cross-border Tourist-Consumer Protection Matters in China Under the One Belt One Road Initiative—based on empirical analysis in the judiciary

Zhen Chen

Protecting foreign tourists is a brand-new issue in private international law in China, which is extremely significant under the One Belt One Road Initiative(OBOR or B&R initiative or BRI). OBOR initiative will inevitably promote the development of Silk Road tourism, and accordingly, an increasing amount of foreign-related tourism disputes will arise. When it comes to cross-border tourist-consumer protection, multiple dispute resolution mechanisms are available for cross-border tourists, be it traditional court procedures (transnational litigation), or new non-court procedures(ADR or ODR). International litigation, although sophisticated, expensive and time-consuming, is still the last resort for cross-border tourists to redress their legitimate rights and interests. Regarding international court proceedings, jurisdiction and choice of law are particularly important and also complicated issues when settling foreign-related tourism disputes. In particular, when Silk Road tourism is faced with the fast-changing technology and increasingly-popularized internet usage, E-tourism is imposing new challenges on the traditional legal rules and regulations. In order to protect international tourists and make sure their access to justice is achieved best in China in this new era, it is of necessity to clarify and further improve the specific rules on jurisdiction and applicable law issues, which are two primary aspects in the private international law arena.

Therefore, this article is centered on the question of what are the rules of jurisdiction and applicable law in China, in respect of foreign-related tourism disputes. For instance, if a Chinese tourist booked a Greek hotel online in a Chinese website and has disputes with the hotel, does the Chinese tourist have the right to sue a Greek hotel in a Chinese court? If so, what is the legal basis? If a Dutch couple travel to China, get injured on a cruise tour and bring a lawsuit in a Chinese court, what are the rules for jurisdiction and applicable law. With the aim of improving the level of cross-border tourist-consumer protection, this article will first start with case analysis in the Chinese judiciary to identify the existing problems and the gap between the China’s statutory law and the

application in Chinese courts. All these foreign-related tourism dispute cases will be analyzed from private international law perspective. After identifying the problems existed in theory and in practice, this article will further find out the reasons and try to provide possible solutions.

ABSTRACT
Transactions in Consumer Information:
An Emerging Asset Class and the Limits of Current Regulatory Tools

This paper surveys the difficulties for consumer policy presented by transactions (both domestic and international) in consumers' private information. This paper provides a detailed exploration of recent transactions in such assets and a normative analysis of them.

Consumers' private information forms an emerging asset class, which has come to the fore as traditional retailers, such as Radio Shack and Sears and many others, have become distressed and sought to monetize every asset possible. The problem is that consumers have little opportunity to protect their interests in such transactions, and no actor with economic incentives in the transactions has an interest in protecting them. Regulatory efforts have largely fallen short, even where legal protections exist (and legal protections are also largely lacking). This problem is likely only to become more prominent going forward.

The paper emerges out of an ongoing empirical study that I have been conducting into US bankruptcy law's efforts to protect consumers whose information is involved in such transactions. The Bankruptcy Code's efforts focused on the introduction of the "Consumer Privacy Ombudsman," a neutral professional paid to investigate and report to the court on certain types of proposed transactions. In other work, I intend to argue that this institution has fallen far short of its goals. In this paper, I explore court records related to the practice of these ombudsmen, which open a useful window into transactions in this new asset class, in the revealing context of deeply distressed (but formerly deeply trusted) entities. In any case, the failure of the "Consumer Privacy Ombudsman" institution is a useful basis for considering what regulatory approaches, both domestic and international, might or might not provide useful in actually protecting consumers whose information is involved in such transactions.

A.ISPLAING: THE INFLUENCE OF ARTIFICIAL INTELLIGENCE IN THE CONSUMPTION HABIT

Karlo Messa Vettorazzi[1]

Julia de Mello Bottini[2]

ABSTRACT: Artificial Intelligence is a branch of informatics that has become an essential part of technology, this slice of the technological market aims to create intelligent machines. AI development studies include computer programming to identify certain traits such as knowledge, reasoning, problem solving, perception, learning, planning, ability to manipulate, move objects, and the ability to, by accumulating all of these traits, to create an algorithm that identifies wills and customs that determine the choice of the human being. That is, a certain machine is programmed through software to use artificial intelligence, so it is possible to develop the ability to decide between pre-established options, which is the best. These traits will create patterns that can be linearized by the machine. As machines get more information, more patterns are created and they become more and more "smart". This is all done on the basis of databases, which are supplied by new information by the system itself, constantly. It is possible to say that artificial intelligence causes machines to learn as the database grows, which makes decisions more complex and assertive. The use of this intelligence is increasingly widespread and used in the various aspects of human life, but mainly used in the relationship of consumption. I.A is responsible for almost all the induction and propagation of sales thanks to its complete database, it can even predict the consumer's wishes, separating the products that will "pop" on computer screens, smartphones and other devices. With the more assertive use of artificial intelligence, it enters into a field, in which there is only an illusion of the conscious taking of choices and wills, which leads the consumer to the appearance of a sort of ***Mansplaining*** by the Artificial Intelligence. In the current scenario, in which the machine thinks it knows - and sometimes does in fact know - more about a topic than the human being itself, when this machine shows us the choices that we should make, because they are the best, for economizing the our energy and to spare us from thinking, we have the possible figure of an ***A.Isplaining***. That is to say, one can use this term when the machine demonstrates that its knowledge is superior to that of the human, even in what concerns its own desires and intimate wills. It is the simple junction of the word Artificial Intelligence (A.I) with explaining (explain). At this point, we must pay attention to the fact that the human being makes room for an ascension of the machine, and we must think that the choices regarding consumption are not choices but rather inductions, in this wake we must think like the AI influences consumer habits through ***A.Isplaining***.

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SPECIALIZED COURTS AND CONSUMER`S DEFENSE: the overindebtedness case

Patrícia Antunes Laydner[1] and Káren R. Danilevicz Bertoncello[2]

Due to the increased number of cases and the crisis faced by the Judiciary in Brazil[3], there seems to be a trend regarding the specialization of the judicial activity with the use of specific mechanisms which aim to reunite certain types of lawsuits - such as collective rights, health, the environment and, more recently, the Higher Courts of the State of Rio Grande do Sul, as well as lawsuits concerning corporate issues - in the hands of a small number of judges.

If the criteria used for defining such specialized competences are variable, it is normally due to its own characteristics of a certain branch of the Law to be specialized.

For the advocates of the jurisdictional units specialization, such mechanism would facilitate and would speed up trials, increasing its effectiveness and contributing to the standardization of decisions (an important aspect in Brazil, where the system of precedents is not adopted). Therefore, a study carried out by the University of Denver[4] highlights that among the grounds that justify the specialization in specific areas such as Environmental Law: a) reduction of time required for the judgement of cases, b) reduction of delays, c) better decisions and standard interpretations and application of Law. Indeed, because it involves an internal reorganization that permits new workload divisions and the speeding up of certain courts, it is possible to find possible

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1 Judge in the state of Rio Grande do Sul (Jurisdiction of Guaíba), PHD in Law and Master in Environnemental Law by Université de Paris Sud – France; specialist in European Contrats by Université de Savoie, coordinator of the environnemental management programe of the Rio Grande do Sul Court and coordinator of the Departement of Environnemental Law at the Center of Studies of Ajuris (School of Magistracy of the State of Rio Grande do Sul).

2 Judge in the state of Rio Grande do Sul (Jurisdiction of Canoas), PHD and Master in Civil Law by the Universidade Federal do Rio Grande do Sul, specialist in European Contrats by Université de Savoie, FR, member of the Research Group about overindebtedness coordinated by Professor Dr. Cláudia Lima Marques and coordinator of the Department of the Consumer Law at the Center of Studies of AJURIS (School of Magistracy of the State of Rio Grande do Sul). Professor in Law School IMED, Porto Alegre/RS.

3 It is a fact that the Brazilian Judicial System is facing a crisis, specially with difficulties related to the excessive volume of processes, financial restrictions and difficulties to reduce the number of cases. It is often criticized by the media and by the population, and is object to permanent study and reforms. It is common to relate the Brazilian Justice to problems contributing to the unhappiness of the population: slow and long trials, high operational costs and difficulties to access justice (even with the existence of free legal aid and of a Public Defense's Office which greatly reduces such problems). In this sense, ready CAPPELLARI, E. "The Judiciary Crisis in the context of modernity: the need for a conceptual definition" . Revista de Informação Legislativa, 38, n. 152, Oct/Dec. 2010, page 137. E. VON MÜLHEN et G. MASINA point to certain possible causes for the crisis: a precarious structure and a disproportionate volume of cases, excessive growth in the number of cases, the large number of lawyers entering the market annually, the complexity and instability of the legislative system. *In "* The principle of Reasonable Duration of the Proccess", in F.C. MACHADO, R.B. MACHADO, dir., The reform of the Judiciary, São Paulo, Quartier Latin, 2006, p. 145.

4 G. PRING et C. PRING, « Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment », Oregon Review of International Law, n° 2, 2009, available in http://www.eufje.org/images/DocDivers/Rapport%20Pring.pdf (consulté le 01.10.15).

answers to the problem of efficiency in Justice within the specialization of jurisdictions.

However, specialization can also have harmful effects, especially with regards to the increase of competenceconflict that can further delay the resolution of cases even more. Particularly in the case of transversal rights and factual situations that concern different branches of the Law, the delimitation of competences becomes a complicated task, contributing to the multiplication of conflicts and making it difficult to understand judicial texts. Moreover, it is questioned whether the specialization would have no influence on judges biases. Finally, structural issues and financial problems could undermine certain types of specialization.

Also, it is clear that judicial organization has been gradually influenced by private management models in Brazil. Discussions about the administration of justice, once restricted to legal practitioners, have now changed course. Following the National Council of Justice[5], strategic management mechanisms are increasingly adopted by courts, and specialization of tribunals is part of this frame. The problem is that initiatives aimed at organizing work as to speed up trials not always take into consideration the vulnerability of the issues involved.

The hypothesis proposed is embodied in the empirical study carried out in situations of consumer over-indebtedness, which has no specific legal support in Brazil, and whose judicial analysis may happen through private insolvency lawsuits or contract review. In this context, some judges in the State of Rio de Janeiro have started to divide tribunals into different corporate competences in order to decide on contract relations in which the debtor was found to be insolvent, because it intended to limit the percentage of payment to creditors and as a way to save an amount for the minimum existential.

Thus, in order to promote the understanding of the specialization of the judicial activity in concrete cases from the parameters adopted, one could raise some reflections prospecting the consequences in social relations, namely: to what extent the fundamental right provided for in Article 5, XXXII, of the Brazilian Federal Constitution ("The State shall provide, as set forth by law, for the defense of consumers") is being preserved? Could the indebted consumer be considered equal to the insolvent businessmen? Would this comparison allow the judicial integration when restructuring liabilities and debts, despite the absence of legal provisions? If so, would the court be responsible for dealing with the creditors when restructuring liabilities and debts on a case-by-case basis?

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[5] According to G. MENDES, former president of the Federal Supreme Court and the National Council of Justice, the improvement in the provision of the public service of justice implies the eternal pursuit of an evolution in the administrative management, aiming to reduce costs and to maximize the effectiveness of resources. In The Reform of the Judicial System in Brazil: a fundamental element to ensure legal security for foreign investment in the country (speech given in the l'OCDE in May/2009), available in (http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfAgenda_pt_br/anexo/discParisport1.pdf (accessed on 19.02.14).

17th IACL Conference, June 13-15, 2019
Indiana University Robert H. McKinney School of Law

Proposal:

1. Title:

"Protecting the Personal Information of Consumers in the Context of Canadian Banking Transactions: A Comparative Analysis"

2. Abstract:

Technology is essential for the processing of consumer banking operations, whether for a credit or a payment transaction. It is convenient and the level of confidence of consumers has grown in recent years. However, electronic banking transactions involve processing personal data, which may not always be in the interest of consumers. Firstly, regarding consumer credit, banking contracts in Canada provide explicitly that consumers consent to the collection of personal information by their bank, which is then passed on to credit reporting agencies. Since each bank provides similar clauses in their contract (due to an oligopoly in the Canadian banking industry), consumers are prevented from selecting a bank that offers more privacy. They become hostages of these standard banking clauses. Secondly, electronic payments, and especially mobile payments, involve several players who are not adequately regulated and supervised to protect personal data. Amongst other things, financial technology (FinTech) firms, i.e. commercial enterprises involved in financial activities, are not subject to the same regulatory and supervisory burdens than financial institutions. Since financial data are very sensitive and valuable, this situation brings meaningful risks for consumers. Hence, financial data protection in credit and payment transactions raise important questions. For instance, how can one evaluate whether a consumer has freely consented to the collection and sharing of their personal information in this situation? What is the meaning of a free and informed consent? How are such risks perceived by various categories of consumer? Canadian regulation is not entirely adequate to protect the consumer in this situation. Is the new European General Data Protection Regulation an alternative we should consider? Are there other ways to protect consumers and their personal financial data? Analysis of banking contracts and consumer regulation will be reviewed.

3. Relevance:

Technology, banking and consumer protection perfectly fits with the major theme of the ICAL 2019 conference: "Innovation and the Transformation of Consumer Law." Data protection is a core issue for 21st century consumer protection, raising several important challenges for public policies and regulators.

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http://www.fd.ulaval.ca/faculte/professeurs/marc-lacoursiere (in French only)

Who pays when things go wrong?

Online Financial Fraud and Consumer Protection in Scandinavia

This paper focuses on legal challenges related to the allocation of losses after consumer-targeted online financial fraud in Scandinavia. Such fraud is a growing problem as a result of the digitalisation of financial services. Consumers are particularly vulnerable to attempts at fraud and to the economic impact of such fraud. Rather than attacking financial institutions directly, criminals can target consumers through push payment scams, phishing attacks or identity theft, for example. The goal is typically to deceive the consumer into revealing the security information needed to authenticate or make an electronic signature in the name of the consumer. If successful, the fraudster can empty the victim's account, or obtain credit cards and loans in the name of the victim. As it can be difficult to recover losses from the person who committed the fraud, in practice the loss will often remain with either the financial institution or the consumer. Hence, liability issues and the allocation of losses between these parties is a challenging issue.

This paper's research question is twofold. First, it relates to how current rules on liability allocate losses resulting from third-party online financial fraud between consumers and financial services providers de lege lata. The paper explores relevant Scandinavian - Danish, Swedish and Norwegian - and European law. Second, it relates to whether larger parts of the losses after online financial fraud should be allocated to financial institutions de lege ferenda, as means of achieving the political goal of strong consumer protection against cyberfraud in the financial market.

For fraud related to payment services, questions on loss allocation are regulated by national rules implementing the liability regime for unauthorised payment transactions under the second Payment Services Directive (PSD2). For other financial services, these questions are solved according to general rules on contract and tort in national law. The analyses show that consumers are often left to deal with the losses caused by online financial fraud. In particular, consumers are left responsible for credit agreements concluded in their name by fraudsters.

It is argued that the digitalisation of the financial services industry has in practice led to a shift in who bears the risk for attacks against financial institutions. The financial industry and digitally literate consumers benefit from this development and digitalisation, but vulnerable consumers are worse off. Rules on loss allocation could reduce the frequency of online financial fraud, provide some compensation for its victims and distribute the costs generated by fraudsters more effectively among those who benefit from financial services. The analyses of the liability regime for unauthorised payment transactions based on PSD2 compared to the national regulation of liability for fraud in credit agreements shows how the lack of an overall EU-based regulatory framework can lead to dramatic inconsistencies in how losses resulting from fraud are allocated for different financial services. Hence, the paper concludes that loss after online financial fraud should be allocated to financial institutions to a greater extent.

Title: Do consumers have to be protected from AI or is it much ado about nothing? A comparative perspective on the regulation of robo-advisors in the financial services industry

Authors: Prof Tjakie Naudé (University of Cape Town, South Africa) and Ms Elizabeth de Stadler (Director, Novation Consulting and Associate, Esselaar Attorneys, Cape Town, South Africa)

Abstract:

Increasingly, financial service providers are using so-called robo-advisors (automated advice) to assist consumers when they make decisions about financial services. Policy-makers the world over have been scrambling to keep up with these technological developments and have responded with new regulation to ensure that consumers remain protected. In South Africa, the Financial Sector Conduct Authority (FSCA) adopted additional requirements for automated financial advice in its fit and proper requirements for intermediaries. In addition, section 71 of the Protection of Personal Information Act, 4 of 2013 provides for some protection when consumers are being subjected to automated decision-making. The aim of this paper is to assess this regulation against the regulation of robo-advisors in other parts of the world and to make recommendations on what the ideal nature of the regulation should be. The paper will examine the exact nature of the risks to consumers introduced by robo-advisors. It is against these risks that the efficacy of the regulation must be measured. Three different models of regulation of technology will be discussed. The first option for legislatures is to adopt technology neutral regulation which does not address robo-advisors per se, but which is broad enough in nature to cover them. On the other end of the spectrum, legislatures could opt for detailed mandatory rules that regulate robo-advisors specifically and which may include compulsory insurance or strict liability. Lastly, a more moderate approach which includes principle-based technology neutral regulation accompanied by best practice guidelines specifically aimed at automated advice will be considered.

Innovation and the Transformation of Consumer Law 17th Conference of the International Association of Consumer Law (IACL) Date: from June 13th to June 15th, 2019. Venue: Indiana University Robert H. McKinney School of Law, United States

BEST PRACTICES AND CONSUMER LAW IN THE ERA OF RADICAL TRANSPARENCY

CAROLINE VISENTINI FERREIRA GONÇALVES[1]

Abstract: The Internet in the daily lives of consumers brought technological solutions either through the sharing economy[2], platforms or within the world of Internet of

Things. Companies monitor in real time the perceptions, feedbacks, and reactions of

consumers during the use of products and services, through various online platforms

available, such as Facebook, Instagram, YouTube, and Consumidor.gov.br. Consumers

seek accurate, timely and reliable information about pricing, standards, quality, safety

and redress. Transparency of information, therefore, became more sophisticated as

platforms provide means by which consumers cease to be the passive recipients of

information and become active participants in the markets, creating an era of radical transparency[3]. In this complex scenario it is even more challenging for companies with

global presence to meet and comply with standards and criteria applicable to products

and services, since eventual non-compliance could bring reputational risks to companies, in reason for the “bad press"[4] exposure. In the digital and online world,

companies are compelled to frame their conduct in compliance policies on consumer

law that encompass not only their values, but also the particularities and rules applicable

in each country of operation, along with best practices of the market. The article

proposed herein aims at assessing on whether the Brazilian consumer protection code

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[2] Thus defined by Professor Claudia Lima Marques as "a collaborative purchasing system, in which people rent, use, exchange, donate, lend, and share goods, services, resources or commodities, application help, and mobile online technology to save money, cut costs, reduce waste, waste time or immobilize assets, or improve sustainable practices and the quality of life in your region. " MARQUES, Claudia Lima. The new notion of supplier in shared purchasing: a study on the correlations of contractual diversity and access to purchasing. Consumer Law News, vol. 111/2017, p. 247 - 268, May - Jun /2017. [3] CONSUMER FOCUS. In my honest opinion: consumers and the power of online feedback. Available on< >. Access on October 29, 2018. 4 "When someone or something is bad press, it means that they are criticized, especially in the newspapers, television or radio". COLLINS DICTIONARY. To get bad press. Access October 29, 2018.

and its principles are aligned with best practices towards consumers, along with

practical examples adopted by companies and industry sectors and trends foreseen by

the New Deal for Consumers adopted by the European Commission.

Key-words: Consumer law; International Compliance; Best Practices.

03 December 2018

Abstract for the 17th Conference of the International Association of Consumer Law (IACL) – Indiana University Robert H. McKinney School of Law,13 to 15 June 2019

Title: The Transformation of Consumer Protection Law in South Africa: A holistic overview

Presenters: Prof Stéfan Renke (University of Pretoria) and Prof Jacolien Barnard (University of Pretoria)

The last decade or two has witnessed a complete transformation of the South African Consumer Protection Law landscape. In terms of the National Credit Act 34 of 2005 (NCA) and the Consumer Protection Act 68 of 2008 (CPA) respectively, outdated pieces of consumer credit legislation were repealed and replaced and "umbrella" legislation introduced to provide a comprehensive framework for general consumer protection in South Africa. Both pieces of legislation enjoy a broad scope of application and are characterised by a definite drive to introduce consumer protection measures that would not only bring South Africa in line with global consumer protection measures and trends, but that would also be responsive to social context taking into account vulnerable consumers in the present socio-economic climate in South-Africa. Further aims were to provide for a fair and accessible South African consumer protection statutory framework that would be in line with the South African Constitution.

The transformation of the South African consumer credit legislation evidenced the introduction of two new consumer credit institutions and of a variety of fresh concepts and objectives, such as the registration of credit providers, unlawful credit agreements, the prevention of reckless lending and over-indebtedness and the alleviation of the latter. Significant transformation regarding access to credit took place, in particular in respect to those members of the South African society who were previously disadvantaged. The National Credit Amendment Bill of 2018, introducing

The CPA attempts to govern the full life cycle of goods and services and all businesses (suppliers) in the consumer market. The paper will provide examples of how the CPA has transformed areas of consumer protection in South Africa for example defective goods; the introduction of a new product liability- and product recall regime; regulating fair business practices and the provision of just and fair contractual terms in consumer contracts.

Though this paper will focus on the transformation of the credit and general consumer protection laws (the NCA and the CPA), the most important transformative measures regarding Financial Consumer Protection Law and E-commerce will be mentioned for purposes of completeness. The aim will be to illustrate how the interplay between consumer credit and general consumer protection legislation and other consumer protection measures (legislation, judicial decisions, the South African common law, foreign and international law) have transformed the consumer protection landscape in South Africa to bring it in line with global trends.

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IACL conference abstract: "Innovation and the Transformation of Consumer Law"

Title: The enigma of transparency: Dilemmas of enforcing traditional concepts in modern times

Abstract:

Mandatory information obligations remain a staple of consumer protection in Europe. Provision of information to consumers aims to facilitate pre-contractual informed decision-making, as well as encourage the enforcement of consumer rights after the contract's conclusion. Still, it is a widely known phenomenon that consumers do not read (pre-)contractual disclosures. Among many justifications given to explain the lack of readership is disclosures' complexity and obscurity. The principle of information transparency intends to remedy such defects. However, clear guidelines are missing in European scholarship, legislation and case law as to which requirements should be fulfilled to consider disclosures transparent. This paper describes and analyses which requirements of transparency Polish enforcement authorities take into account in their assessment of information transparency, as well as what sanctions they assign to the lack of transparency. Online transactions place consumers at a particular informational disadvantage as they hinder assessment of goods before the purchase, as well as limit communication with traders. Therefore, the paper discusses transparency of online disclosures. The paper poses the question whether the introduction of the new technologies has complicated the assessment of compliance with the principle of transparency or, contrarily, facilitated it for online traders. Another explored question is to the consensus, or lack thereof, amongst the enforcement bodies on the meaning, importance and consequences of the lack of transparency. Research results presented in this paper follow from the ORA research project "The ABC of Online Disclosure Duties: Towards a More Uniform Assessment of the Transparency of Consumer Information in Europe".

Abstract 17th Conference International
Association of Consumer Law

The role of International Consumer Policy in Fostering Innovation and Empowering Consumers to Make Informed Choices

Kara Nottingham[1]

Izabel Cardozo[2]

To address the topic of consumer policy from an international law perspective, this research paper explores the content and evolving meaning of the right to information in the age of fast-paced scientific and technological advancement, according to the United Nations Guidelines for Consumer Protection ("the Guidelines"), which were adopted in 1985 and last revised in 2015. [3]

This paper will address how international principles of consumer protection, relating to information, tangibly apply and evolve in the face of rapid innovation and technological advancement. We will discuss in particular the implications that exist for businesses in heavily regulated industries (like food, alcohol, and tobacco) in providing timely information to consumers about product innovation where existing regulations create a knowledge gap. We will also analyze how approaches to commercial speech, aligned with the spirit of the Guidelines, could foster the free flow of information, harness product innovation and facilitate product choices that enhance the health and well-being of consumers.

We argue that the revision of the Guidelines in 2015, and its new text, have attributed enhanced responsibility for businesses and governments to empower consumers to make informed decisions through consumer education. The "Principles for Good Business Practices", now embedded in the Guidelines, create a positive obligation on businesses to provide truthful, relevant, and non-misleading information concerning their products and services, as well as a negative obligation to avoid deceptive or abusive practices. Since its latest revision, the Guidelines have established a role for businesses to upskill consumers' awareness and knowledge of risks.

As regulation often lags behind the speed of product development, we contend that the Guidelines place an increased responsibility on businesses to educate consumers on product innovation and new technologies. Where regulatory gaps exist, businesses should be able to disseminate accurate and truthful information to avoid the risk of consumers being left in the dark, unable to make an informed decision on whether or not to consume a new product. The free flow of information contributes to more innovation, enabling better and informed consumer choices. Information provided to consumers should in all cases be subject to regulatory scrutiny and enforcement to address deceptive practices.

The over-arching spirit of the Guidelines also calls for enhanced international consensus and collaboration so that consumers may receive anywhere in the world the same quality of products, and related information, which becomes even more important in the era of technological innovation and digital information.

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See United Nations Guidelines on Consumer Protection ("the Guidelines"), available online at https://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf (last accessed on 29 January 2019).

31 January 2019

Responses to the Banking Royal Commission - Will we see the transformation of banking, superannuation and financial services regulation in Australia and how will this impact on Australian consumers?

Eileen Webb*

In 2018, Australians were both mesmerized and bemused by proceedings in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. (The Banking Royal Commission)

The Banking Royal Commission – which had long been resisted by the Commonwealth government due to fears of an adverse impact on the financial system – was instructed to inquire into and report on misconduct in the banking, superannuation and financial services industry. A series of hearings revealed a catalogue of misdemeanors, cover-ups, willful blindness and criminal behavior at all levels of these industries. Proceedings in the Banking Royal Commission have seen the admonishment, and in some cases, triggered the resignation of high-ranking executives from some of Australia's (formerly) most respected corporations. The Final Report is due in February 2019.

As the public hearings rolled on throughout 2018, a perplexed public raised some obvious questions being:

- *Are there not laws against this kind of behavior?*
- *What were the regulators doing?*
- *How will the findings of the Royal Commission affect the conduct of financial services regulation in Australia and what impact will this have on consumers of financial products?*

Reassuringly, there *are* laws that address all forms of conduct discussed at the Royal Commission including the making of false and misleading statements, unconscionable conduct, irresponsible lending and the failure to report breaches to the regulator. However, the inaction of the regulators, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) to enforce those laws, saw them described as 'hear no evil, see no evil' regulators.

There is no doubt that the financial services landscape in Australia will be transformed in the wake of the Banking Royal Commission. What is uncertain, however, is the form this transformation will take. Are new laws necessary or desirable? Is there a future for the existing regulators? What are the consequences of a tightening of financial services regulation? This paper will provide an overview of the Banking Royal Commission's findings and consider how the recommendations will shape Australian financial services regulation.

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TOWARDS TOURISTS PROTECTION IN THE DIGITAL AGE

By Ezequiel N. Mendieta

The digital revolution has changed our lives. Social media, sharing economies, big data are challenges faced by society today. The globalised world offers more opportunities to approach new places. Therefore, people travel more often around the world and discover different cities, cultures, taste new flavours of local foods, and many other experiences which tourism can provide.

Tourists are involved in complex relationships because travelling includes many kinds of services such as transport, accommodation, tours, etc. That condition was recognised in the Tourists Code of United Nation World Tourism Organization of 1985 by article XIII.2.b. Therefore, tourists are protected by Consumer Law. In fact, the United Nations Guidelines for Consumer Protection were modified in 2015 and added a specific guideline dedicated to tourists (Guideline 78), which provides that "Member States should ensure that their consumer protection policies are adequate to address the marketing and provision of goods and services related to tourism."

At the same time, tourists are considered a vulnerable or hypervulnerable consumers because they are more exposed than any other kind of consumer to suffer damages or unfair treatment. It is certain that tourists are in a different country or city, where people could speak in a different language or have different idiosyncrasies.

In this context, the digital revolution has had an important impact on tourism. Nowadays, tourists book their trip by themselves through online travel agencies or digital platforms such as Airbnb. E-commerce is an important tool for tourists because they might book transport, buy tickets for attraction, etc., by themselves without intermediaries. Another significant impact of the technology on tourism is social media. There are several blogs where tourists may obtain information about the experiences of other visitors to the same hotel or attraction.

Despite all the benefits of the digital age, tourists have to deal, besides their disadvantaged position as tourists, with another vulnerability which is that they are e-commerce consumers. In fact, tourists usually have problems with the accommodation that they have booked by an app or digital platform where there are no clear about mechanisms to make a complaint against traders. Furthermore, tourists may be victims of geo-blocking avoiding the access to a particular good or service. Hence, tourists need a specific and strong cross-border protection like The Hague Conference's proposal of Convention on Co-operation and Access to Justice concerning international tourists.

This paper estimates the impact of the digital revolution on tourism and their benefits. The International Consumer Law protect tourists and the different regulations about tourism may contribute to our understanding of tourists' protection. The aim of the present investigation was to explore the tourists' challenges facing the digital age by analysing e-commerce problems and discrimination like geo-blocking. Indeed, it is possible to postulate that tourists are vulnerable consumers in the digital age and they

need specific and cross-border protection, mainly in mechanisms of dispute resolution and redress.

Blockchain and Consumer Protection at the EU Level: Focus on some Legal Issues raised by *Smart Contracts*

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Blockchain and smart contracts are among the most discussed topics in the IT community.

Bitcoin, as cryptocurrency, is probably the most famous application relying on blockchain, but it is not the only one. Serving as an incorruptible public repository of data, thanks to distributed ledger technology, asymmetric cryptography and mining, *blockchain* is also the main technology component of so-called *smart contracts*. With *smart contracts*, the purpose is not only to record a transaction (e.g. a transfer of money from A to B, like with the blockchain bitcoin), but also to execute automatically some transactions, when determined requirements are met. The transaction is therefore self-executed, automatically and without any human intervention: unlock the door of an accommodation, when the fees are paid; grant the insurance indemnity to the consumer, when the flight is delayed; immobilize a vehicle, and terminate the agreement, should the leasing fees remain unpaid during two months; etc.).

Within the legal framework protecting consumers at the European Union level (or in the Member States of the EU), there is not any sector specific regulation protecting consumers using blockchain technology. Various risks can however be identified for consumers: lack of knowledge (on the risks of a smart contract, etc.), misleading or aggressive practices, denial of the professionals (considering that there is no binding agreement), automatic enforcement of the agreement without any consideration to a possible force majeure event, etc.

The first part of the paper shall focus on the main risks and threats of blockchain for the consumer. The legal framework protecting consumers is mainly grounded on the weaker position of the consumer, contracting with professionals (particularly with regard to the level of information or the bargaining power). The specific weakness of the consumer facing *smart contracts* (compared to the consumer contracting online or in shop of brick and mortar) must be identified, in order to determine whether additional regulation is needed.

The second part of the paper draw up an overview of the main applicable rules aiming at protecting consumers, under EU Law (being agreed that, in almost all cases, rules are not especially dedicated to *smart contracts*), in order to determine whether they apply (or not) to blockchain: information duties, safety and security regulations, warranties, prohibition of unfair commercial practices and unfair contracts terms, etc. (as prescribed by directive 2005/29/EC on unfair commercial practices, directive 2011/83/UE on consumer rights, the proposal for a directive on contracts for the supply of digital content, etc.).

The last part of the paper will propose amendments to the current legal framework (if needed), in order to ensure a higher level of protection to the benefit of consumer, while keeping in mind the concerns of the professionals, and the issues resulting from overregulation.

The EU Directive on the Sale of Goods : Consumer Protection 2.0 ?

Jasper Vereecken and Jarich Werbrouck

Society is getting more and more digitalized. Consequently, law is/should as well, since law is the mirror of society. Self driving cars, watches with the capability of showing us our blood pressure at any moment of the day, kitchen robots,... all of these are no longer science fiction. Since these goods will without any doubt also have their own problems and malfunctions, the question should be asked how these should be approached from a legal perspective. The current EU Directive on the sale of goods to consumers dates back to 1999. In a certain way unsurprisingly, this directive is not adapted to (goods with) digital content or services.

This observation was also made by the European legislator. Consequently, two proposals for directives were put to the front: one on the delivery of digital content and one on the sale of goods. Contrary to what the name may suggest, the latter also applies to certain aspects of digital content and digital services. If this content or these services are embedded in such a way that they form integral part of the goods, though the main function of the latter is not the one of carrier of the digital content or services, the directive on the sale of goods will (according to the latest proposals) be applicable.

In our contribution, we want to analyse whether or not the proposal is fit to be applied in the context of goods with embedded digital content or services which turn out to be not conform to the contract the consumer concluded with the seller or supplier. It is our impression that, however the EU legislator has already come a long way to 'upgrade' the legislation in order for it to be applicable in the context of this kind of goods, there is still room for improvement. The contribution thus seeks to pinpoint some oddities and holes in the proposal, and proposes ways to fill those gaps.

The Innovation and the Transformation of South Korea's consumer law : A study on the activities of the consumer policy committee

<Abstract>

Recently, Korea's consumer legislation is changing rapidly. The revision of the framework act on consumers increased the legal status of the consumer policy committee, and allowed the consumer policy committee to recommend improvements to the legal system governed by the relevant administrative agency in order the enhance consumer interests. The direction of the consumer policy committee's recommendations for improvement is to ensure that consumer choice is a major factor in creating a better consumption environment, while various goods and services are supplied to the market and the consumer market is activated.

There are many difference types of problems in the consumer market in korea. There is a lot of interest in the consumer market and resistance in the process of improving consumer rights. The legal system of high-level government agencies that regulate telecommunication, broadcasting, transportation and finance is not properly regulating various services in these fields, and the resistance of existing businesses is high. E-commerce and digital content service transactions have become common, but unfair consumer transactions by businesses also are increasing. It is also necessary to respond to consumer problems considering the social and natural factors the lead to massive consumer changes such as north-south korea unification, population change, environmental pollution, and climate change.

The consumer policy committee is meaningful in that it will actively publicize the issue and propose improvements to enhance the basic right of consumers. Innovation and Transformation of korea's consumer law in the future are expected to be viewed through the activities of the consumer policy committee.

A Behavioral Economic Analysis of Consumer Withdrawal Rights in the USA, EU, and Japan

Koju HIROSE (Associate Professor of NIT JAPAN, Kitakyushu College)

Abstract

Unlike the right to cancel a contract due to a breach of a condition of the contract, the consumer's right to withdraw from a contract is allowed on conditions favorable to consumers. There is therefore a need to clearly define and clarify the basis for justification for it. Since the legal provisions for withdrawal rights in distance selling are very different between the USA and the EU, research in this area has led to further studies on the distinction of contracts as well as advancing research on consumer behavior in each type of contract. It is of noteworthy mention that behavioral economics has been applied fruitfully in the comparison and analysis of the consumer's withdrawal rights. If we are able to come up with proposals to better the society as a whole by analyzing allocation of resources not only for consumers but for honest and dishonest companies as well, it might be beneficial to apply these economic theories to clarify and define the judgment criteria for justice and fairness. On the other hand, there is a need to define the nature of each contract to prove the rationale for justifying the consumer's right to withdraw from it, and the application of economic theories is expected to clarify the nature of each contract. Studies conducted in the USA and the EU on the consumer's withdrawal rights by applying economic theories have centered around the analyses of justification basis of these rights for each type of contract via an economical distinction of these contracts. For instance, the contracts drafted nowadays are complicated and diversified, such as online sales contract and door-to-door sales contract. In fact, the laws of the USA, the EU, and Japan present different stipulations concerning the consumer's withdrawal rights for each type of contract. Therefore, the individual provisions, such as provisions for the withdrawal period and legal consequences, differ between contracts. In particular, the scope and application of the mandatory rule and the default rule are different in the USA, the EU, and Japan, and have been the topic of many discussions and dispute. Advances in science and technology have transformed the structure of the market, such as recycling, digital contents, the Internet, and corporate mergers, resulting in further complication and diversification of the contents of contracts. We can therefore expect to create a new classification of contracts by applying economic theories to it. Moreover, these studies have attempted to perform a psychological analysis of the relationship between law and consumer behavior based on behavioral economics to propose legal provisions to build a better society. This study attempts to organize and review the points of arguments by comparing the consumer's withdrawal rights in the USA, the EU, and Japan, as well as discussing the benefits of the behavioral economic analysis of these rights.

Abstract for the 17th Conference of the International Association of Consumer Law

Title: The Challenges of Smart Insurance Contracts to Consumers: Based on the Chinese Law

Author: MA Kailiang, a law PhD candidate in the University of Paris-Saclay in France.

Abstract: After China's Consumer Protection Law was amended in 2013, the protection of consumers' rights in online transactions has been strengthened, and the responsibilities of Internet platforms have become clearer. However, in the Internet age, technology is developing rapidly, especially in the insurance industry. In recent years, in the process of buying commercial insurance for consumers, block chain technology has greatly promoted the transparency of trading process and overcome the disadvantages caused by asymmetric information consumers. It not only protects the consumers' right to know, the right of fair trade and the right to choose or supervise, but also reduces the operating costs of insurance company and promotes the insurance company to perform the responsibilities. Many Chinese insurance companies are building smart contract trading platforms, such as Sunshine Insurance Group and ZhongAn Online P&C Insurance. However, although smart contract realizes the coordination between technology and law to some extent, it still needs further confirmation of the current legal system in China.

China's Consumer Protection Law does not stipulate the constitution of insurance contract elements, and in specific operation, this needs to consult the regulation of Chinese Insurance Law. However, they do not respond to the smart contract, and the original law cannot completely solve the problems in the process of technological development. So, the smart insurance contract is bound to bring challenges to the protection of consumer rights.

On the one hand, in the process of insurance transaction, the computer code cannot accurately express the semantics of contract terms at present, and the terms of smart contract cannot accurately express the meaning of the parties. In real life, there are often situations not stipulated by law or not agreed by both parties, which require the interpretation of legal provisions or contract terms. Such interpretation often involves complex interest balance and value judgment, which should be decided by a third party with credibility. However, smart contracts rely

entirely on programs written in computer language to verify and execute between contracting parties. Now, consumers do not know about smart contracts, which easily leads to insurance companies' infringement of consumers' right to know and right of fair trade.

On the other hand, in the implementation of smart contracts, everything needs to be obeyed by the pre-set codes, regardless of the true will of the parties. If one of the parties wants to have other choices, the codes cannot help. The terms of the contract revocation
and dissolution, as stipulated in Articles 15 and 16 of the Chinese Insurance Law, cannot be applied. Moreover, this has a great conflict with the right of rescission stipulated in Article 25 of China's Consumer Protection Law, and it also affects the realization of consumer claims.

Key words: smart insurance contracts; China's Consumer Protection Law;
Chinese Insurance Law; right to know; fair trade

Over-privileged Permissions: Using Technology and design to create legal compliance

Anjanette Raymond, [1*] *Jonathan Schubauer,* [2*] *and Dhruv Madappa* [3*]

Abstract

Most lawyers recall with a level of fondness the series of shrink-wrap cases, founded in somewhat extensional twist of the law at the time- the law landed on the determination that a customer can buy software and agree to the primary terms of use prior to its installation, of course- as purchasers retain the option to return software once they see the terms inside the box. The cases slowly came to a somewhat reasonable line of legal business efficiency.

Fast forward to today's world, software- at least on a disk in a box, is a thing of the past. And, the ability to download a piece of software is ubiquitous. One might assume, those tried and true cases of old still lead the reasoning, but you would likely be surprised. In fact, downloading applications are still subject to terms of use. But buried inside the download- and rarely mentioned in the fine print, are the series of third-party libraries installed with automatic permissions- that is permissions that must be granted to allow the application to function appropriately.

In addition to such libraries, applications use these third party permissions in ways that may violate consumers' expectations and privacy. For example, Silverpush, an advertising company, developed a mobile ad library repository that passively listened for ultrasonic audio beacons to

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track users TV viewing activities. Similarly, Facebook was recently awarded a patent for utilizing a mobile device's camera to analyze users' emotions while they are browsing their newsfeeds. In such instances, these third party libraries are granted permission to collect advertising information, without any notification to inform the consumer. Of course, these are just a couple of the more nefarious examples, consider an application that provides up-to-date weather, or traffic, or locations of friends. These applications are often drawing information from other databases- and are aggregating the data in a real time provision. Each of these external databases- or other providers of data- often want access to the data, both stored and generated.

While most individuals may be comfortable with sharing such data, individuals are unaware of the privacy risks they consensually agree upon. Consumers are blindly conforming to the blanketed disclosures, while coupled with their lack of understanding of the inners workings of how their technology may be used in their daily routines. Thus, we have since returned our society to the days of the uncertainty of the law in the face of shrink wrap clauses.

Consequently, it's time to revisit the approach that was developed in response to shrink-wrap issues, one that recognizes the importance of balancing law and business interests. This paper will explore a governance regime for the consumer driven digital world. The paper asserts that regulation must be designed with four features in mind: legal compliance technology as a driver, seamless unobtrusiveness- yet, transparent, with business interests as an essential balanced interest. The paper will accomplish this by demonstrating consent by design deployed in the automatic permission-based application ecosystem.

Implications of Medical Liability for Improved Access to Health Care through Telemedicine and Its Impact on Consumers

Abstract for
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The adoption of the Affordable Care Act (ACA) in 2010 to expanded access to health services for Americans through improved insurance coverage, but expanded insurance coverage did not convert automatically into access to care. For access to specialized services in particular, remote geographic areas of the nation shared a common problem with poor and impoverished urban areas in that there is a shortage of health care providers. It is difficult to recruit highly qualified professionals to these locations, and health care financing models have not facilitated creative uses of technology to assist is reducing this disparate access to services. However, researchers and policymakers have recently begun to advocate for the use of telemedicine as a means of reaching underserved populations by using audio and video technology to allow health care professionals to see a patient and assess the medical condition, to monitor health-related data through wearable consumer electronic devices, and to exchange medical information and diagnostic opinions between clinical professionals. For example, the Centers for Medicare and Medicaid Services (CMS) has recently accepted five new Current Procedural Terminology (CPT®) codes to pay for physician services using virtual services for remote monitoring and electronic consultations.

While more organizations have shown a willingness to use these new technologies to serve patients, the legal implications of these new technologies are not fully clear with respect to liability for providers. Legal issues include, but are not limited to, patient privacy concerns and informed consent and legal liability, jurisdictional and regulatory issues for any cross-state medical practice.

This paper will review the current state of telemedicine use in the US and the legal considerations and implications for health care providers, including licensure requirements along with existing and potential issues related to interacting with patients remotely. The paper will review the policy implications of telemedicine liability issues and suggest potential solutions to encourage the expansion of access to care for consumers through telemedicine services when economically efficient and clinically justified.

A study on the regulation of the exclusion reason and procedure of the right of withdrawal in online digital content transactions

Byung-jun Lee (Professor, Hankuk University of Foreign Studies)

1. The digital contents industry has been dramatically developed as a variety of digital contents provided online. In general, when digital contents are sold on corporeal things like DVD, they are basically regarded as commodities and the regulations on the contract of sales are applied. In contrast, there was no regulation for a digital content that was downloaded in online or used via a streaming service. In Korea, the Digital Content Industry Promotion Act in 2002 contained some regulations on user protection. The User Protection Guidelines and the Standard Terms of Use have been established based on this Act. However, as the Act on the Consumer Protection in Electronic Commerce(ETC) was revised in 2017, some new regulations on digital contents were introduced in addition to the provisions targeting products and services. In the case of digital contents, the right of withdrawal would be excluded when the provision of a digital content is commenced(Article 17 (2)-5 of the Act on the Consumer Protection in Electronic Commerce, ETC).

2. In the case of the corporeal goods, Korean law recognizes the right of consumers to withdrawal the contract after the goods are delivered and the quality of the goods is checked by the consumer. In the case of online transactions of digital content, the right of withdrawal could not be guaranteed when the partial use of the digital content is sufficiently provided. Therefore, in order to exclude the right of withdrawal in case of transaction for a digital content, the vendor must provide test goods and indicate the fact that the consumer can not exercise the right of withdrawal(Article 17 (6) of the Act on the Consumer Protection in Electronic Commerce, ETC). The method of providing test goods is as follows: (i) Permission for partial use, (ii) Permission for use for a limited time, (iii) Provision of digital contents for experience, (iv) Provision of information on digital content (Article 21-2 of the Enforcement Decree of the Act on the Consumer Protection in Electronic Commerce, ETC).

3. (i) This paper reviews the history and regulations of digital content in Korean law. (ii) It is introduced that the exclusion procedure and the detailed articles about the withdrawal in case of a trasaction for a digital content. Particularly, it is presented that the issue of ‘partial withdrawal’ which is discussed in recent practice, related to the concept of the divisiblility of a digital content. (iii) About the exclusion procedure, the legitimacy of the Korean regulation is assessed through the comparative legal review of the legislative directives of European Union on digital content transactions. EU recognizes the exclusion of the right to cancel, which requires the vendor to inform the consumer that the right is

excluded, and the consumer to agree with it in a state of awareness. However, Korean law does not stipulate the requirement of consent, and it is required to ensure an opportunity to experience digital contents.

Smart contracts and Consumer Protection

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A smart contract is a computer code converted, stored and replicated on the system and supervised by the network of computers that run the blockchain. It directly controls the transfer of cryptocurrencies or assets between parties under certain conditions and can automatically enforce obligations of each parties. Today, convenience of smart contracts is emphasized in that parties can conclude automated contracts without face to face. However, smart contracts have some problems in terms of consumer protection.

First, there is a difficulty in protecting consumers when there is a problem in signing or implementing the contract. Consumers do not have a record of the smart contract process. So they will have difficulties proving that they could not have prevented such processing when there is a computer error or a mistake made by the seller, which results in an automatic processing. Many consumer protection laws require contracts to be written in a plain and understandable language, but it is obvious that Solidity(Java-based programming language) is beyond most consumers' ken.

Second, smart contracts are eventually linked to centralized groups such as google's web crawlers, which may lead to over-disclosure of consumer information or preferences. Focusing on mechanisms, except for the technical side, smart contracts operate similarly to over-the-counter derivatives such as options. In this case, fixings that determine whether a particular contract condition has been reached must be delicately designed. For example, if you design that you order bottled water from the nearest supermarket when you have run out of bottled water at home, you will need a precise definition of 'run out', 'bottled water' and 'home' for smart contracts. However, the block chain can not automatically know the real world. In the contrary, both parties need to identify and correlate market data published by third-party accredited organizations in OTC derivatives world. If there is a centralized agent that delivers the real world to the block chain, the consumer's life patterns and preferences are revealed to centralized agent, giving the centralized agent some kind of power.

Third, smart contracts will be concluded in a standardized form, which has the same problem as the standardized contracts(terms and conditions). Consumers may deny the contract itself, but eventually enter into a smart contract that includes an unwanted clause in order to enjoy the convenience of the smart contract, which ultimately results in the acceptance of personal information beyond their expectations.

IMPROVING THE QUALITY AND SAFETY OF PRODUCTS OFFERED BY MICRO, SMALL AND MEDIUM ENTERPRISES THROUGH STANDARDISATION

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Abstract
Improving the quality and safety of products through standardisation has been a major goal pursued by Nigeria over the years. Standardisation of products in Nigeria started about 47 years ago with the enactment of the Standards Organisation of Nigeria Act 1971 which was repealed and replaced with the Standards Organisation of Nigeria Act 2015. Over the years, the Standards Organisation of Nigeria (SON) has established numerous standards covering different product fields. Strengthened by the expanded functions and powers conferred by the 2015 Act, the Organisation has intensified its standardisation activities to cover new areas of national interest. A major area of focus is prescription of standards for products produced by Micro, Small and Medium Enterprises (MSMEs) with the aim of empowering the operators to key into the Federal Government's Economic Recovery and Growth Plan (ERGP), a plan aimed at diversifying the economy of the country. It is widely acknowledged that MSMEs make significant contributions to the Gross Domestic Product of Nigeria. Recently the Director-General of the Small and Medium Enterprises Development Agency of Nigeria (SMEDAN) disclosed that there were about 37.1 million MSMEs operating in the country; contributing 48.7 per cent to the Gross Domestic Product (GDP) and 7.2 per cent to export. This level of contribution to GDP is, indeed, significant; but the percentage contribution to export is worrisome. To empower MSMEs to produce products that are competitive at local and international markets, SON as the standards-making body for Nigeria has adopted various measures including prescription of MSMEs-focused standards; procurement of testing facilities that can be utilised by all producers including MSMEs; sale of standards to MSMEs at subsidised rates; education of MSMEs on application of standards; product certification (Mandatory Conformity Assessment Programme – MANCAP); participation of MSMEs in the standards-making process; and consumer education to appreciate the need to insist on certified products. In addition, Nigeria being a member of the African Regional Organisation for Standardisation (ARSO) and International Organisation for Standardisation (ISO) has participated and adopted some international standards thereby achieving uniformity and facilitating access to foreign markets. This paper examines some MSMEs-focused standards prescribed or adopted by SON and how far the operators have used these standards and other SON measures to achieve improved quality and safety of products offered to consumers both at the local and international levels. The impact of the existing measures on the acceptability of made-in-Nigeria products by consumers is also examined. The paper combines theoretical and empirical methods. It is expected that the current innovative approaches will help to solve the problem of fake and substandard products; engender enhanced interest in made-in-Nigeria products; position MSMEs to contribute more significantly to national development; and transform the state of consumer protection in Nigeria. The study will generate data on these issues.

Harnessing Information Technology for Student Loan Servicing

Kathleen Engel and Prentiss Cox

Something is wrong with the student loan market in the United States. Almost 5 million (holding $88.4 billion in debt) are in default, yet almost all borrowers with federal loans are eligible to have their payments reduced to an affordable amount based on their income. We would expect that income-driven repayment would bring the default rate close to zero for federal student loan borrowers.[1]

The federal government outsources the servicing of student loans to private companies that, among other responsibilities, are tasked with explaining repayment options to borrowers and helping them enroll in alternative payment arrangements. Through contractual agreements, the Department of Education has crafted incentives for servicers that are designed to reduce defaults. Despite these efforts, default rates remain high and borrowers in financial distress are not enrolling in alternative payment plans in numbers close to their default rates.

In this paper, we argue that when it comes to student loans, there is limited need for an agent to act on behalf of the government. We contend that information technology tools could fill the bulk of the roles assigned to student loan servicers in

[1] Daniel Rivero, The debt trap: how the student loan industry betrays young Americans, The Guardian (Sept. 6, 2017), https://www.theguardian.com/money/2017/sep/06/us-student-debt-loans-navient-sallie-mae (last visited October 2, 2017)

guiding students to loan forgiveness and income driven repayment programs. To the extent that borrowers need individualized, human counseling, credit counselors authorized and licensed by CFPB, rather than student loan servicers, are in the best position to help students find the repayment program that meets their needs.

Prof. dr. M.B.M. Loos, *Let's get digital. Consumer protection for contracts concluded through online platforms*

In a 2016 communication,[1] the European Commission identifies a number of communalities among online platforms: all of these platforms use information and communication technologies based on collecting, processing and editing of data, and many of them offer some form of direct interaction between groups of users, leading to multisided markets in which many 'offerors' and 'offerees' are brought together. The platforms benefit from network effects (the more users, the higher the value of the service offered by the platform) and may exercise varying degrees of control as regards the contracts concluded through the platform. In my presentation, I would want to focus more specifically on platforms connecting offer and demand, such as Uber, Airbnb, eBay, Booking.com, Cheaptickets.com, Skyscanner, Alibaba, and Amazon. The underlying assumption of the European Commission is that in the case of contracts concluded through such platforms, the platform may be required to disclose the identity and status of the supplier offering their goods and services via the platform to the consumer-acquirer, but is not required to verify this information. This would imply that if the supplier is not truthful about this information (e.g. by hiding its professional identity by claiming that it is not acting in the exercise of a trade or profession), the platform would not be liable for any loss sustained by the consumer-acquirer as a result. I will discuss whether under European consumer law, platforms would or should be required to disclose the identity of the supplier in a verifiable manner and whether a breach of such obligation could lead to (quasi-)contractual obligations for the platform. To this end, I will analyze a number of cases decided by the Court of Justice of the European Union and extrapolate the outcome of these cases to the platform economy.

[1] European Commission's Communication 'Online platforms and the Digital Single Market', 25 June 2016, COM(2016) 288 final.

The responsibility of online intermediary platforms for information duties of professional suppliers under EU law

M.Y. Schaub

Online intermediary platforms allow users to connect with each other and conclude contracts via the platform. Well-known examples are Airbnb, eBay, but also online store amazon.com, as it allows other sellers to sell via the amazon-platform. Online intermediary platforms have given rise to several legal questions concerning the responsibility of these platforms in relation to the contracts that users conclude using the platform.[1] This contribution focusses on the responsibility of online intermediary platforms regarding the information duties that prima facie rest on the professional suppliers of goods or services that use an online intermediary platform.

Online intermediary platforms may state that they merely provide an infrastructure and that they do not have any responsibility concerning the contracts concluded via the platform. Given certain circumstances online platforms could nevertheless have certain responsibilities. The way the platform presents itself and the level of involvement with the users and their contracts may trigger this.

As can be learned from CJEU 20 December 2017 C-434/15 (*Uber Systems Spain*) the level or the nature of involvement may even entail that the platform should be considered the supplier of the services that are offered via the platform. The consequences of this judgement for other platforms, more in particular the level or the nature of the involvement that is required, are yet indistinct.
If an intermediary is acting in the name or on behalf of a trader, this means the intermediary is directly addressed by the Consumer Rights Directive and the Unfair Commercial Practices Directive.[2] This means it must be determined if and when an online platform is acting in the name or on behalf of the suppliers that use the platform.
What if the platform is not the supplier and is not acting in the name or on behalf of the professional users, what does that mean for the responsibility concerning the information duties of suppliers? As a minimum, the platform should facilitate suppliers to provide the mandatory information, but an express obligation to do this is not stated in European legislation.

My contribution will focus on the current state of European law regarding the responsibility of online intermediary platforms concerning the information duties of professional suppliers, including a specification of how this translates to various types of platforms. This will result in insights regarding the (possible) problems relating to this topic and whether or not there is a need for legislative intervention.[3]

[1] See for example: C. Wendehorst, 'Platform Intermediary Services and Duties under the E-commerce Directive and the Consumer Rights Directive', EuCML 2016/1; C. Twigg-Flesner, 'Disruptive technology – disruptive law? How the digital revolution affects (contract) law', in: Alberto De Franceschi (red.), European Contract Law and the Digital Single Market, Intersentia 2016.
[2] Article 2 (2) of Directive 2011/83/EU and article 2 (b) of Directive 2005/29/EU.
[3] Considering this last question The Discussion Draft of a Directive on online Intermediary Platforms published in EuCML 2016/4 provides suggestions.

Does a lower maximum interest rate on the second short-term loan taken within a year from the first loan truly provide relief to a consumer?

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The South African National Credit Act 34 of 2005 ("the NCA") stipulates that there are certain maximum amounts of interest and other costs of credit which may be charged on credit agreements concluded with consumers (natural persons). The Regulations promulgated in terms of the NCA set out the maximum allowable interest rates and other costs of credit (that is, service fees and initiation fees) which may be charged on credit agreements. There are eight different types of credit (mortgage agreements, credit facilities, unsecured credit transactions, developmental credit agreements for the development of small businesses, development agreements for low-income housing (unsecured), short-term credit transactions, other credit agreements, and incidental credit agreements) to which the different maximum interest rates and initiation fees apply.

The Regulations defines "short term credit transaction" as a credit transaction in respect of a deferred amount at inception of the agreement not exceeding ZAR8 000; in terms of which the whole amount is repayable within a period not exceeding 6 months; and in terms of which an amount of money was disbursed to the consumer, to be utilised at the sole discretion of the consumer (basically a micro-loan). Initially the Regulations provided that the maximum interest rate for a short-term loan (micro-loan) was 5 per cent per month. The maximum rate applied irrespective of whether or not the consumer took out a first, second or even a third short-term loan with the credit provider in any given period. During 2015 the Regulations governing the interest rates and other costs of credit were amended and the maximum rates and costs were mostly reduced. The new Regulations were due to take effect in 2016. It made provision for the maximum interest rate for a subsequent (for instance, a second) short-term loan taken out in any 12-month period from the first short-term loan, to be reduced from 5 per cent to 3 per cent a month. The maximum interest rate on a first short-term loan, however, remained unchanged at 5 per cent per month. According to the South African National Credit Regulator, responsible for the regulation of the consumer-credit industry, and the South African Department of Trade and Industry the changes were done in order to provide some relief for over-indebted consumers. One of the justifications for the reduction was that because many consumers struggled to keep up with the repayments on their first loans, they were often forced to borrow for a second time.

Before the amended Regulations come into operation, the Micro Finance South Africa ("MFSA"), representing a large number of micro-lenders, had challenged these amendments inter alia on the grounds that the amendments were made without proper consultation and without considering the full impact and unintended consequences they would have on both the consumers and micro-lenders. The MFSA contended that one of the consequences would be that it would close access to credit for affected consumers and force them to obtain credit in the unregulated market (that is, from loan sharks). The MFSA attempted to obtain an interim interdict (injunction) to prevent the new Regulations from coming into operation, but was unsuccessful and the matter proceeded to the review court to be argued on the merits. The High Court, dealing with the merits, initially ruled in favour of the MFSA, but the judgment was overturned on appeal by a full bench of the same court. The MFSA appealed to the South African Supreme Court of Appeal, but leave to appeal was denied in November 2018. The amended Regulations, therefore remain in force.

The paper will look at these court cases and the arguments put forward by the relevant parties both for and against the lower interest rate for second and subsequent micro-loans concluded within the

given period. Specific attention will be given to whether or not such a lower interest rate will truly provide debt relief to an over-extended consumer.

Innovation and the Transformation of Consumer Law: Product Liability in the Age of Innovation

Abstract submitted by Prof Corlia Van Heerden, Department of Mercantile Law, University of Pretoria, South Africa

With advances in innovation and technology we are seeing the increase of complex, sophisticated products being released onto the consumer market on a daily basis. It is trite that it is impossible to make all products absolutely safe all the time hence product accidents are prone to happen occasionally. Accordingly the law of product liability has developed from the broader law of delict (tort) as a specialised set of rules that impose liability for harm caused by defective products. Whereas product liability regimes in various jurisdictions were initially fault-based the 20th century has witnessed the migration from fault-based product liability to strict product liability regimes (as pioneered in the United States) in an attempt to afford greater protection to consumers whose access to redress was hamstrung by the requirement to prove negligence on the part of the manufacturer.

South Africa has also taken the bold move to transition from a fault-based regime of common law product liability *ex delicto* to a purportedly strict product liability regime ostensibly modelled on the EU Product Liability Directive 85/374/EEC and the product liability provisions in Part 3-5 of Schedule 2 of the Australian Competition and Consumer Act 2010. Notably the fault-based common law of product liability *ex delicto* co-exists with the new statutory product liability regime that was introduced by the Consumer Protection Act 68 of 2008 and inter alia does away with proof of negligence in order to found a product liability claim. It also imposes product liability on the whole supply chain. However, although it has introduced a number of statutory defences to temper the strict liability imposed on the supply chain, South Africa did not follow the decision of the EU and Australia to provide for the notorious "development risk defence". This defence is afforded to a manufacturer who could not discover a defect in a products having regard to the objective state of scientific and technical knowledge at the time that the product was developed and supplied.

This paper will consider whether the notion of a strict product liability regime in an age of innovation such as we are currently experiencing, and from the perspective of a country that is in dire need of life –saving pharmaceuticals, is sustainable and more specifically what the role of the development risk defence within the context of innovation and technology is. Finally it will address the question whether South Africa has taken the right decision to exclude the defence from the purportedly strict product liability regime introduced by the Consumer Protection Act.

CONSUMPTION LAW IN SENEGAL AND IN THE ECOWAS AREA AND WHAT POTENTIAL THREATS TO THE WELFARE OF THE CONSUMER.

Jean Karim Coly[1]

Digital technology, a major lever in changing the living conditions of populations, particularly disadvantaged, offers opportunities for modernization and enhancement of socio-economic sectors with high growth potential, through the techniques and technologies of production, but also trade in goods and services.

Based on the performance of the digital sector, Senegal wants to boost acceleration in the key drivers of growth in favor of improving the productive capacities and innovation of growth sectors.

The chosen option is to accelerate the diffusion of digital technology in the priority sectors identified in the Emerging Senegal Plan (PSE) to, on the one hand, promote access to basic social services (health, education, financial services), and on the other hand, significantly increase productivity by focusing on the increased use of digital technology in agriculture, livestock, fisheries and trade.

The Senegal Emergent Plan (PSE) aims to transform Senegal into an emerging country in 2035, "with a socially responsible society and the rule of law". It is in this context, that a number of sectors whose development, essential to the achievement of this ambition, have been identified, among which that of the digital economy.

Indeed, the digital economy is a transversal domain that represents all the activities of production, distribution and consumption of goods and services related to Telecommunications and Information and Communication Technologies, their uses in as heart or support in the industrial, economic and societal processes.

However, with the increasing vulnerability of consumers faced with advanced technology

and business techniques, consumer information and consumer protection must be strengthened more than ever.

In Senegal, where consumer protection is the subject of legal measures grouped in the Consumer Code, institutions are intended to enforce it and to give consumers the means to defend their rights and interests. Despite these measures, however, deceptions and unfair practices are still commonplace.

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Thus, with the application of the ECOWAS Common External Tariff since 1 January 2015, there will be many more goods and services that will circulate across borders. Therefore, the Senegalese consumer must be better and better protected. Hence the creationof THE HIGH CONSUMPTION COUNCIL, whose mission is to ensure security, since it is necessary to strengthen the coordination of national law enforcement authorities and to deal with the risks associated with the globalization of the chain of custody production. It is also necessary to have comparable, reliable and easy to use information (especially in cross-border cases), to collect reliable data on how the market serves the interests of consumers, to strengthen the power of the defense organizations consumers, particularly in some Member States, and to improve the information and education tools used. It must also be remembered that there is a need to strengthen consumer rights, especially in a cross-border context.

17th Conference of the International Association of Consumer Law (IACL)

"Innovation and the Transformation of Consumer Law"

Submission Details

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Title: Obesity among children and the regulation of food and beverage products in South Africa: A consumer protection perspective

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Keywords: Consumer; **c**onsumer protection; non-communicable diseases; food and beverage products; food industry; obesity; South Africa

ABSTRACT:

OBESITY AMONG CHILDREN AND THE REGULATION OF FOOD AND BEVERAGE PRODUCTS IN SOUTH AFRICA: A CONSUMER PROTECTION PERSPECTIVE

About 41 million children worldwide, below the age of five, and 340 million children and adolescents aged 5-18, were overweight or obese in 2016. Previously, obesity was a challenge mainly for affluent countries. In 2013, the World Health Organization (WHO) confirmed that there were more than 30 million overweight children in developing countries. It is reported that South Africa has the highest child overweight and obesity rates in Africa with 2013 studies showing that the rate of overweight among South African children (birth to 19 years) had increased from 10,6% to 18,6% since 2005 and obesity rates were at 4,7%. The severity of the problem shows the need for national strategies to prevent and control these conditions. Childhood obesity is an indicator that obesity may be a challenge as an adult. Overweight and obesity increases the risk of non-communicable diseases, including cardio-respiratory conditions, hypertension and type 2 diabetes, as well as certain cancers.

Studies have shown that the vigorous marketing of unhealthy food and beverages could affect the choices made by children and adolescents relating to food and beverage products. Sophisticated marketing communications by the food and drink industry, have influenced the dietary behaviour of young people, and has contributed to "energy-dense and nutrient-poor diets", weight gain and has impacted negatively on their health. It is not surprising therefore that in 2010 the WHO endorsed a resolution which aims to restrict the marketing of unhealthy food and non-alcoholic beverage products to children and adolescents in order to reduce the prevalence of overweight, obesity and diet-related NCDs. Further, one of the goals in terms of the South African Department of Health

National Plan for the Prevention and Control of NCDs 2013-2017, is a 10% reduction in the number of overweight or obese by 2020.

It is appears that sectors of the food and beverage industry are less concerned about the consumer health risks associated with their products. Recent government regulatory initiatives have attempted to address such challenges by prohibiting or regulating certain marketing and business practices and providing for a range of legal consumer rights and remedies. Consumer protection legislation recognises children as a vulnerable group and the government has proposed regulatory measures for advertising aimed at children. The aim of this paper is to investigate the implications of such existing and proposed consumer protection legislation, for the food industry and children as consumers of food products, particularly in the context of marketing of unhealthy food and beverages. The paper entails a review of related literature and pertinent legislation, through a descriptive critique. It will highlight the duties of food product suppliers, particularly to scrutinize their product's health risks for children and the marketing of such products to children, as well as, food labelling and disclosure of information relating to health risks, in understandable language. It will also identify possible gaps in the law requiring specific regulation.

Innovation and the Transformation of Consumer Law
17th Conference of the International Association of Consumer Law (IACL)
Date: from June 13th to June 15th, 2019.
Venue: Indiana University Robert H. McKinney School of Law, United States

PLANNED DISREGARD IN CONSUMER RELATIONS: A PROPOSITION TO REDRESS CONSUMERS' LOST TIME

LAÍS BERGSTEIN

Time exerts multiple influences on consumer relations, since it is a triggering factor for several legal obligations, especially in long-term contractual relations. The valuation of time as an essential and limited resource has emerged in the context of post-modernity with the formation of a new consciousness about the effects that its passage exerts on people. In Brazil, since 2009 several judicial decisions recognized the time lost by consumers trying to solve conflicts with suppliers as a special kind of moral damage and guaranteed the right to redress. However, other consumers in similar situations had the same right denied in Courts, mostly due to the lack of criteria for compensation the time lost due to acts attributable to suppliers. In this context, the research proposes a dual-criterion to pursue the adequate compensation for the time lost by consumer through the evaluation of suppliers conduct. The study makes a distinction of consumer time and supplier's time and defines the "*planned disregard*" as the abusive devaluation of time and the efforts made by consumers to achieve a successful conclusion to consumer contracts, mostly due to the lack of investments in efficient customer care services. This commercial practice violates the limits of good faith and represents an excessive advantage for the supplier, breaking the legal balance that the law establishes in consumer relations. The paper presents the legal duties of effective prevention and full redress of damages in Brazilian consumer law, which are the legal tools to compensate the damage due to the loss of time suffered by consumers. Finally, it suggests how the members of the national consumer protection system, such as the regulatory agencies, civil entities and the Judiciary, may contribute with structural processes to the prevention of undue loss of consumer time.

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KEYWORDS: Consumer time; planned disregard; damage due to time lost; full redress; structural processes.

Responsible suppliers and product recalls: The disconnect between food safety standards, listeriosis outbreak and communication channels with consumers

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Section 61 of Consumer Protection Act 68 of 2008 ("the CPA") which provides for strict product liability has a dramatic influence on the legal position regarding liability for harm caused by goods. This is an important issue in the drive to ensure that markets work for consumers and to address the unbalanced terms of trade that can have negative consequences for consumers in South Africa resulting in unsafe products, counterfeit and substandard goods. Section 3(1) of the Consumer Protection Act 68 of 2008 (CPA) provides that the purpose of the CPA is to promote and advance the social welfare of consumers through the establishment of a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally. The South African consumer market was recently affected by the outbreak of listeriosis in prepared meat products. On 5 December 2017, South Africa's Department of Health first announced the outbreak. A joint investigation involving multiple public health agencies and officials. On 3 March 2018 Health officials finally confirmed the outbreak strain source—a RTE processed meat plant owned by Tiger Brands (the Enterprise Foods Polokwane production facility). *Listeria* had also been identified at an RCL-owned facility (Rainbow Foods). On 4 March 2018, the Health Department enforced a mandatory and immediate recall of all RTE processed meat products produced at these facilities. On 3 September 2018, South Africa's health minister declared an end to the listeriosis outbreak caused by ready-to-eat (RTE) deli meat. As of the last Situation Report, released in July 2018, there were 1,060 laboratory-confirmed cases and 216 deaths. With the help of WHO, South Africa now has a surveillance system in place to find and test all *Listeria* isolates from human cases to identify clusters of cases that may represent outbreaks. Early investigation groups will detect outbreaks and identify affected foods early. The problem in South Africa is that there is no proper corrective action plan even though now product recalls were reported in a financial year and this is one of the shortcomings that should be addressed. Another problem is lack of proper communication when such an outbreak takes place as suppliers and producers rarely want to come forward and acknowledge accountability as it can possibly lead to liability. Calls are therefore made for the introduction of proper informational and communication channels in order to facilitate the process of product recalls and align consumer law properly with food safety standards. From a Corporate Social Responsibility perspective companies should take due cognisance of product recalls especially when it comes to consumables and the information and communication that is shared with consumers and the effects of such a recall as well as the response time for such a recall. Companies have a duty to not only protect consumers from hazards to their well-being and safety but should also develop effective means of redress for consumers. This means that the responsibility of suppliers and manufacturers extends beyond making money and profits.

Experimental Challenge for Redress of Collective Consumer Damage in Korea

by Heeseok Seo[1]

The consumer law of Korea has begun to develop only after the 1980s. It has been developed with two major axes: the "Act on the Regulation of Terms and Conditions of 1986" and the "Consumer Protection Act of 1987". The former is a special law of Civil Code for consumer protection by civil way, and the latter is a law for consumer protection by administrative way which includes the promotion of consumer policy, the foundation of an administrative ADR system and the establishment of the Korea Consumer Protection Agency. This Act of 1987 played a major role in consumer policy in Korea. After 20 years of the enactment of this Act, Korea changed the name of the Act to the "Framework Act on Consumers of 2006" and transferred the department of consumer policy to the Fair Trade Commission from the Ministry of Economy and Finance. This means that consumer policy has been separated from economic policy, and competition policy and consumer policy are pursued by a single department.

The "Framework Act on Consumers of 2006", also has a great feature in that it introduces two new systems for the redress of collective consumer damage, the "Collective Mediation System"(CMS) and the "Consumer Organization Litigation System"(COLS). The CMS is a kind of ADR system created by referring to the Class Action System of the United States, and is applied to the same or similar consumer damage case of more than 50 persons. Although this system has been unprecedented in the world where mediation is combined with Class Action, the average utilization is only 3 or 4 cases per year and the acceptance rate is not higher than the usual mediation. On the other hand, the COLS based on the German system of 'Verbandsklage', allows nationwide registered consumer organizations to request a future prohibition of unlawful action of business. Under this system, not only nationwide registered consumer organizations but also so-called civic group can also file a lawsuit against business. However, in actual cases, there are only six litigation cases until now.

The purpose of this paper is to examine the two systems of Korea. The paper outlines the specific contents of both systems and introduces the actual mediation and litigation cases. After that, I evaluate the "legislative experiment" of Korea in comparison with legislation of other countries. Besides this, I will mention about the recent legislative proposals in Korea for the introduction of American style Class Action System and of European or Japanese style so-called "Consumer Organization Collective Redress System" introduced recently in France, Japan and Germany, in which a consumer organization can file a lawsuit against a business for the collective consumer damages. Given these circumstances, finally I look forward to the future of Korean system for the redress of collective consumer damage.

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17th IACL Conference "Innovation and the Transformation of Consumer Law"

June 13-15, 2019, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana

Abstract submission

Blurred lines: Consumer or Prosumer?

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One of the focus areas of EU legislation for the past two decades has been consumer protection, with over 90 Instruments aiming to strengthen the position of the consumer in the market. However, EU policies are challenged by the fact that technological advances lead to new business models that affect the contractual balance between the parties. A recent example is the rise of companies such as Uber which have blurred the lines between consumers, service providers and intermediaries. Despite their increasing popularity, the current legal framework does not expressly cover the triangular relationship introduced by this business model, namely between the user of the services, the individual providing the required service and the platform. As a result, the impact of platform companies on consumer protection is still being explored.

Consumer protection in this context is not only relevant in respect of the rights of the user of the services but can also serve as a protective mechanism for the individuals offering a particular service through the platform. The latter have been called prosumers (Rifkin 2014) in light of the fact that they constitute “misfits” that fall between the categories of consumers and professional service providers. If the Consumer Rights Directive definition of a consumer is adopted, a prosumer could only be legally considered a consumer if (s)he is acting for purposes not relating to his/her trade, business, craft or profession. Arguably, an Uber driver who only performs transportation services for a couple of hours per month would not be acting as a professional. In that case would the driver be covered by consumer protection rules vis-à-vis the platform company? Another relationship that has not been sufficiently investigated is the one between the prosumer and the seller of goods (or provider of services) that (s)he needs to perform the relevant activities. For example, is the mobile phone used by an Uber driver to log into the service a consumer good?

Against this background this paper seeks to answer to following question: where do we draw the line between prosumers and consumers in the context of the platform business model? This qualification is relevant in two relationships:

1) That of the prosumer with the platform
2) That of the prosumer with the supplier of the equipment being used for the performance of these activities.

In order to investigate this issue this paper will first examine the scope of consumer law instruments in the current legal framework. Second, it will explore whether prosumers should be covered by these instruments in view of the underlying policy goals, taking into account the characteristics of prosumers and the availability of alternative private law mechanisms that can achieve these objectives.

"

This article aims to analyze in what ways the changes brought about by postmodernity have influenced the way people relate and act towards one another. If solidarity actions were initially restricted to the family and community, with the rise of Christianity, the ideal of moral purity spread. Through an analysis of studies and theories constructed during the 20th century, among them the philosophers Richard Rorty and Alf Ross, the aim is to delimit the extension of solidarity, to define it and to understand the values that motivate the practice of solidarity. Contemporary society gains prominence in research because it is within it that old values are subjugated, to the detriment of individualism and the pursuit of personal well-being. Postmodern society has repressed morality and good manners, so it is called by Gilles Lipovetsky of post-moral society. It is in this scenario co-ordinated by consumption and the media that the internet assumes an essential role in modern life, resulting in the emergence of other technologies, such as the blockchain. Therefore, it is proposed the encounter between the social value of beneficence and the blockchain to know what the results will be. The methodology used was based on bibliographic research in books, scientific articles, electronic journals and content on the internet, using the hypothetical-deductive method."

Economic models of many companies have probably evolved and ther's no doubt that the foundations upon which legal frame of these practices is established might not be as relevant as it used to be forty years ago (date of adoption of the first explicitly protective laws of the consumer). If, for instance, fidellity could previously be considered as a tool of (cordial) invitation to renew contracts with immediate execution, it might be relevant today to wonder if the practice would not have evolved towards a new economic model favoring a constant contractual link. For such a purpose, professionals multiply the mechanisms for strengthening the contractual relationship. Among these mechanisms, the Internet of Things by creating a permanent link with providers can assure them access to a wealth of information about lifestyles or consumer preferences. Then, what economists have described as captive ecosystems, where the consumer remains bound by a provider thanks to this object that remains in his daily life, can be set up. In such systems, data is highly valued. As a driver of this new economy, the valorized data can make it possible to constitute dominant positions by offering the professional who collects and treats it a priority over its competitors. Competition law can apply to such situations. These systems can also bind the consumer and they potentially call into question his freedom of contract. Consumer law can also apply to it. The purpose of our paper shall consider the required evolutions of competition and consumers Law to protect effectively consumers without hindering growth.
This evolution of professional practices succeeds in two goals: guaranty exclusivity and perpetuity. For perpetuity technical solutions might preferably be offered by rent. Yet, French consumers Law is highly focused on the sales model. It is then no longer relevant considering new practices. Internet Of Things also offers opportunities to set up exclusivity for the profit of the professional: real issue of consumers Law would then be to find new modes of regulation to guaranty liberty of consumers. Here are the issues raised by our proposal.

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DO MARKETS PROVIDE CONSUMER PROTECTION?

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ABSTRACT

Markets are powerful mechanisms for serving consumers. Some critics of regulation have suggested that markets also provide consumer protection: for example, Nobel Prize-winning economist Milton Friedman said "Consumers don't have to be hemmed in by rules and regulations. They're protected by the market itself." That view may seem more plausible than ever before in the social media era, in which innovations enable information to spread quickly to consumers from many sources, making it possible for consumers to learn more readily which companies have violated norms and respond accordingly. This article reports recent incidents in which companies mistreated consumers and then explores how the companies' sales to consumers fared. In some instances, businesses' sales increased after their misconduct became public, despite the fact that, in at least two cases, consumers had told pollsters they would avoid patronizing the company. On occasion, companies suffered declines in sales after their misbehavior becomes known, though it is impossible to determine whether that is because of the misconduct or would have happened anyway. Though the article's methodology is limited by the inability to know what would have happened if the troublesome conduct had not occurred, it does suggest that markets alone are generally not enough to protect consumers.

The Article also explores why the market doesn't consistently function as a substitute for regulators. In addition, it offers hypotheses for when consumers will and will not avoid a company that has misbehaved. Factors that may affect consumer decision-making include whether it seems likely that the company will repeat the misconduct; how the choice to patronize the company is presented to consumers; how difficult it is to switch to other providers (e.g., the cost of switching from one bank to another); whether the company has presented itself as catering to consumer values but failed to deliver; and how many consumers are affected. The article also examines how regulators' actions might trigger a market response.

Abstract: Consumer Protection in the Gambling Industry

Kurt
Eggert

Professor of Law, Chapman University School of Law

Gambling has become a huge, legal consumer industry world-wide, despite its underground origins. In the United States, the Supreme Court recently struck down a federal law that banned sports gambling except in a few states, and so gave the other states permission to allow betting on sports like football, basketball, and baseball. Some states are moving quickly to expand sports betting and other gambling options, hoping to cash in from the losses of gambling consumers. Casinos have long been touted as a panacea for states' income shortfalls. Various countries fight to make their local casinos tourist destinations.

In the midst of the enormous expansion and legalization of gambling, consumer interests have largely been ignored. As governments are increasingly reliant on income from gamblers' losses, they show little interest in protecting problem gamblers or recreational gamblers from sharp practices and the lack of reliable information by casinos and other providers of gambling opportunities. Governments seem determined to allow gambling consumers to remain ignorant as to the cost and risks of the gaming products they are purchasing. World-wide, there is a shockingly lack of consumer protection for gamblers and few advocates for consumer protection for gamblers.

This presentation will focus on how consumers in the gambling industry are not given sufficient information to shop for the gambling products they are purchasing. It will also discuss what consumer protections should be given gamblers, in slot machines, daily fantasy sports, internet poker, and sports betting. The presenter has testified to congressional subcommittees several times on various gambling issues, and the presentation will reflect that testimony and the responses.

IACL Paper Proposal
Lauren E Willis, Loyola Law School, Los Angeles
12/15/2018

Unfair and Deceptive Marketing: When the Evidentiary Gold Standard is Obsolete

Firms today disseminate thousands of different online marketing materials, sometimes developed through machine learning, each of which are targeted to different micro-audiences, sometimes in real time. Randomized controlled survey experiments, once the gold standard for demonstrating the deceptiveness of marketing materials, are no longer practicable in this world. This article proposes that false advertising law adopt a burden-shifting scheme by which courts require plaintiffs to produce evidence of actual customer confusion about material facts regarding the transaction. If a plaintiff satisfies this burden, the burden shifts to the defendant to demonstrate that it neither produced this confusion (that is, it did not deceive consumers) nor did it exploit that confusion (that is, it did not engage in unfair or abusive practices).

PhD Fellow Marianne Hundahl Frandsen Denmark, Aalborg University

EUROPEAN AIR PASSENGERS' RIGHTS:

The concept of 'extraordinary circumstances' and the enforcement of the right to compensation.[1]

The European Regulation (EC) No 261/2004 establishes rights for air passengers. The passengers have the right to compensation in case of delay or cancellation unless it *"is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken"*.[2] The compensation is a fixed amount of money depending on time of delay and route length.[3]

The purpose of the concept of 'extraordinary circumstances' is to limit the liability for airlines in the case of specified situations. The Regulations' preamble 14 lists examples of those situations and preamble 15 provides detailed explanation of the concept. Case law show that it is difficult to apply the concept in practice. Since 2005, the CJEU has ruled on nine cases about 'extraordinary circumstance', which has giving a decisive and clearer interpretation of the concept.[4] Denmark has 6 cases from supreme and high court and more than 15.000 cases from the Danish transport authority.

An overview of the content can be illustrated by the following:

[1] The research presented in this abstract is a part of my PhD thesis, which is still in progress: "The Danish passengers' legal position". [2] Article 5,3. [3] Article 7 and case C-402/07 (...) paragraph 61. [4] From 2008 – December 2018: C-294/10, C-195/07 (...), C-12/11, C-315/15, C-394/14, C-402/07 (...), C-257/14, C-549/07, C-501/17. Other cases are delete from the register with no access now; see for example C-396/06.

PhD Fellow Marianne Hundahl Frandsen Denmark, Aalborg University

The procedure of enforcement The passenger must apply for compensation through the airline company. The airline can deny compensation, if it can prove that the delay or cancellation is caused by an 'extraordinary circumstance'. If the passenger is not satisfied with the airline's respond or if it has not responded within 6 weeks, the passenger can complain to the Danish transport authority. The transport authority has 5 months to decide the case. If it decides in favour of the passenger and the airline does not respect their ruling, the passenger can go to court. The passenger can for free get help and advice from the European Consumer Centre Denmark after the first contact with the airline.

As an alternative to the formal procedure, the passenger can choose to send the claim to a private company, who will claim the compensation on behalf of the passenger. Denmark has four private companies that offer to take legal action against the airline in return for receiving a percentage of the passengers' compensation.[5] The companies charge

between 19.8 – 25.0 %, if they win and nothing if they lose ('no cure no pay'). One company claims to win 98 % of their cases.[6] Another company claims to have helped more than 290.200 passengers.[7] With these numbers, it seems to be a need for those companies. The private companies have resulted in fewer cases at the transport authority, while city courts have gotten even more.[8]

In a consumer protection perspective, there are pros and cons of the use of private companies: For example, the passenger is dependent on the company to take the case. However, the passenger safe a lot time in return of some 'compensation-money' and sometimes the amount of money is more than what the flight tickets have cost. The development of private companies was not the intention by the EU, and the concept of 'extraordinary circumstances' remains difficult and unclear.

[5] www.Flypenge.dk , www.flyfhjaelp.dk (www.refundmore.com), www.flyforsinkelse.dk and www.airhelp.com [6] https://flyhjaelp.dk/?gclid=EAIaIQobChMIoJD6j7Pc3gIVVeh3Ch2MQQRFEAAYASAAEgKb3fD_BwE [7] https://flyforsinkelse.dk/om-os [8] There are about 1.500 cases pending alone in the court of Copenhagen.

Role of Mandatory Arbitration in Monetary Claims Against Consumers Under Turkish Law

Disputes arising from consumer transactions have usually distinctive dispute settlement procedure, because it is widely accepted that consumers should be given some privileges. Under Turkish Law, Code of Protection of Consumers covers all consumer transactions and also regulates settlement of consumer disputes. According to Code, consumer disputes, which do not exceed 6.000 Turkish Lira (approximately 1.100 US Dollars), shall be processed only through mandatory consumer arbitration. For these disputes, permanent arbitral tribunals for consumer disputes were established in each district. For other disputes, which exceed that limit, jurisdictive authorities are consumer courts. Thus, mandatory arbitration should be the only way to settle all consumer disputes with small amounts. On the other hand, filing a suit is not the only way for any kind of monetary claims. Under the Code of Enforcement and Bankruptcy, enforcement proceeding without a judgement is available for all claims, including claims of consumers or claims against them, only if the claim is liquid. Until the end of 2017, applicability of this procedure, which is regulated by Code of Enforcement and Bankruptcy, to consumer disputes, was very controversial among the scholars. Although the Code of Enforcement and Bankruptcy has no restriction regarding the nature of the claim, there was not any consensus on the component authority. Even though this procedure does not require any judgment, enforcement courts have an essential role during this procedure. For example, under certain circumstances, enforcement courts could order compensation of punitive damages. Some of scholars asserted that, arbitral tribunals for consumer disputes have jurisdiction over the enforcement without judgment procedure, instead of enforcement courts. On the other hand many of scholars asserted that, these arbitral tribunals have no jurisdiction over these cases, since the arbitral tribunals for consumer disputes could not be defined as a court under the Code of Enforcement and Bankruptcy. However, by the amendment of the Code of Protection of Consumers, which was made in December 2017, enforcement without judgement procedure becomes available for all consumer disputes, either for claims of consumers or claims against consumers. This amendment clearly states that, parties' rights that are entitled by enforcement law are reserved. One of these rights is to apply enforcement without judgment procedure. As a result of this fact, mandatory arbitration is not the sole way for monetary claims in consumer law. Now it is accepted if there is a monetary claim, claimant can choose either to file a suit before the arbitral tribunal or to apply enforcement without judgment procedure. On contrary, if the claim is not monetary, for example return of a purchase, arbitration is still a mandatory way for consumer disputes.

Title – Consumers Health Rights Enforcement through Limited Cognition Procedural Tools: Limits and Extension (Writ of Mandamus and the Health Rights Case)

Abstract

The purpose of this article is to analyze the limits of the consumer's defense of their fundamental rights through writ of mandamus in the Brazilian Federal District Supreme Court. It is suggested that the case is exemplary of a procedural strategy and decision-making process that has implications in the fields of collective justice and public administration. It is assumed that judicial activism in the case of health rights should distinguish and take into account four possible situations. Judicial intervention in public health policy in the absence of any statutory provision, with a specific rule that provides for it*, ie*, the rule exists but is not enforced; or when the applicable rule is invalid, since it is insufficient to provide effectiveness to the right in the face of a rule of superior hierarchy recognized as contrary to it; or in the absence of a specific rule that provides for any vindicated right (case of normative analogy), with no rule applicable to the case; or by the absence of any public policy that would provide for effectiveness. In this case, rights are abstractly stated in the Federal Constitution, there being no public policy applicable to the case, only the generic constitutional claim. Ronald Dworkin's liberal vision of the issue is suggested to be an adequate theoretic approach to the case. It shows the difficulty of formulating criteria for establishing precise meaning of a given legal obligation in relation to the case under analysis and approaches the idea of collective justice, and the charitable and pitiful visions about the Law, suggesting that the latter are not adequate approaches to deal with problems of individual allocation of collective resources.

Key words - Public policy. Health. Judicial activism. Writ of Mandamus.

The Duty to Read Consumer Contracts: Time for a Reality Check

Uri Benoliel[*] & Samuel I. Becher[**]

ABSTRACT

The duty to read doctrine is a well-recognized building block of U.S. contract law. Under this doctrine, contracting parties are held responsible for the written terms of their contract, whether or not they actually read them. The application of duty to read is especially interesting in the context of consumer contracts, which consumers generally do not read.

Under U.S. law, courts routinely impose this doctrine to consumers. However, the application of this doctrine to consumer contracts is one-sided. On one hand, in light of this doctrine consumers are excepted to read their contracts. On the other hand, there is no general duty on suppliers to provide consumers with readable contracts. This asymmetry creates a serious public policy challenge. Put simply, consumers might be expected to read contracts that are, in fact, rather unreadable. This, in turn, undermines market efficiency and raises fairness concerns.

Numerous scholars have suggested that consumer contracts are indeed written in a way that dissuades consumers from reading them. This Article aims to empirically test whether this concern is justified. The Article focuses on the readability of an important type of consumer agreements: the sign-in-wrap contract. Such contracts, which have already been the focal point of many legal battles, are routinely signed by consumers when signing up for popular websites such as Facebook, Amazon, Uber, and Airbnb.

The Article applies well-established linguistic readability tests to the 500 most popular websites in the U.S. that use sign-in-wrap agreements. We find, among other things, that effectively reading these agreements require on average more than 14.5 years of education. This result is troubling, given that the majority of U.S. adults read at an 8th-grade level. These empirical findings hence have significant implications for the design of consumer contract law.

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Abstract
submission

IACL
2019

THE THEORY OF PREVENTIVE CONSUMER LAW IN DIGITAL ADVERTISING

This theory is focused in business digital advertising validity. The concept of validity in this theory consists in a harmony between case facts and rules that apply in each fact and / or the entire case. To get validity in each case enterprise must be diligent in foresee and attend the legal effects that it´s digital advertising will generate. In that way, the diligent enterprise ensures legal validity of each consumer relation based on digital advertising.

The determinant aspect is to create and apply preventive law solutions (in general: a preventive law environment) to have validity in all extracontractual and contractual variables of digital advertising case. The principal variables of a digital advertising case are involved in these steps: 1) Creation of digital advertising; 2) Functioning of digital advertising; 3) Communication of digital advertising; and 4) Attention (attention of the effects) of digital advertising.

The paper-conference will be focused in how theory applies in the four steps to get validity in each step and in the entire case of digital advertising (clarifying that theory apply tailor-made to each case).

Author profile: Camilo Alfonso Escobar Mora. Lawyer graduated from the Universidad del Rosario (Bogotá D.C, Colombia). Master in law and information technology and Master in telecommunications law, Universidad del Rosario. Master (LL.M.) in commercial law, Universidad Externado de Colombia. Master thesis: *expert system for consumer protection in electronic commerce* ©. Doctor (Ph.D.) in law, Universidad Externado de Colombia. Doctoral thesis: *the preventive law for legal effectiveness of the right to receive information that consumer has face to digital advertising* ©. He held a doctoral research stay at the Institute of Legal Research of the National Autonomous University of Mexico

(UNAM). Author (creator) and Researcher of *The Theory of Preventive Consumer Law in Digital Advertising* ©. Applicant to Postdoctoral Fellowship in *The Preventive Consumer Law in Digital Advertising Theory in Tailor-Made Advertising Based on Consumer Profile* ©. Scholar and international lecturer in preventive consumer law in digital advertising. He will be Jury of the first Global Awards for promoting best practices in Advertising Self-Regulation, organized by the International Council for Advertising Self-Regulation (ICAS), 2019.
Founder of JURÍDIA – *Research center for preventive consumer law in digital advertising* (www.juridia.co). Contact: gerencia@juridia.co.

ABSTRACT

17th IACL Conference

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Principles and Programs to Protect Consumers From the Deleterious Effects of Technological Innovation

Technology has transformed the environment in which most consumers select products, promise to buy them, pay for them, and use them. Consumer law in the United States has failed to adjust to this new marketplace. Outdated legal approaches, concepts and terminology result in consumer law becoming less able to meet the needs of businesses for certainty and consumers for basic protection. My paper will first describe major issues that arise in the cyberspace environment. The paper concludes by proposing principles and programs to aid in the development of new consumer laws that can bring greater certainty and safeguard consumer welfare.

Consumers used to find products through advertisements in various media such as radio, television, newspapers, and visits to stores. Today, many rely on search engines and apps. While making important information such as comparative pricing and consumer reviews easily available, this also has resulted in new avenues for deceptive practices. Many laws require disclosures, but they do not instruct businesses on how to comply when making disclosures on the small screen of a smartphone.

Shopping online is a boon for the disabled and those living in rural areas, but it enables companies to collect and store personal information, then sell it to others.

Many contracts are formed online or by consumers talking to virtual personal assistants. Contract law is ill-equipped to deal with issues that arise.

Consumers pay for their purchases using digital wallets, new payment systems, unregulated financial institutions, and cryptocurrency. Substantial gaps in the law leave consumers without protection.

The digital divide has serious consequences for those who cannot afford to engage in e-commerce. For those who can participate, security breaches and privacy invasions are a common occurrence.

Consumers are more dependent than ever on the goods and services they purchase online, yet they have few practical remedies due to mandatory arbitration and class action bans.

Laws should be modernized to respond to the challenges that consumers face. My paper proposes that these laws be based on specific principles and accompanied by government and public-private programs. Examples of the principles and the programs are the following:

- Laws should be revised to take into account online disclosures and deceptive online practices.
- The law on contract formation should take into account contracting online and by talking to virtual assistants.
- Consumers should always have the option of receiving information in printed form sent through the mail even if not required by the E-Sign Act.
- Regulators should fill in the gaps in laws governing digital wallets, cryptocurrency, new types of financial institutions, and novel methods to process payments.
- The federal government should establish minimum security standards and privacy safeguards.
- Consumers must have adequate judicial remedies.
- Public-private partnerships should subsidize broadband access and affordable devices to narrow the digital divide.

17th IACL Conference: Call for Papers

"Innovation and the Transformation of Consumer Law"

June 13-15, 2019 - Indiana University Robert H. McKinney School of Law

TITLE: "UNCTAD Intergovernmental Group of Experts on Consumer Protection Law and Policy: its third anniversary. Action and visibility".

Prof. Martina L. Rojo (Universidad del Salvador, Buenos Aires, Argentina).

The Intergovernmental Group of Experts on Consumer Protection Law and Policy is "*a standing body established under the United Nations Guidelines for Consumer Protection (UNGCP) to monitor the application and implementation of the guidelines, provide a forum for consultations, produce research and studies, provide technical assistance, undertake voluntary peer reviews, and periodically update the guidelines*"[1].

A group of academics in the discipline of Consumer Law and the ONG Consumers International helped UN member states´ representatives to develop the need to establish a specific group or body to take care of consumer protection issues within the UN. At the time of the update of the UN Guidelines for Consumer Protection in 2015, the idea reached high levels of consent among the member states. The establishment of an IGE on Consumer Protection Law and Policy was decided via Res. 70/186 of the UN General Assembly, dated on December 22nd, 2015[2]. At Academia, we received the news with enthusiasm and cheers.

On the first meeting of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, on July 2016[3], we saw an intense debate regarding its method of work and work program.[4][5] Also, a copy for a "Manual on Consumer

[1] https: //unctad.org/en/Pages/Meetings/Group-of-Experts-Consumer-Protection.aspx
[2] "*The General Assembly ... decides to establish an intergovernmental group of experts on consumer protection law and policy within the framework of an existing commission of the Trade and Development Board of the United Nations Conference on Trade and Development",* at: https://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf
[3] https://unctad.org/en/Pages/MeetingDetails.aspx?meetingid=1060
[4] https://unctad.org/meetings/en/SessionalDocuments/cicplp2016progRT5_en.pdf
[5] Report of 1st session (2016): https://unctad.org/meetings/en/SessionalDocuments/cicplpd4_en.pdf

Protection" was presented[6]. The second session in 2017[7] advanced in many issues. We may highlight the results related to the framework and workplan for voluntary peer reviews on consumer protection law and policy, for example[8]. In the third session, the IGE debated matters such as "Dispute resolution and redress", "Consumer product safety" and "Consumer protection in financial services," via preparatory studies and round tables. Also, the first "Voluntary Peer Review of Consumer Protection Law and Policy" has been provided for Morocco[9][10].

At this point, three years later after its creation, we can see the IGE on Consumer Protection Law and Policy in full activity and we have already some interesting results at our reach.

We develop in this paper a brief analysis of the work of the IGE, as presented in the reports of its three meetings, and we propose a line of action to help in the visibility of the IGE from Academia.

Prof. Martina L. Rojo (mrojo@usal.edu.ar)

[6] « Manual on consumer protection" (Edition 2016, advance copy), at: https://unctad.org/en/PublicationsLibrary/webditcclp2016d1.pdf
[7]https://unctad.org/meetings/en/SessionalDocuments/cicplpd9_en.pdf
[8] https://unctad.org/meetings/en/SessionalDocuments/cicplpd6_en.pdf
[9] Report 3rd session (2018): https://unctad.org/meetings/en/SessionalDocuments/cicplpd15_en.pdf
[10] "*Morocco welcomes review of consumer protection regime*", July 10th 2018, at: https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1806

Abstract

International Association
of Consumer Law Conference
June 13-15 2019

Consumer Law and Policy and Discriminatory pricing in the age of algorithms and big data

Dr. Pascale Chapdelaine

Associate Professor
University of Windsor
Faculty of Law

This paper examines potential issues of consumer law and policy related to e-commerce brought on by the increasing use of algorithms and big data in the sale of products and services. To this end resort is being had to price discrimination (more specifically "personalised pricing") as a case study to evaluate the broader effects of the transformation occurring through algorithms and use of big data in e-commerce. For instance, the fact that there is conflicting evidence on the existence of the practice of personalized pricing is symptomatic of the opacity of commercial practices online, more specifically about the use of big (or small) data. To begin, is online personalized pricing acceptable or should it be banned and if so on what base? Would disclosure requirements be sufficient to make this commercial practice acceptable and are they effective? Given that the determination of price is sensitive information for suppliers (and that it may involve competition law issues) what level of transparency may be reasonably required for consumers?

Another attractive feature of personalized pricing as a case study is that price is one transaction term that is sensitive and that would generally get a high level of consumers' attention. While use of personal data for targeted advertising might be perceived favourably by some consumers, using personal data to predict the highest price a consumer is willing to pay might be perceived as far more intrusive. While some level of personalized pricing may be viewed as "fair game" in the off line world, to what extent is it still acceptable when achieved through increasingly sophisticated use of algorithms and big data? Overall, probing the various regulatory implications of online personalized pricing is a pretext to revisit general assumptions of consumer law and policy and ask which if any need to be reconsidered in the age of algorithms and big data. The focus of the analysis is Canadian consumer law and policy with reference to other jurisdictions (EU, UK, France, US) as a mean of comparison.

17th Conference of the International Association of Consumer Law
Indiana University Robert H. Mckinney School of Law
13-15 June 2019

Proposed Paper Title: "**A business-model regulatory approach to consumer protection in technological innovation: the case for transitional-prosumer within the sharing economy**"

The digital sharing economy, exemplified by online peer-to-peer lending (P2PL), represents an increasing shift towards non-intermediated transactions between individuals and businesses. This often takes the form of a platform which enables individuals to connect directly with other individuals and businesses in order to engage in transactions such as lending, buying and selling or simply hiring a taxi. Due to the technology-based nature of these business models, they create new and exciting opportunities for individuals to interact with one another and often democratise opportunities for individuals to participate within new marketplaces. However, due to the disintermediated platform business model, platform users take on a greater degree of risk than in traditional variations of the model – often unaware of certain risks they might have adopted. The existence of these risks necessitates regulatory attention to ensure that regulatory provisions for consumer protection are suitable to the business model.

In order to provide suitable protections for participants within the sharing economy, it is important that regulation displays an understanding of the underlying framework of the business model it aims to regulate. In regulating P2PL, the UK Financial Conduct Authority appeared to have recognised the need to protect a new type of consumer - those who make their money available to finance others. Therefore, in 2014 it created bespoke regulation for a new form of regulated activity: operating an electronic system in relation to lending. Although this led to a range of measures which dealt with many of the risks involved in online P2PL, it did not go far enough in terms of the protections afforded to platform users because the regulations largely focused on the traditional business-to-consumer (B2C) model which only partially represented the P2PL industry.

Taking P2PL as a case study, this paper argues that there is a need to recognise that participants of the sharing economy are more than just 'consumers'. The development of P2PL demonstrates a shift in the concept of individuals from consumers to prosumers, because they participate in the production side of the services they receive. However, the paper goes further than existing discussions of prosumption within the sharing economy by positing the concept of the transitional-prosumer, to give a more accurate account of the role and experiences of users engaging in an intermediated P2P exchange/business model.

The paper shows that the UK regulatory regime has limited suitability because it lacks awareness of the underlying prosumption model of P2PL and the sharing economy generally by focusing on the B2C aspects. Consequently, it does not resolve the issues resulting from the tripartite participatory nature of the P2PL transaction. Initially, framed within the P2PL discourse, the paper demonstrates how the transitional-prosumer concept also applies to other models within the sharing economy, highlights regulatory implications, and sheds new light on how technological changes to a business model can impact the nature of consumers and their protection requirements.

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Innovative approaches to solving traditional and continuing consumer concerns_

Using EU Consumer and Human Rights Law to Help People in Mortgage Distress

Marguerite Angelari, J.D., Open Society Justive Initiative

Dr Padraic Kenna, Ph.D., National University of Ireland, Galway.

In 2015, inspired by successful efforts in Spain to use EU law, the Open Society Foundations launched a project to ensure that further European Union (EU) Member States applied consumer and human rights protections to home-loan borrowers in distress.

The Unfair Terms in Consumer Contracts Directive (UCTD)(1993) requires that EU Member States prohibit unfair tems in coinsumer contracts, and national courts examine all consumer contracts in disputes, and strike out any such terms (*Oceano, Pannon GSM*), although this does not cover terms containing the main subject matter and price of the contract. The Court of Justice of the EU (CJEU) applied the UCTD to consumer home-loan mortgages in *Aziz* (2013), finding that Spanish mortgage law violated EU law, as it made the application of the UCTD protection impossible or excessively difficult. This case also recognised that the 'home' was deserving of special attention. Unfair mortgage terms, such as acceleration clauses, default interest rates, floor interest rate clauses and unfair terms on quantification of the outstanding debt, were all struck out in further Spanish CJEU cases. In *Sanchez Morcillo* (I)(2014) the CJEU added the principle of effective judicial protection, as laid down in Article 47 of the EU Charter of Fundamental Rights (CFR), holding that the risk, for the owner, of losing his main dwelling puts him and his family in a particularly fragile situation. In *Kušionová* (2014) the CJEU held that under EU law, the right to accommodation is a fundamental right guaranteed under Article 7 CFR which a national court must take into consideration when implementing the UCTD. This integrates established European human rights principles of proportionality into mortgage repossession cases, involving potential loss of home.

The significance of these developments are; firstly, mortgage contracts were treated as consumer contracts; secondly, that the enforcement of the security or repossession could not be based on unfair terms and; thirdly, the CFR must inform the judicial interpretation of EU consumer legislation, even as applied at national level, in mortgage possession cases. While this corpus of EU law (binding on all national and local courts within the EU) can be directly applied to challenge mortgage related evictions, it is not uniformly applied. The Abusive Lending Practices Project's overall goal therefore, is to ensure that these human and consumer rights are effectively engaged to protect consumers, particularly in cases of abusive lending practices. This involves information sharing, awareness raising and community engagement. The Project supports strategic advocacy and litigation of relevant cases in national courts, and possibly to the CJEU, to further clarify and develop EU consumer and human rights law. This paper describes the measures taken to develop this Project of the Open Society Foundations and the NUI Galway Centre for Housing Rights, Law and Policy, and assesses its impact to date.

Professor Mary Spector
Project Proposal
Herbert Smith Freehills Visitor Scheme

May 24, 2018

Research Plan for Visit

The proposed project will be a collaborative effort involving community engagement and interaction between legal academics and practitioners, as well as research. Professor Spector and Dr. Gardner anticipate the development of a community-based legal clinic in which students supervised by practicing attorneys provide *pro bono* legal services as well as education and outreach services to vulnerable consumers. The proposed project will be modeled after similar collaborative efforts undertaken in the United States and Australia, but is expected to be the first of its kind in Cambridge and could be a model for future collaborative efforts between practitioners and legal academics.

With the consent of consumers obtaining services through the project, the research component will collect information regarding the types of matters about which consumers seek assistance. It is anticipated that the research component will also include the analysis of data collected through the program in an effort to identify trends as well as areas in which legal assistance might be most effective.

We anticipate that this project may unfold in stages and are seeking support from the Visitor Scheme to embark on the first stage, which will include interviews and meetings with potential stakeholders, e.g., practitioners, NGO's, academics, etc., to determine the framework for the clinic, the type of legal matters to be reviewed, and a framework for the research.

In the initial stages of the project, we foresee a small group of volunteer students remaining in Cambridge after their exams and participating in the project. This will provide them with useful work experience, as well as the opportunity to use their legal skills to give back to the local community. We have spoken with a number of students to determine initial interest and it has been quite positive.

Proposed Dates for Visit

May to July 2019

Proposed Topics

Collaborative Efforts to Promote Access to Justice: A Comparative View
Protecting Consumer Rights: UK v. USA
Providing Legal Services to Vulnerable Parties – Challenges and Opportunities

17eme conférence IACL: Appel aux contributions

« Modernisation et transformation du droit de la consommation » Du 13 au 15 juin 2019
Indiana University Robert H. McKinney School of Law

Proposition de contribution :

Le droit de la consommation face à l'avènement du mineur e-consommateur.

Par Maxime Péron, ATER en droit privé, Doctorant en droit privé, Lab-*LEX* 7480, Université Bretagne Occidentale (France), Universidade São Paulo (Brasil).

La société actuelle est caractérisée par une consommation de masse, visant tous les sujets de droit, incluant les mineurs. Ces derniers sont considérés comme particulièrement vulnérables, nécessitant une protection juridique adaptée[1].

La première question est de savoir s'ils sont, en matière de consommation, protégés par le droit. L'analyse du droit positif permet d'envisager deux axes de protection : l'une civiliste, où l'incapacité suffit à sa protection ; l'autre consumériste, où considérés comme consommateurs, ils seraient protégés par le droit de la consommation.

La seconde question est de savoir si l'avènement des nouvelles technologies ne vient pas bouleverser ce rapport de protection et fragiliser les mineurs dans ses rapports avec toute forme de consommation.

Les réponses à ces deux questions sont des marqueurs de la modernisation et de la transformation du droit de la consommation.

En effet, la particulière vulnérabilité des mineurs consommateurs invite à repenser le droit de la consommation, en y intégrant l'objectif d'une protection adaptée aux enfants et aux adolescents[2]. Aujourd'hui, le droit de la consommation n'accorde que brièvement une protection aux mineurs[3]. Dès lors, cette protection mériterait d'être étendue pour répondre aux enjeux actuels et futurs de la problématique du mineur consommateur, extension impliquant une évolution du droit de la consommation.

En outre, l'émergence des nouvelles technologies participe à la modernisation et à la transformation du droit de la consommation en créant de nouveaux risques pour les consommateurs, notamment chez les mineurs, particulièrement exposés aux nouveaux moyens de communication, au commerce-électronique et à la porosité des frontières entre le réel et le virtuel[4]. Les mécanismes juridiques du droit de la consommation doivent s'adapter à ces nouveaux enjeux[5].

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[1] « L'enfant, en raison de son manque de maturité physique et intellectuelle, a besoin d'une protection spéciale et de soins spéciaux, notamment d'une protection juridique appropriée », Préambule de la Déclaration des droits de l'enfant du 20 nov. 1959.

[2] T. M. Macena de Lima et M. de Fátima Freire de Sá, « A criança e o adolescente no Mundo consumerista », in M. De F. Freire de Sá, R. H. Porto Noguiera et B. Schettini (org.), *Novos Direitos Privados*, Belo Horizonte, Arraes, 2016, p. 111 et s.

[3] G. Paisant, *Défense et illustration du droit de la consommation*, Paris, LexisNexis, 2015, p. 244 et s., n° 196.
[4] L. Grynbaum, C. Le Goffic, L. Morlet-Haïdara, *Droit des activités numériques*, Paris, Précis Dalloz, 2014.
[5] C. L. Marques, B. Miragem, *O novo direito privado e a proteaçao dos vulneraveis*, São Paulo, Revista dos Tribunais, 2a ediçao, 2014.

L'objectif de cette contribution est de tenter d'apporter des éléments de réponse à ces deux interrogations. Pour y parvenir, les outils juridiques de protection existants en droit français et en droit brésilien seront mis en avant pour envisager une amélioration de la protection du mineur consommateur. Si la comparaison des droits peut permettre d'envisager le dialogue des sources par la prise en compte de la particulière vulnérabilité du mineur consommateur[6], elle permet également au droit de la consommation de proposer de nouveaux outils juridiques pour protéger le mineur désormais devenu e-consommateur.

[6] C. L. Marques, L. R. Bessa, A. H. V. Benjamin, *Manual de direito do consumidor*, São Paulo, Revista dos Tribunais, 8a edição, 2018.

17th IACL Conference: Call for Papers

"Innovation and the Transformation of Consumer Law"
June 13-15, 2019
Indiana University Robert H. McKinney School of Law
Contribution proposal:

Consumer Law facing the advent of the child e-consumer.

By Maxime Péron, ATER in private law, PhD student in private law, Lab-*LEX* 7480,
University of Western Brittany (France), University of São Paulo (Brazil).

The current society is characterized by a mass-consumption, targeting all subjects of law, including children. Those, are considered as particularly vulnerable, and requiring an adapted law protection[7].

The first question is to know if they are, as regards of consumption, protected by the law. The analysis of the positive law allows to plan two protection approaches: the first one, the civilist, meaning that the incapacity is enough for its protection; the second one is consumerist, where considered as consumers, the children would be protected by the consumer law.

The second question is to know if the advent of new technologies doesn't disturb this protection link and doesn't weaken children's connection with any consumption's forms.

The answer of both questions is indicator of the innovation and transformation of the consumer law.

Indeed, the particular vulnerability of children also consumers encourage to think about the consumer law, taking into account the aim of an adapted protection for children and teenagers [8]. Nowadays, the consumer law gives only minor protection to children[9]. Therefore, this protection deserves to be extended to answer current and future issues of the child as consumer, involving a consumer law's evolution.

Furthermore, the new technologies' emergence participates to the innovation and transformation of consumer law by creating new risks for consumer, especially for children who are particularly exposed to new way of communication, to e-trade and to limits' porosity between the real and the virtual[10]. Legal mechanisms of the consumer law have to adapt themselves to those new issues[11].

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[7] « The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection », Preamble of the Declaration of the Rights of the Child, 1959.

[8] T. M. Macena de Lima, M. de Fátima Freire de Sá, « A criança e o adolescente no Mundo consumerista », in M. De F. Freire de Sá, R. H. Porto Noguiera et B. Schettini (org.), *Novos Direitos Privados*, Belo Horizonte, Arraes, 2016, p. 111 et s.

[9] G. Paisant, *Défense et illustration du droit de la consommation*, Paris, LexisNexis, 2015, p. 244 et s., n° 196.
[10] L. Grynbaum, C. Le Goffic, L. Morlet-Haïdara, *Droit des activités numériques*, Paris, Précis Dalloz, 2014.
[11] C. L. Marques, B. Miragem, *O novo direito privado e a proteçao dos vulneraveis*, Sao Paulo, Revista dos Tribunais, 2a ediçao, 2014.

The aim of this contribution is to try to give answers to these both questions. To reach it, legal protection tools in the French law and in the Brazilian law will be used to plan to improve the protection of the children as consumer. If the comparison between the laws, taking into account the particular vulnerability of a child as consumer[12], allows to plan the dialogue of the sources, it also allows the consumer law to offer new legal tools to protect the minor now begun e-consumer.

[12] C. L. Marques, L. R. Bessa, A. H. V. Benjamin, *Manual de direito do consumidor*, São Paulo, Revista dos Tribunais, 8a edição, 2018.

ABSTRACT OF PROPOSED PRESENTATION EXCLUSIVELY SUBMITTED FOR ACCEPTANCE AT THE 17th CONFERENCE OF THE INTERNATIONAL ASSOCIATION OF CONSUMER LAW.

"I Can't Get No Satisfaction: Singing out the Need for Uniform Statutory Reform in the U.S."

By Michael W. Pinsof,
*J.D.**

Consumer protection abounds in the formation stage of the lender-consumer borrower relationship. However, when the relationship is terminated by paying off the loan, the current American statutory and regulatory scheme falls short of squarely and uniformly addressing a breeding ground for consumer vulnerability to predatory lenders.

U.S. law requires lenders to promptly issue "accurate" payoff statements upon demand, specifying the exact amount due under the terms of the mortgage as of the payoff date. Upon receipt of all stated amounts due, lenders are required to issue a "satisfaction", that must be officially "recorded" to release the lien on the borrowers' property, thereby enabling the borrower to transfer "marketable" title. This in turn enables the title insurer to insure clear and marketable title in the new buyers, and to insure the priority of the new lender's mortgage. Thus, reliance on the accuracy of the payoff statement is essential to the efficiency of the U.S. title transfer and registration system. When a lender belatedly asserts, after receipt of a presumably "full" payoff and the transfer of title of the mortgaged real estate, that its statement was erroneously understated, and demands the shortfall, the wheels can come off the bus.

From a policy perspective, which party, as between the consumer, the lender, and the title insurer, should bear the risk of the "short" payoff? Subsequent to its receipt of the specified payoff funds, should the lender be entitled to demand the claimed underpayment from the title insurer that remitted the payoff? If the title insurer pays the purported underpayment amount, should it be entitled to recover reimbursement from the seller, based upon the standard "Indemnity Agreement" that insurers require as a standard industry practice? Should the lender be equitably "estopped" from pursuing its borrower for the shortfall, based upon the borrower's justifiable reliance on the erroneous payoff statement? What if the lender rejects the payoff, and refuses to release the mortgage? What statutory sanctions, if any, should be imposed against a lender who refuses to record a satisfaction of the mortgage, thereby rendering the property wrongfully encumbered?

The presenter traces an actual consumer borrower's navigation through the legal minefield illustrated by the foregoing scenario, and concludes that the available legal framework fails to provide

sufficient consumer protection. He suggests that the current patchwork of inconsistent state statutes provide "toothless" slaps on the wrist of lenders that refuse to issue a satisfaction after receiving full payment in accordance with its payoff statement. A sparse body of case law provides little protection for consumers who become ensnared, through no fault of their own, in such a nightmare. The presenter will propose practicable solutions, including nationwide adoption of currently-drafted uniform legislation, to insure the efficient operation of the U.S. title conveyancing system, and to level the playing field for consumer borrowers.

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ACHIEVING FINANCIAL ACCESS IN NIGERIA THROUGH A UNIVERSAL AN DIGITAL NATIONAL IDENTIFICATION SYSTEM

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Abstract

In Nigeria, about 41.6per cent of the population of the country lack access to formal financial services according to the Central Bank of Nigeria. Studies have shown that apart from factors such as distance to banks, financial illiteracy, irregular income, unemployment and complexity of account opening; lack of proof of identity documentation debars a significant number of persons from accessing finance. This paper seeks to address the last issue as a significant factor of financial exclusion in order to help citizens more easily fulfil mandatory Know-Your-Customer (KYC) checks as well as facilitate access to additional financial products including loans, pension and insurance. Significantly, this is in line with goal 16.9 of the United Nations Sustainable Development Goals (SDG) which envisions a legal identity for all by the year 2030. Notably, the National Identification Management Commission (NIMC) was established since 2007 to oversee all matters of citizens' registration. So far, the commission has only succeeded in registering about 30 million Nigerians out of the total national population of approximately 198 million. The doctrinal method of research is employed as mostly legal literature and regulatory guidelines and policies are utilised. Furthermore, the author will draw examples from the regulatory landscape of other jurisdictions such as Pakistan, Peru and Uganda where positive strides have been achieved in the sphere of national registration. In Pakistan for instance, 98 per cent of the target population have been captured in the national identification programme including socially disadvantaged groups aided by a wide array of mobile registration agents comprising hikers, van drivers, mountaineers, biker and skiers to locate citizens even in the most remote locations. Similarly Uganda has attained 99per cent registration even though the programme was only commenced in the year 2014. The author proposes a self-sustaining universal national identification system that provides Nigerians with the needed foundational identity to access financial services with a view to achieving financial inclusion. The paper proposes an efficient national identification system that is cost-effective, inclusive and recognises the unique socio-cultural and demographic characteristics of Nigeria. The shortcomings of the existing identification system such as funding strategies, mode of registration and logistics management are highlighted. The paper proposes more effective means to reach excluded populations through an efficient national identification system founded on new and existing technology including biometrics, blockchain and the Internet of Things. The paper is expected to contribute to the growing body of literature on improving national identification and the global conversation on financial inclusion bolstered on an effective national identification system. Furthermore, the recommendations are intended to foster socially inclusive gains in several other sectors including agriculture, health and social security. Finally, even though this work is specifically focused on Nigeria, the findings offer veritable lessons for other nations grappling with financial exclusion by reason of inadequate or unsuitable identification systems.

Forthcoming European Data Consumer Law

Abstract for submission to the th International Association of Consumer Law Conference

Simon GEIREGAT

The European Union aspires to become a borderless 'Digital Single Market' where citizens enjoy free flow of (non-personal) data. To that end, the Commission has launched various regulatory proposals. Some will have an important impact on consumers.

The EU legislator is expected to have approved two consumer rights directives before the end of the current legislative term. One will replace the Consumer Sale Directive with new rules on conformity of tangible goods sold to consumers. The other will create Pan-European conformity standards and remedies for contracts for the supply of digital content to consumers. The latter Directive on the Supply of Digital Content will mark a milestone in modern consumer law. An overview of its highlights would acquaint the conference attendees with the essence of the forthcoming regulatory changes. If time so permits, a more elaborated discussion of the field of application and the conformity requirements could also prove interesting.

Neither one of the two Directives deals with the rights in rem the consumer may have in data (s)he acquired access to. In this respect, another instrument of the European Commission initially put forward that a new 'data ownership' right be created for the benefit of data producers. Still, it seems highly unlikely that these suggestions will end in the issuing of new hard law. EU legislation will therefore probably not require Member States to provide for ownership-like protection of data in the near future.

Many questions remain unanswered with regard to consumers and digital data. One open question concerns the consumer's competence to 'resell' so-called 'digital assets', being downloaded data or online platform accounts (aka cloud services or software/platforms/anything-as-a-service). This topic is usually addressed with reference only to intellectual property law. The Court of Justice of the EU has been dealing with downloaded software in two copyright cases (UsedSoft ; Ranks) and will shortly take a stand on downloaded e-books in a case currently pending (Tom Kabinet). Contrary to what one may expect however, there are strong arguments rather to address this topic

from a consumer law perspective. This is especially the case with regard to cloud access rights, as consumer protection against unfair contract terms may prove a useful tool to warrant consumers' rights to 'resell'.

I would love to present a paper at your conference on the consequences of consumers exercising nullification rights in cases of online personalised pricing infringing upon (national laws implementing the) EU Unfair Commercial Practices Directive (UCPD) from a Dutch and Belgian perspective.
Please find my abstract below, let me know whether you will provide me with the opportunity to present my paper and do not hesitate to contact me if you have any questions.

Personalised pricing uses big data and artificial intelligence to allow suppliers to sell goods and services to each consumer at the maximum price that each individual consumer is prepared to pay for such good or service. Quite a lot of research focuses on whether suppliers using personalised pricing infringe upon EU unfair trade practices or privacy legislation and if so, what measures can be taken to act against such infringement. However, surprisingly little research has been conducted to determine what the civil law consequences are in case a consumer nullifies an agreement on account of such an infringement. It is this void I attempt to fill in relation to (national law implementing) the EU Unfair Commercial Practices Directive 2005/29. This is important because the EU has left it up to individual EU Member States to provide "effective, proportionate and dissuasive" sanctions against such infringements, and if research shows that the consequences of nullification do not meet that test and are perhaps even dead letters, other measures must be considered. Using Dutch and Belgian law as an example, three possible consequences of nullification will be analysed against the backdrop of this test: (1) let the consumer keep the good delivered or service provided free of charge, (2) let the consumer return the good or service delivered in exchange for the price paid minus a compensation for the use he has made of such product or service or (3) achieve a price reduction by means of partial nullification. In this article, it will be shown that what makes this research challenging, especially in relation to the second option, is that existing laws with respect to the consequences of nullification (or, for that matter, rescission on account of breach of contract) are ill-equipped to deal with situations where the good or service acquired is perfectly fine, as is the case in case of personalised pricing. In this article, it will also be demonstrated that additional difficulties are encountered when focusing instead on the pricing side of the equation, as the third option does, because judges are generally not at liberty to determine what a fair price should be (due to the rejection of the iustum pretium concept) and, if they were, would effectively reduce a sanction (which is contrary to case law of the European Court of Justice). The compensatory nature of a personalised pricing system - a loss on one transaction is compensated by a profit on another transaction - makes it even more difficult for a judge to intervene in individual cases because it effectively destroys the supplier's entire business case. The conclusion reached is that, in light of these and other difficulties, measures other than the exercise of individual nullification rights should be considered.

CONSUMER PROTECTION IN ELECTRONIC COMMERCE AND ONLINE DISPUTE RESOLUTION THROUGH MEDIATION

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ABSTRACT:

Due to globalisation and development of technology, Electronic Commerce (E-Commerce) has become a busting business in India today. It is the cutting edge in all areas of business today. Therefore, physical market shifting to Electronic market in India. E-Commerce has evolved and has gained importance in the present economy. E-commerce offers the consumers a wide range of products and services and also, the businesses find huge potential for consumers. Also, the number of internet users has gone up in the world including India.[1] As a result, the number of e-commerce transactions has increased multifold. A large number of new businesses and services have also evolved around the world and the concept of B2C commerce has also expanded especially inter-state and cross border transactions.[2]

With the increase in e-commerce transactions, the number of disputes are bound to increase. Therefore, effective measures/mechanism for resolving these disputes is necessary and should be given importance. The e-commerce should not slow down because there is no proper dispute resolution mechanism in place. This hurts the economy of the nation considering the potential it holds in the cross border sales. An effective dispute mechanism should generally include speedy justice and convenience. Consumers including those who have small value claims should also have access to a forum. Consumers should be given an opportunity and access to assert their rights.

With the courts burdened with crores of cases and ineffective implementation of Consumer Protection Act, 1986, the scope for Online dispute resolution (ODR) methods has widened. While ODR provides flexibility, saves time and costs, it has more potential for amicable and swift resolution of disputes through the use of technology. Online Consumer Mediation Centre (OCMC) is an initiative by the National Law School of India University (NLSIU) sponsored by Ministry of Consumer Affairs, Government of India which provides an

[1] According to a report by the Internet and Mobile Association of India and market research firm IMRB International, the number of Internet users in India is expected to reach 450-465 million by June, 2017 which is 4-8% higher than from 432 million in December 2016. It is important to note that in the report that the overall internet penetration in India is currently around 31% and in rural India 163 million internet users around 17% of total users are present.

[2] According to a report published by Forrester Research, India is the fastest growing e-commerce market in the world and could overtake USA which stands in second position after China.

e-platform for both the e-consumers and e-commerce companies to resolve their disputes out of court. The platform set up at NLSIU offers e-negotiation and e-mediation for the parties to settle amicably in either synchronous or asynchronous way. This innovative initiative marks beginning of new era in the field of consumer justice delivery in India. This article focuses on the consumer protection in E-Commerce in India and the success of the online dispute resolution through mediation initiative carried out by National Law School of India University, Bengaluru.

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Consumer Product Safety Through the Lense of Normative Spirals

International Association of Consumer Law, Indianapolis, June 15th-16th 2019 Marie ARBOUR, Full Professor and Vice-Dean (Research & Graduate Studies), Université Laval

Consumer Product Safety is an evolving field of law in quest of intellectual adoption. Against the backdrop of ever increasing market globalisation and removal of unwanted barriers to trade (including safety standards), this paper aims at exploring the relationship between safety law and liability law. It inevitably addresses the increased blurring of the boundaries between private law and public law. It inquires about the role played by safety concerns within liability law and, vice versa, the impact of compensation law on regulation strategies also investigated by other social sciences.

Law-making is now supplanted by regulation strategies exogeneous to the State as a provision enactor. It is increasingly dependent on science-based decision-making and smart regulation. This pluri- dimensional aesthetic finds its legitimacy in the necessity to ensure normative flexibility in a societal context characterized by the sophistication of techno-sciences and the new angulations of free-market economies. Canada and the EU embrace such normative changes, promoting regulatory and administrative streamlining as a means to eradicate costly and burdensome administrative procedures and other obstacles to trade. Whereas the vast majority of technical standards set parameters for the making-process of a product (the know-how), innovative products are rather conditioned by standards pertaining to *the conditions* in which the making-process takes place (e.g., quality management systems, ethical standards). Uniting economic operators, users and the democratic assembly (Parliament) through the help of a specialized, technical third party, new normative strategies are designed. Legitimized by consumers' faith in science, they rely on the cutting-edge knowledge of standardization entities to regulate better product safety. Despite increasing sophistication of risks prevention, injuries still occur. Institutional responses to a growing demand for compensation then take the form of litigation, be it anchored in negligence, strict liability or contract law. Does private law litigation fill an intentional regulatory gap? Is it, conversely, already embedded in the regulatory strategy? The paper sets the stage for the conceptual framework underlying its theoretical approach.

From a methodological standpoint, it builds upon the normative spirals concept. Based on legal positivism, internormativity and legal pluralism, these spirals are rooted in the regulation sphere and metaphorically illustrate the interlocking of distinct areas of law that underpin product safety and liability law. Scholarship constructing and structuring this very field cannot develop in intellectual silos: it must rather ground itself in a constant dialogue between distinct legal sectors in order to build a legal knowledge in line with economic and societal changes. Spirals therefore conceptually and pragmatically connect together six chosen disciplines: contract law, liability law, administrative law, trade law, consumer law and

constitutional law. Spirals explicitly do away with the long established private law/public law dichotomy, when, for example, they include the reliance on private law rules to hold States accountable for inadequate or absent regulation of health products, thus challenging liability and administrative law. Though primarily rooted into “hard law” (statutes, regulations), spirals also twirl into legal pluralism by working their way into soft law.

In an innovative, reconstructive and complementary fashion, the present paper contributes to legal knowledge around normative safety and liability concerns and strategies that will increase the internal coherence, functioning and predictability of products-related law. Moreover, its pragmatic and resourceful methodology shall inform other areas of public policy and law where safety and liability issues can no longer be addressed separately (e.g. environmental and medical law).

Submitted by: Marcos Catalan

Paper Title: LIFE SPECTACULARIZATION AT HUMAN ASSISTED REPRODUCTION: A NECESSARY REFLECTION

Abstract:

Set in the Spectacle thought by Debord, this research was born at the crossroads identified by the connection of two dimensions of knowledge: the assisted human reproduction and the Consumer Society. It has as hypothesis the colonization of a space historically thought as something private, by the Economy, as well as, the disrespect of a lot of important juridical duties. The article touches some important aspects linked to contemporary family's structure and practices, the postpone of parenthood project, the promises of happiness made in the scenarios of assisted human reproduction and the existence of risks that, although, usually not informed, fill such social contexts. Critical perspective and bibliographic analysis were chosen as method. The research concludes that is necessary to respect fundamental rights, especially, life and health, the best interests of the child and the protection of the consumers.

Keywords: Consumption. Law fragmentation. Human assisted reproduction.

Monika Jagielska

All of us are users – the problems and the consequences of a new approach to consumer protection in the digital era.

In 1962, when President John F Kennedy used his famous words, all of us were consumers. We consumed: paid money and bought good, usually standardised mass-produced tangible items; we owned them, used them and finally disposed of them. Consumer law at that time, in the second half of XX century, adjusted to this approach. The first EC "consumer" or "consumer-like" directives focused on "all movables" (85/374 Product Liability Directive), the "supply of goods or services" (85/577 Off-premises Directive) and sales contracts (97/7 Distance Selling or 99/44 Consumer Sales Directives).

Nowadays, in the era of digital content and AI, this attitude has changed: - the subject of contracts has developed into a hybrid of goods and services, where it is sometimes hard to establish which element – the item itself or the service – is more important to the consumer; - now, it is not only the product itself or the price that may be a priority for the consumer to make decisions, but the bundled software, functionality and compatibility; - the process of concluding a contract is increasingly extended over time. It is not easy to point to one specific moment when the contract gains its final shape, and it is even harder to say when the traditional passing of risk occurs; - it is no longer only money (in any form) that is used to make payments, now our personal data and privacy are used as well; - profiling and big data leads to the individualisation of products, tailored to a consumer's needs; - liability may be attributed to different market actors.

These days we do not consume – we use; we are not interested in buying and owning – we want to have access; we do not care whether we receive an item or a service – we want the content; and we require it to function properly through all the lifespan.

This social change demands a profound change in legal thinking and attitude. Traditional concepts, such as the distinction between sale and service contracts, the notion of conformity, the suitability of the passing of risk concept, ratios for assigning liability, and the information duty, should be rethought and adjusted to the changing reality.

In my paper, I would like to first briefly describe this process and show that we are no longer consumers but users, on the basis of practical examples from the digital world, IoT and AI. Then I will try to point at the legal consequences of this basic conceptual change in the sphere of private and consumer law.

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Consumers´ protection and sharing economy

Sergio Sebastián Barocelli
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Information and communication technologies (ICT) have severely impacted the way consumers and suppliers establish and develop their relationships in the market.

The vulnerability of the consumers in mass consumption, which is depersonalized and globalized, is compunded by the unnaturality of the technological event, the control of the electronic media by the supplier and a greater propensity to risks related to security and self-determination in terms of personal data, means of payments, breach of trust, fraud, and trademark fraud, among others.

In this context, a significant phenomenon is that of the so-called "sharing economy" or "collaborative consumption".

The "sharing economy" is defined as a movement that encompasses new economic practices that have in common some degree of participation or collective organization in the provision of goods and services.

This definition places emphasis on those practices and business models based on horizontal networks and the participation of a community, built on distributed energy and trust within communities instead of centralized institutions. It highlights the collective and community aspect, as well as the need for trust and participation to develop the activity, and extends the scope of the sharing economy. The philosophy of sharing economy emphasizes the creation of communities that, in a framework of trust, allow access to underutilized goods by sharing them.

Sharing economy is essentially linked to peer-to-peer (P2P) and business-to-peer (B2P) technology for its operation, in the supply based on the access to the unproductive goods as opposed to its acquisition; a combination that can sometimes be based on a relationship between equals (P2P) or on a company's licence to access goods on demand (B2P), differentiating between companies that try to monetize services around communities of users and those technological companies that connect some users with others and charge a fee for it.

E-consumers deserve a level of protection that is not less than that afforded in other forms of commerce.

In addition, the hypervulnerability of consumers in the digital environment obliges States to adopt specific protection policies.

Therefore, the organizers of collaborative economy networks are strictly liable for damages suffered by consumers in context of compsumption.

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Responsibilities of Digital Pratformers

By utilizing ICT and data, the "places" for services provided to third parties by "digital platformers" or "online platformers" are said to have become a very important existence. However, monopolization and oligopoly tend to develop from the characteristics (network effect, low marginal costs, economies of scale, etc.) of such important "places" which are "digital platforms", and considerations on measures, etc. for improvement of the trading environment for digital platformers are underway in every country.

It is difficult to define and argue a "digital platformer" because it can take various business forms, but here we will consider the responsibilities of providers of product marketplaces where products are exchanged among customers in a physical manner like Amazon, eBay and others.

In case of online shopping malls, platformers provide shopping platforms, and customers purchase items listed by businesses which have "opened stores" on them. The contract for purchasing and selling products itself is a contract between the seller and the buyer.

On the other hand, in case of Internet auctions and flea markets, platformers provide corresponding platforms on which customers "bid" for products listed by sellers with the highest bidders being decided once they meet the desired conditions of the sellers.

In either case, platformers set up the terms of use for their platforms. In most cases, even if there is a damage to one party resulting from a transaction between users, since platformers have established disclaimers to shed their responsibility, when one of the parties has suffered damage through a transaction, in principle the platformer will not be held responsible for it.

Is it so that even though the platformers do not directly participate in sales contracts, they really have no responsibility before users?

In a Japanese lower-court case when a successful bidder who used an auction service on the Internet was deceived by the seller and paid for a product which had not arrived, the court recognized the platformer had "an obligation to create a system without defects". In that court case the responsibility of the platformer was denied.

However, despite the absence of face-to-face contact on the Internet and the lack of transparency on platforms built by platformers, it is inevitable for users to use the systems provided by platformers in order to trade on product marketplaces. Therefore, it has an important meaning the court has clarified that obligation.

How can we demand much of the obligation for creation of "defect free" systems?

For example, when it is found out that a listed item is stolen or when a certain product is being recalled, and as a result of being still being listed on the platform, even after the passage of a reasonable period of time sufficient to exclude the product from the platform, it was purchased or contracted by a system user causing damage to the user, the platform should be responsible for violating their obligations based on tort liability or the platform's terms of use.

Abstract. There are two factors on startups business that require our attention : cost to acquire a customer (CAC) or how much is to attract and win costumer; and lifetime value of that customer (LTV) which means a prediction of the net profit attributed to the entire future relationship with a customer. The balance on these two factors is the core of startups today. If the entrepreneurs want not to fail they have a challenge to win: the lifetime value of that customer (LTV) have to be higher than the cost to acquire a customer (CAC). On the other hand, customer and consumer are different subjects. Although these words are used interchangeably, their meanings are subtly different. However, the balance of CAC with LTV does not run advised by customer or consumer rights. In Brazil, Regulatory Agency are public authority or government agency related with constitutional rights: Federal law 9.961/2000 created Agência Nacional de Saúde Suplementar (ANS); Federal law 9.427/1996 created Agência Nacional de Energia Elétrica (ANEEL); and Federal law 9.427/1997 created Agência Nacional de Telecomunicações (ANATEL). These federal laws should protect the consumer on health, electrical energy, and telecommunication services. There are no good responses because these agencies have to do with government and private goals at the same time. Health, energy, and telecommunication are explored by Federal Government. We have no regulatory agency able to protect consumer from starups business. This defense its possible by using Código de Defesa do Consumidor (Federal law 8.078/1990). As a lege ferenda, we discuss some of the basics fundamentals for Consumer Nacional Agency creating.

Extraterritorial Enforcement of Consumer Legislation in Korea

Won Jae Hwang[1]

Through improvements in network and telecommunications individual consumers have more chances of purchasing from a supplier based overseas. This means that more consumers can enjoy more diversity and possibility of selection. However, the increase of cross-border commerce presents the potential threat to undermine the protection of consumers which would be offered if consumer purchased goods from traders based locally. Because only the national courts can enforce and give effect to remedies prescribed in regulations that aim to protect the rights of consumers. For that reason, the question of the jurisdiction and territoriality must be an essential topic with internet commerce. Conflict of laws principles may be helpful in determining which law to apply in that case, however, the conflict of laws rules are inappropriate to handle business-to-consumer transactions, because they were originally developed for the business-to-business transactions. To conclude, consumers importing goods from overseas should have the same rights and remedies for breach or defects of contract as consumers purchasing them from the local traders.

This paper will examine the decisions of Korean courts and consumer legislation in Korea on the extraterritorial application and enforcement. Especially, it will focus on the "Act on the Consumer Protection in Electronic Commerce, Etc." and the "Act on Private International Law." According to article 27 of the act on private international law, the consumer has the protection given by the mandatory provisions of the country, where the habitual residence of the consumer is located whether or not the parties have chosen the applicable law. However, this article is only applicable if the opposite party of the consumer conducted solicitation of contacts and other occupational or business actions by a commercial into that country from the territories outside that country and the consumer took all the necessary steps for the conclusion of the contract in that country. To put it briefly, this article is applied on a limited basis in order to protect the jurisdiction to adjudicate and enforce of the other countries.

However, this approach should be changed to respond to market changes, especially changes through developments in electronic commerce. For the most transactions on the internet are international, consumer protection, therefore, is not adequately provided by existing laws. In this regard, the common understanding of the jurisdictional rules should be changed, the consistent, predictable and transparent jurisdictional guidelines must be applied to the legislation, adjudicate and enforcement of consumer protection.

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CONSUMER PROTECTION BILL OF 2018: AN INNOVATIVE APPROACH FOR SOLVING TRADITIONAL CONSUMER CHALLENGES

The rapid pace of growth of globalization and industrialisation has rendered the dynamics of market economy really complex, as a result of which, consumers are faced with newer challenges in dealing with modern and complex goods and services. Consumers more often than not are left hapless at the hands of unscrupulous manufacturers and sellers whose prime aim is profiteering. India is no exception to this change in market dynamics. Problems regularly faced by Indian consumers include high prices, defective products and deficient services, adulteration of food, spurious drugs, dubious hire purchase plans, poor quality, misleading and deceptive advertisements, hazardous products, black marketing and so on and so forth. The above problems multiply with ignorance and illiteracy amongst consumers and with presence of a justice delivery system which is plagued with delays and is cost *deficient* and is in fact *inefficient*. To tackle the above problems, the Indian government has taken a lot of steps and has also initiated the process of complete overhaul of Indian consumer protection law by introducing a consumer protection bill which will replace the present law (which is found insufficient to meet with the challenges created by newer market dynamics). The efforts to amend the consumer law started few years ago; however, all the bills introduced in parliament since 2005 got lapsed and could not see the light of the day. The present bill (of 2018) was introduced in parliament in January 2018, however almost after a year the bill has not yet passed and is still under consideration. The bill includes several crucial provisions for welfare of consumers; however it is observed that a few provisions of the bill need reconsideration.

In light of the theme of the IACL Conference 2019, the present paper endeavours to discuss the innovative approaches to solving traditional and continuing consumer concerns in India and seeks to critically analyse the innovative solutions offered by the Consumer Protection Bill of 2018. Lastly, the paper will also discuss some innovative solutions for the abovementioned problems.