

Business law

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MGM412

Lecture 5





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MIDOCEAN
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Chapter 5 :Consumer Law:

The most important main themes of the lecture:

- 1- Introduction.
- 2- Protecting the Purchaser.
- 3- Protecting the Debtor.
- 4- Enforcement.
- 5- Concluding Thoughts.

1- Introduction:

- Consumer law is the area of law dealing with consumer transactions, including an individual's ability to obtain credit, goods, real property, or services for personal, family, or household purposes. Business to business transactions are usually governed by contract law and are not considered part of consumer law.
- Consumer protection laws are laws designed to protect consumers against unfair trade and credit practices involving consumer goods, as well as to protect consumers against faulty and dangerous goods. The focus of these laws is to ensure that businesses do not take advantage of individual consumers.

- Consumer protection laws that protect purchasers of goods and services generally fall into four categories:

1- Labeling and Packaging:

- How goods are labeled and packaged influences whether consumers will buy them. As a result, regulations require that labels must be truthful and allow consumers to understand what the product is, what it contains, and any potential hazards.

- Labeling and packaging regulations fall into four categories:

2- Protecting the Purchaser:

Type	Example
Product comparison	Nutrition labels on food and beverages
Preventing injury	Warning not to use lawn mower to trim hedges
Preventing access	Childproof caps on medications; tobacco secured in retail stores
Informing of potential hazards	Potential side effects of hazardous items and drugs

2- Sales:

- The general principle in sales regulations is that advertising must be honest. Consumers should be able to make informed decisions based on what products and services really are and not based on false claims or empty promises. These regulations apply to all sales materials regardless of medium: print, electronic, social media, or radio.
- One important regulation involves door-to-door sales. Consumers who buy goods or services from door-to-door salespeople have three days to cancel purchases without penalty. This is called a cooling off period and is intended to protect consumers from high pressure sales tactics. The exception to the cooling off period is when services are immediately rendered. For example, someone who aerates a lawn or removes.

2- Sales:

- Another important regulation involves delivery of goods ordered online, through catalogs, or by door-to-door sales. Goods must be shipped within the promised time period or notice must be given to the consumer. If the goods are not shipped and proper notice is not given, then the consumer has the right to cancel the order for a full refund. Similarly, if a consumer receives goods that he or she did not order through the mail, the consumer can treat it as a gift and does not have to pay for it.

2- Sales:

-Sellers are allowed to promote their goods and services and make them appealing to consumers. Puffery is a broad promotional statement made by a business about goods or services that is not intended to be taken literally. In other words, puffery is an exaggerated opinion, such as “the best,” “most popular,” and “nobody can beat it!” As long as puffery remains an opinion and does not contain false factual statements, puffery is legal. However, if puffery contains false statements, then the statements are deceptive advertising and illegal.

3- Deceptive Advertising:

-Deceptive advertising is a material misrepresentation or omission likely to mislead a potential customer and would mislead a reasonable customer. In other words, deceptive advertising is a lie.

- For example, if a car manufacturer advertises a vehicle as “the best in its class” or “the most popular” sedan, such statements are legal puffery. If the manufacturer advertises that the vehicle gets 35 miles per gallon when it only gets 30 miles per gallon, then that statement is deceptive advertising.

3- Deceptive Advertising:

-Another form of deceptive advertising is called bait and switch or bait advertising. Bait and switch is a sales practice where a seller advertises a low-priced product to lure consumers into a store only to induce them to buy a higher-priced product. Often the advertised product is not actually available as advertised or the seller refuses to sell it on the advertised terms. The low-priced.

product is the “bait” that brings consumers in but then the seller “switches” the higher-priced product as the subject of the transaction. Bait and switch advertising can also apply to sales of services.

4- Hazardous Materials:

- In the context of consumer protection law, hazardous materials are products deemed dangerous to the consuming public. Hazardous materials include drugs that may be consumed safely in small amounts under supervision of a medical provider, as well as toxic chemicals that are banned for certain public uses such as lead and asbestos.
- Hazardous materials regulations are extensive to ensure that products reaching consumers are safe for their intended use and other reasonable, foreseeable uses. These regulations also control product recalls.
- Regulations vary depending on the business's industry. To help consumers understand their rights and report harmful products, the Consumer Product Safety Commission established the www.SaferProducts.gov website.

- A debtor is someone who owes an obligation to another individual or business, especially the obligation to pay money. Consumers become debtors when they owe a business money for the purchase price of goods and services. If consumers pay the purchase price at the time of the transaction or shortly afterward, then the transaction is completed. If, however, the consumer does not immediately pay but receives the goods or services, then the consumer becomes a debtor under consumer protection laws.

- Consumer protection laws that protect debtors generally fall into five categories:

- Obtaining credit;
- Reporting credit information;
- Electronic fund transfers;
- Identity theft; and
- Debt collection.

1- Obtaining Credit:

The process of obtaining credit is regulated by two federal laws. The Truth in Lending Act regulates what information must be provided by creditors who wish to extend credit to consumers. The Equal Credit Opportunity Act prohibit creditors from discriminating against consumers based on their membership in certain protected classes.

A-Truth in Lending Act:

- Congress passed the Truth in Lending Act (TILA) in 1968 to help consumers understand and compare various credit options available to them. TILA only applies to consumer credit transactions and leasing. The law does not apply to commercial credit transactions.
- TILA applies to all real estate transactions and consumer credit transactions of \$25,000 or less. The law also applies to credit transactions involving finance charges or when the loan repayment involves four or more installments.

- TILA also regulates credit cards. The law prohibits credit card companies from issuing credit cards unless they were requested by the consumer. Any changes to interest rates or policies to existing credit card accounts must be provided in writing to consumers, who must be allowed to cancel their credit cards without penalty. Consumers are required to pay any outstanding balance accrued to that point, but they cannot be forced to accept altered terms.

TILA requires certain disclosures be made to applicants for credit. These disclosures include:

- Minimum rate of repayment;
- Billing period;
- Interest rate in the form of the annual percentage rate;
- Type of interest (simple or compound);
- Service charges and fees; and Prepayment penalties.

-All disclosures must be in ordinary language that makes sense to the ordinary customer. Disclosures must also be clear and conspicuous, meaning that the terms cannot be buried in a contract to hide them from consumers.

B-Equal Credit Opportunity Act:

- Congress passed the Equal Credit Opportunity Act (ECOA) in 1975 to protect consumers from discrimination when applying for credit. ECOA prohibits creditors from discriminating against creditors based on their:

- Race;
- National origin;
- Gender;
- Marital status; and
- Color;
- Religion;
- Age;
- Welfare status.

-The purpose of ECOA is to require creditors to consider only those characteristics of an applicant related to creditworthiness rather than social status or stereotypes. Therefore, creditors may consider an applicant's marital or welfare status only to the extent that it relates to the applicant's creditworthiness. For example, an applicant's marital assets and debts are relevant factors when determining how much credit, if any, should be extended to the applicant. However, denying or granting credit solely on the basis of marital and welfare status is illegal.

- ECOA also requires creditors to provide specific reasons for denying credit to applicants. This allows applicants to determine whether the denial was for discriminatory reasons or as pretext to hide the discriminatory reason, in violation of the law.

2-Reporting Credit Information:

- Congress passed the Fair Credit Reporting Act (FCRA) in 1970 to regulate the gathering, storage, and reporting of credit-related information. FCRA applies to individual consumer information only. FCRA does not apply to business entities' credit reports.
- A credit bureau is an organization that maintains and distributes information regarding a person's credit worthiness to potential creditors, insurance companies, and employers. The three main credit bureaus in the United States are Equifax, Experian, and Transunion.
- Before releasing consumer information, a credit bureau must confirm the identity of the party making the request and verify the reason for its use. The credit bureau then provides information about a consumer's credit in the form of a credit report.

-In general, consumers do not have to consent to the release of their information. FCRA requires notice to consumers in three specific circumstances:

- 1- A credit report is provided to an employer and includes negative information that could prevent the consumer from being hired;
- 2- When the consumer is denied credit, insurance, or employment based on information contained in the report;
- 3- An investigative report is requested about the consumer's character, personal attributes, and living arrangements.

Credit bureaus must delete general information that is more than seven years old, and bankruptcies that are more than ten years old. If debts were incurred over seven years ago, or bankruptcies filed more than ten years ago, but are still “open” because the debt has not been paid off, then that information may be reported.

3- Protecting the Debtor:

-FCRA gives consumers some specific rights regarding their consumer reports. First, consumers are entitled to one free report per year from each of the credit bureaus. Consumers may pay for additional copies of their credit reports.

-Second, consumers are entitled to dispute information included in a credit report. If the credit bureau determines that the report contained an error, the erroneous information must be removed. If the credit bureau confirms the information or cannot determine that it was erroneous, then the consumer has the right to add an objection to the information in the report.

-Finally, consumers are entitled to place a credit freeze on their credit reports. A credit freeze is when the consumer restricts or prohibits creditors from requesting credit reports about them. In essence, a credit freeze prevents third parties from requesting a consumer's credit report without the consumer's permission. If the consumer wants to apply for credit or a new job, then the consumer may lift the credit freeze for a limited period of time or give authority to specific entities to request a credit report.

3-Electronic Fund Transfers:

- The Electronic Fund Transfer Act (EFTA) was passed by Congress in 1978 to protect consumers from unauthorized electronic fund transfers from their accounts. EFTA applies to electronic direct deposits and withdrawals, automatic teller machines (ATMs), and point-of-sale transactions with merchants.
- EFTA requires banks to investigate errors and reported fraud promptly and to correct any errors within one business day. A consumer's liability for unauthorized transfers is limited to \$50 or the amount of the transfer (whichever is less) for transfers made before the consumer notified the bank of the unauthorized use. After the consumer notifies the bank, the consumer is not liable for any additional unauthorized transfers. However, if the consumer fails to notify the bank within two business days of the unauthorized transfer, then the consumer's liability rises to \$500.

3-Electronic Fund Transfers:

-A preauthorized transfer is an electronic fund transfer authorized in advance to recur at regular intervals. For example, a consumer authorizes her monthly mortgage payment to be automatically withdrawn from her banking account on the first of every month.

Preauthorized transfers require banks to:

- 1- Receive written instructions from the consumer about the timing, amount, and duration of the transfers; and
- 2- Allow the consumer to stop payment up to three business days before the scheduled transfer date.

3- Protecting the Debtor:

4-Identity Theft:

-Identity theft is an increasing concern for businesses and consumers. The Federal Trade Commission estimates that at least ten million consumers are victims of identity theft each year.

- While consumers cannot completely prevent identity theft, there are some steps that they can take to minimize their risk. First, consumers should monitor their bank accounts and charges on their credit and debit cards. If they notify their banks of unauthorized transactions as soon as possible, then they will minimize their personal liability. Second, consumers should request their credit report at least annually. Parents are entitled to request credit reports for their minor children. Third, consumers can place a credit freeze on their credit report to prevent third parties from accessing their financial and personal information and from obtaining credit under their name.

3- Protecting the Debtor:

4-Identity Theft:

-If a consumer is a victim of identity theft, he or she can post a fraud alert with the credit bureaus to be included in his or her credit report. A fraud alert requires businesses to verify the identity of an applicant for credit before extending any credit to him or her.

5- Debt Collection:

Businesses that are owed money from debtors may seek a court judgment to collect the debt. However, the judicial process is often expensive and time consuming. As a result, many businesses prefer to collect debts outside of the court system.

To prevent abusive practices by debt collectors, Congress passed the Fair Debt Collection Practices Act (FDCPA) in 1978. Under FDCPA, a debt collector must, within five days of contacting a debtor, send a written notice containing:

3- Protecting the Debtor:

- The amount of the debt;
- The name of the creditor to whom the debt is owed; and
- A statement that if the debtor disputes the debt in writing, all collection efforts must stop until the creditor receives evidence of the debt.

- FDCPA also prohibits certain debt collection practices. Debt collectors cannot:

- 1-Contact a debtor who has notified the collector in writing that he or she wants no further contact;
- 2- Contact a debtor who is represented by an attorney;
- 3-Call a debtor before 8:00 a.m. or after 9:00 p.m.;
- 4-Threaten a debtor or use obscene or abusive language;
- 5- Contact a debtor at work if the employer prohibits such contact;
- 6-Imply or say that they are attorneys or government officials when they are not;

3- Protecting the Debtor:

7-Use a false name;

8-Make any false, deceptive, or misleading statements;

9-Contact family and acquaintances of the debtor more than once or for any reason other than to locate the debtor;

10-Tell family and acquaintances of the debtor that he or she is in debt;

11-Publish the debtor's name and address on a "bad debt" list on the internet or in the newspaper; or

12-Collect charges in addition to the debt unless permitted by state law or contract signed by the debtor.

-Filing a collection action in court does not violate any of these rules.

4-Enforcement:

- Congress empowered both the Federal Trade Commission and the Consumer Financial Protection Bureau to enforce the primary federal consumer protection laws. However, numerous federal and state laws contain provisions to protect consumers. As a result, there are many federal and state agencies that have regulations related to consumer protection.
- The Consumer Financial Protection Bureau (CFPB) was created by Congress in 2010 to be a single point of contact for consumers who seek financial consumer protection. The CFPB is intended to consolidate enforcement efforts and to make them more consistent than when they were shared among agencies. The CFPB is authorized to enforce the federal consumer protection laws discussed in this chapter, as well as others.

5-Concluding Thoughts:

-Consumer protection laws are intended to protect consumers from unethical and unfair business practices. These laws are broad in range, from advertising and marketing to recalling delivered products that are hazardous. With the continued evolution of electronic transactions and banking, consumer law will continue to evolve to address areas of concern as they develop.



Thank You