

Preface

This book is the fifth volume in the series of *Casebooks on the Common Law of Europe* under the general editorship of Professor Walter van Gerven.

This Casebook fits within the broader objectives of the Ius Commune Casebook Project, which is a joint undertaking of the universities of Leuven (Belgium) and Maastricht (the Netherlands). The Casebook Project fosters co-operation among legal scholars from all over Europe, allowing them to join forces to develop teaching materials for use in comparative law courses. One of its main aims is to enable students across Europe and beyond to discuss the same leading cases and materials.

Like the other books in the series, the present volume follows a bottom-up approach to explore the extent to which, despite differences in approach, concepts and terminology, common principles underlie the laws of the EU Member States on consumer protection. Compared to the other volumes, this Casebook has a rather strong focus on European Community law, since, in consumer law, the *acquis communautaire* is more developed than in many other fields of the law.

This volume therefore contains quite a number of judgments of the European Court of Justice and extracts from directives and regulations. National case-law and legislation are primarily drawn from the English common law, French law and German law. Extracts from other legal families have been included, either because the solutions found were original, or – probably more often – because a legal system was accessible for one of the authors. In this sense, the choice is to a certain extent arbitrary. The authors believe that this is inevitable but hope that they have succeeded in presenting a relevant range of solutions. However, the readers and users of this Casebook are invited to draw the authors' attention to other relevant sources and are welcome to submit suggestions via the accompanying website (www.casebooks.eu/consumerlaw) where they can be made available as part of the digital 'supplement' to the Casebook which will be expanded at regular intervals. Needless to say, this interactive effort should enable us to strike a better balance in the next edition of this Casebook.

Consumer law is not a separate branch of the law *à part entière*. Consumer law is both private law and public law and, following the Casebook on Non-Discrimination Law, this Casebook is the second Casebook in the series also to deal with public law. A number of substantive private law rules discussed in this Casebook might overlap with the casebooks on contract law (eg with regard to the formation of contracts and unfair terms) and tort law (especially in the field of product liability). Nevertheless, this Casebook has its own focus and discusses the grand questions of consumer law, including enforcement questions which are increasingly at the heart of the debate (injunctions, class actions, public enforcement by agencies, etc).

Like its predecessors in the series, the Casebook builds on ‘primary’ texts, which not only include judgments and legislation, but also soft law and scholarly writings. The extracts are followed by notes and questions. The aim of these is to raise discussion. As Hugh Beale did in his preface to the *Casebook on Contract Law*, we would like to quote Walter van Gerven’s foreword to *Tort Law*:

It is not the intention of this book, or, of the series as a whole, to unify the existing laws of tort or of the other areas of law that are to be covered. That would not be possible, nor would it be desirable. For indeed, the diversity of European legal systems reflects not only a variety of legal cultures—which are bound to converge in step with European integration—but also and perhaps mostly a variety of value judgments or policy choices which find their expression in the legal systems. In their effort to uncover common roots, the authors do not wish to express any preference for the solutions embodied in one or the other legal system, where that would imply endorsing the underlying value judgment over alternative judgments. In the absence of a common European legislature (outside the limited areas for which national competences have been transferred to the European Union), there is indeed no authoritative source, other than national legislation or case law, from which a common understanding as to the fundamental value judgments underlying national law can be derived. Although that should not prevent legal writers from expressing their own personal preferences, we would prefer not to do that, or to do it only exceptionally, in a book like the present one which is intended to inquire into the common core of principles in the national and supranational legal orders existing within the European Union.

Our research for this Casebook confirmed an important finding: while many parts of consumer law are harmonised at the European level, there still remain quite a number of divergences between the laws in the Member States due to a multitude of factors, such as the—recently more or less abandoned—minimum character of the harmonisation, cultural differences, differences in the legal context in which directives have to be implemented, differences in enforcement, etc. Thus, some case-law dating from before the relevant Directives has also been included, especially where these cases addressed questions which may not (yet) have been (properly) tackled by European legislation.

Overall, like the other Casebooks, this volume will show that, irrespective of the differences in legal technicalities of the solution given to a particular problem, in effect the solution is very often the same in the different jurisdictions.

This Casebook goes to press amidst ongoing developments concerning the European Commission’s review of the consumer *acquis* and the recent proposal of a consolidated Directive on consumer rights. This proposal, which came just before the manuscript was finalised (August 2009), could only partly be taken into account. Some time before, the Study Group on a European Civil Code and the Acquis Group had published the Draft Common Frame of Reference comprising Principles, Definitions and Model Rules of European Private Law (DCFR). This was another important element for reflection in several of the chapters of this Casebook.

The book is primarily intended for law students in European universities and elsewhere. In some countries, students are already familiar with the Casebook method. In others, it may be different. Be that as it may, we strongly believe that the

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format of the Casebooks will encourage students to look for the rationale behind the given rule or decision (and the underlying value judgments) and to put the legal rules into context. The comparison between solutions given to a certain problem in different jurisdictions and, as the case may be, in different Community instruments, will certainly improve the students' understanding of the law as it is and will help them to have a creative attitude in their professional careers.

This book is the result of real teamwork, although one or more authors are responsible for the separate chapters. Most of the chapters have been discussed at length during various group meetings in Bamberg, Leuven, Utrecht, London, Edinburg and Florence. These meetings were used to establish a common perspective, but it was decided not to strive for a complete uniformity. The variation between chapters reflects to some extent the different national background of the authors, as well as the varying influence of EC law. Whereas certain aspects of consumer law have been heavily influenced by EC law, such influence is less obvious—for the time being—for other aspects. The structure of certain chapters will therefore only at times come close to the structure of the relevant EC instruments.

These meetings were also used to make difficult decisions on what aspects to include in this Casebook. Some areas of the law mostly concern consumers, but often consumers are not the only ones affected. As this Casebook is in the first place intended as a teaching tool for students, our guiding principle was the likeliness that the materials included would actually be used for that purpose. This Casebook does not claim to be comprehensive, and some chapters should rather be read as a thorough introduction into new fields of law, though always from the perspective of the consumer.

All of the chapters have been reviewed by at least one member of our advisory board. We are very grateful to Ewoud Hondius (University of Utrecht), Norbert Reich (emeritus University of Bremen), Stephen Weatherill (University of Oxford) and Thomas Wilhelmsson (University of Helsinki) for making the time to provide critical comments and to review the final texts of several chapters. It goes without saying that responsibility for any mistakes remains with the authors of the chapters. The main authors for the different chapters are as follows:

- Chapter 1: Setting the Scene: Jules Stuyck (University of Leuven)
- Chapter 2: Trade Practices and Advertising: Hans-Wolfgang Micklitz (European University Institute Florence, University of Bamberg) and Geraint Howells (University of Manchester)
- Chapter 3: Consumer Contract Law: Sergio Cámara Lapuente (University of La Rioja) and Evelyne Terryn (University of Leuven)
- Chapter 4: The Right of Withdrawal and Standard Terms: Peter Rott (University of Bremen) and Evelyne Terryn
- Chapter 5: Sale of Goods: Christian Twigg-Flesner (University of Hull) and Elise Poillot (Université du Luxembourg)
- Chapter 6: Financial Services: Veerle Colaert (University of Leuven) and Tom Van Dyck (University of Leuven)

- Chapter 7: Product Liability: Geraint Howells and Jean-Sébastien Borghetti (Université de Nantes)
- Chapter 8: Litigation, Redress and Enforcement: Hans-Wolfgang Micklitz, Jules Stuyck, Evelyne Terryn and Lubos Tichý (Charles University Prague).

Chapter 1 focuses on the rationale for consumer law and on its actual object: the consumer. It provides an introduction into the main models of consumer law and discusses how consumer interests are affected by European competition policy and the European internal market programme. Chapter 2 deals with unfair commercial practices and advertising, an area recently harmonised by EC law, but the chapter illustrates that national law still has an important role to play. Chapters 3 and 4 treat protection mechanisms in contract law. This includes both general contract law mechanisms (Chapter 3) and more consumer-specific contract law mechanisms such as the right of withdrawal (Chapter 4). Sales contracts are probably one of the most common types of consumer contracts and hence Chapter 5 analyses the main national regimes and the influence of the Consumer Sales Directive. Chapter 6 considers the various methods of consumer protection in the field of financial services, ie credit services, investment services and payment services. The protection of consumers in the field of financial services builds further upon the protection mechanisms that also exist for consumers of general services, but two elements make the protection of consumers in the field of financial services stand out. First, financial services typically involve complicated products and transactions, which are often difficult to understand for the ‘average’ consumer and have important financial consequences. Second, there is a growing awareness that certain financial products and services enable individuals to participate fully in society and should therefore generally be accessible to everyone. The chapter focuses on those two themes. Chapter 7 discusses the liability of manufacturers and other suppliers for damage caused by their products. As such, product liability is not just a matter of consumer law, as damage caused by products can be inflicted on persons who do not act as consumers at the time of the accident. However, it is the development of a consumer society and the increase in the number of accidents caused by consumer goods, such as cars, pharmaceuticals, beauty products or domestic appliances, which led to the emergence of product liability as a distinct branch of law, and thus, it could not be omitted in this Casebook. Chapter 8 deals with the following simple but crucial question: how can consumers ensure that the rights conferred on them pursuant to the rules described in the preceding chapters are enforced. The chapter gives an overview of the existing mix of individual and collective redress mechanisms based on national and European legislation.

For this Casebook, a wide range of national material needed translation, and we are very conscious of the enormous challenge that translating legal texts involves. Sincere thanks are due to our translators, Philip Nelson, Kai Purnhagen, Rory Steven Brown, Roger and Kristof Terryn and Tessa Jones. The translations were reviewed by the authors of the chapters. The original texts will be made available on the above-mentioned website. Sincere thanks are also due to Anne Looijestijn-Cleary (senior

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lector at the University of Nijmegen, Netherlands) who has been so kind to check those parts of the manuscript written by non-native speakers, to Dorothy Gruyaert and Martina Oldani who were our student assistants and, finally, to Majo Werrebrouck who supplied logistic support at the Study Centre of Consumer Law of the University of Leuven.

Last but not least, it should be recognized that we would never have come to the end of this project had Dimitri Droshout, with his immense experience in the making of Casebooks, not guided us in a friendly but firm manner along the long and winding road to the finish.

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Florence and Leuven, 1 October 2009

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