

Consumer Law

Professor Stephen Ware

Spring 2015

Basics. The required casebook is MICHAEL GREENFIELD, CONSUMER TRANSACTIONS (6th ed., 2013). The required statutebook is MICHAEL GREENFIELD, CONSUMER TRANSACTIONS: SELECTED STATUTES AND REGULATIONS (6th ed., 2013).

You are responsible for doing the reading listed on this syllabus and for coming to class prepared to discuss the reading. The statutes and regulations referred to in the casebook are part of each reading assignment.

Your grade will be determined by the two-hour final exam (55%), other assignments (30%), and classroom performance (15%). The “other assignments” (10% each) are noted on this syllabus and you must submit them on time to receive any credit for them. I will grade what you timely submit and will send you my individualized written assessment of what you timely submit for each assignment before your next assignment is due. These assignments are designed to help you develop a variety of lawyering skills through professional writing and then feedback on one project before you begin a similar project. You must work alone on these assignments except that you may discuss them with a KU Law librarian.

Exam. You may use any written material (such as outlines, books, notes) during the final exam. It is completely “open book.” You may also use a calculator. You may take the exam on your laptop computer if you do so with the exam software supported by the law school. The exam software must in the closed mode so that you cannot access any other program on your computer during the exam.

All assigned reading and classroom discussion is fair game for testing on the exam. If you have questions about the assigned reading after our class discussion of it, please do not hesitate to contact me. I try to make the exam correspond to the course so topics that receive a lot of attention in the reading and in class play a bigger role on the exam than topics that receive less attention in the reading and in class. But I am not able to make this correspondence perfect.

I prefer that the entire class take the exam at its scheduled time. I will provide alternate exam times only to the extent the school’s rules require me to do so for individual students.

Classroom performance. Should law professors use class time to lecture or to question students? I believe some time devoted to lecture may be appropriate because lecturing can be an efficient way to convey information from someone who has it to someone who needs it. But you should not need to acquire much information during class. You can acquire nearly all the relevant information before class by doing the assigned reading, thinking about it, and discussing it with your classmates. In short, you should come to each class knowing the law that will be discussed in that class. You should know what the statutes say and what the courts have held.

You should know the basic arguments in favor of those statutes and holdings and the basic arguments against those statutes and holdings.

If students know all this before class starts, then what is the purpose of our class time? One purpose is simply to test whether you have learned before class what you should have learned. If the professor asks straightforward, factual questions about the reading and you have trouble answering them quickly and confidently then you are receiving feedback suggesting that your class preparation or your ability to speak under pressure is deficient. Either way, you benefit from getting that feedback throughout the semester, rather than learning on the exam or later about the deficiencies. Of course, it is not only questions directed to you personally that give you feedback. After each question directed to one of your classmates, you should think about how you would answer it and compare the answer you would have given to the answer your classmate gave. In a good law school class, much of the learning occurs through this process.

Another very important purpose of class time is to give you opportunities to “learn by doing.” We lawyers are often good at learning by reading and that is good because many lawyers do a lot of reading for their jobs. But “book learning” alone is not sufficient preparation for the practice of law. Few lawyers make a career out of just reading. Nearly all lawyers’ careers require the lawyer to engage in effective communication about the law. While *written* communication about the law is a large part of many lawyers’ jobs, so is *spoken* communication about the law. In this course, written communication will be tested on the exam and other assignments, while spoken communication will be tested in the classroom throughout the semester.

During class, I may call on students who have not raised their hands, as well as students who have. Your classroom performance grade is based on the quantity and quality of both forms of participation. I want you to raise your hand and voluntarily contribute to the class discussion because I believe doing this is good training for the practice of law and because the class discussion tends to be better when many viewpoints are represented. So the classroom performance part of the grade rewards students who frequently raise their hands and say things that contribute to the education of the class.

This is a low-enrollment course, which gives everyone the opportunity and responsibility to contribute frequently to the class discussion. Students who raise their hands less frequently than their classmates are more likely to be called on when I am not looking for, or cannot find, volunteers. I hope you will make a point of voluntarily contributing to our class discussion nearly every day as it generally seems better to speak in class at times of your choosing.

If you are unable to prepare for a particular class, it is better to tell me ahead of class than to skip the class or risk being called on. If you come to class without previously asking me for a pass then you are representing to me and your classmates that you are prepared and ready to contribute.

I recognize that many students find law school classes stressful if classroom performance is graded and the professor may call on any student at any time. If you find this sort of classroom

environment stressful then I encourage you to reconsider whether your preparation for class is adequate. If you are well prepared for class then you have anticipated the issues raised by the questions the professor is asking and are ready to use the “book learning” you did before class. That said, even well-prepared students often find speaking in class somewhat stressful. Similarly, many lawyers find aspects of their jobs, including speaking to large audiences, stressful. Compared to most types of law practice, the law school classroom is a relatively easy, low-stakes environment in which to develop important professional skills. Please get the most out of it, rather than shying away from it. I am here to help you with that. If you ever find me demanding or critical, please know that I am trying to help you develop important professional skills.

Advice. If you are like many law students, you outline the material in your courses. Previous students who have taken this course suggest outlining each chapter to include:

1. Part of casebook (Formation, Terms, Enforcement by Creditor, or Enforcement by Consumer)?
2. Casebook chapter number and title?
3. Main problem(s) the lawmakers sought to address, i.e., problematic fact patterns?
4. Basic common fact patterns to which relevant laws apply?
5. Year or era key legal doctrines were enacted?
6. Historical context for enactment? Era and other related legal developments?
7. Important law is federal, state or both?
8. Important law is common law, statute, regulations, or cases interpreting statute or regulation?
9. Who is liable under this law, e.g., sellers of goods (distinguish retailer from manufacturer?), creditors, or sellers of other services?
10. Who brings claim(s)—private parties, [which] agencies, or both?
11. Adjudication occurs in what forum? Loser can appeal to?
12. Elements of claim(s)—what needs to be shown to establish liability?
 - a. Count 1
 - i. Important sections of statutes and regulations?
 - ii. Important cases and their holdings?
 - b. Count 2
 - i. Important sections of statutes and regulations?
 - ii. Important cases and their holdings?
13. Important fact patterns which do not result in liability?
14. Remedies when liability is shown? Do remedies vary depending on who is bringing claim?
15. Cooperation, incorporation, duplication, or inconsistency among relevant laws? (E.g., state/state, federal/state or statute/regulation)

16. Parallels to or connections with other areas of Consumer Law?

Attendance and lateness. You may miss a class or two during the semester because you have transportation problems, a job interview, illness, a death in the family, or something similar. This sort of absence is nothing to worry about and there is no need to contact me about it. Just borrow class notes from a classmate and then let me know if you have any questions. Similarly, you may be late once or twice during the semester for reasons like those listed above. Again, this is nothing to worry about and there is no need to contact me about it.

By contrast, if you are going to miss class or be late more than a couple of times during the semester, that is a worry. If that happens to you then you should take the initiative and contact me to discuss how we can deal with the problem and keep you on track with the course and your classmates. Missing or being late for more than a couple of classes without contacting me would be a sign of disregard for the course and would make things more difficult for all concerned. Please do not be that student.

Computers and other electronics in class. You may use a computer in class but only for working on this course. Any other use of your computer during class is prohibited. And I reserve the right to declare some of our class sessions “computer-off zones.” Please silence computers, phones and any other electronic devices you bring to class. Any audio or video recording of class is prohibited.

Miscellaneous. The law school works with the Academic Achievement and Access Center (AAAC) on the KU campus to coordinate accommodations and services for students with disabilities. If you have a disability for which you intend to request a classroom and/or exam accommodation, you may contact KU Law Student Counselor, Leah Terranova, leah@ku.edu, or any of your professors. You should notify someone at the beginning of the semester or as early as possible. The disability determination process can take time and accommodations may not be possible if requests are made late in the semester. The accommodation process is a collaborative one among the student, the AAAC, and the professor. More about the AAAC can be found at www.achievement.ku.edu

I like to have lunch with students. We can go across the street to the Burge Union and, within limits, the school will buy our lunches. To avoid crowds, I prefer to go at noon, rather than 12:30. I find that these lunches work best with groups of two or three students at a time. If you would like to do this, please send me an email suggesting a day or two that works for all the students in the group and please copy the other student(s) on that email message.

My office is Room 405, my email is ware@ku.edu and my phone number is 785-864-9209. Please do not hesitate to contact me about this course or anything else.

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| Introduction | |
| 1. | Casebook's preface, table of contents and pages 1-4. |
| Part 1. Formation of Consumer Contracts | |
| Chapter 1. Deception – The Response of the Common Law | |
| 2. | 5-20; Rest. 2d of Torts §§ 525-526; UCC § 2-313. |
| 3. | 27-39, 45-47 (notes 5-6); Rest. 2d of Contracts §§ 164(1), 209-216; Rest. 2d of Torts §§ 526, 551. |
| Chapter 2. Deception – Legislative Solutions at the Federal Level: The FTC (“Deceptive Acts or Practices”) and the Bureau of Consumer Financial Protection | |
| 4. | 55-65, 86-87, 102-03 (notes 5-6); FTC Act §§ 1, 4, 5, 19. |
| 5. | 65-80 (Note 3); UCC § 2-314. |
| 6. | 80-86 (Notes 7-10); 117-119; do Problem 1 on 119-120 and presume the reference is to a state's AG. |

| Chapter 3. Deception – Legislative Solutions at the State Level | |
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| 7. | <p>Graded Assignment #1. You are a lawyer whose client is a business that wants to sell its goods and services by telephoning as many consumers as it lawfully can. Your client especially wants to call cell phones but also landlines. Page 120, note 2, says “many states have established do-not-call lists ... that often create exemptions for ... merchants that have an existing business relationship with a consumer.” Your client wants to know:</p> <ol style="list-style-type: none"> 1. Does Kansas have a do-not-call list? If so, who enforces it and what is the most severe sanction for a single violation? 2. Is there a federal do-not-call list? If so, who enforces it and what is the most severe sanction for a single violation? 3. Under any Kansas and federal law governing do-not-call lists: <ol style="list-style-type: none"> a. What counts as an existing business relationship? b. What would your client need to prove its existing business relationship with a particular consumer if challenged to do so? c. What must a consumer with an existing business relationship do to end that relationship and thus make future telephone calls unlawful? <p>Submit your answers to ware@ku.edu at least two hours before this class starts.</p> |
| 8. | <p>121-124 (note 2); 125-130 (notes 7-9). Throughout today’s reading, consider how the cases and other material in the casebook would be resolved in Kansas under the Kansas Consumer Protection Act, Kan. Stat. §§ 50-623 to 640.</p> |
| 9. | <p>At least two hours before this class starts email ware@ku.edu your answers to the following questions.</p> <ol style="list-style-type: none"> 1. What conduct likely permitted by the law we studied in Ch. 1 (tort and contract, including UCC) is prohibited by the Kan. Consumer Protection Act? 2. What conduct likely permitted by the FTC Act is prohibited by the Kan. Consumer Protection Act? <p>Answer these questions both conceptually and with examples of specific (hypothetical or real) facts in which the Kan. Consumer Protection Act changes conduct from lawful to unlawful.</p> |

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| Chapter 4. The Need for Information: the Truth in Lending Act | |
| 10. | 173-178, do Problems 1-4 on 178-79; 209-210 (do no problems). |
| 11. | 179-184, do Problems 1-5. |
| 12. | 186-193 (note 5); do note 1 on 192 together with note 11 on 194-95. |
| Chapter 5. Qualifying for Credit: the Fair Credit Reporting Act | |
| 13. | 217-241, skip problems on 222-23 |
| 14. | 241-250 |
| 15. | 251-264 |
| Chapter 6. Discrimination in Granting Credit: the Equal Credit Opportunity Act | |
| 16. | 267-286, skip problems 5-6 on 272 and problems 8-14 on 278-79 |
| 17. | 286-300, skip problems on 298-99 |
| 18. | <p>Graded Assignment #2. Many consumers receive credit as individuals. However, consumers sometimes jointly pursue credit. For example, a couple (married or not) may jointly pursue credit and a parent may guarantee an adult child's debt. Write a memo explaining the ways TILA, FCRA and ECOA specifically impact <i>joint</i> consumer debt, such as by restricting creditors' freedom to:</p> <ol style="list-style-type: none"> 1. treat some couples differently from other couples, 2. insist on a guarantor before extending credit, and 3. do anything else relating specifically to joint consumer debt. <p>We will not meet as a group during this class session. Instead, I will be available to meet with you privately to discuss your Graded Assignment #1 or, if emailed to me at least two hours before the scheduled start of this class, a draft of this assignment. Graded Assignment #2 is due 48 hours after the scheduled start of this class.</p> |

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| Part 2. Terms of Consumer Contracts (“Regulation of the Bargain”) | |
| Chapter 7. Quality Standards: Goods and Services | |
| 19. | 301-316, UCC § 2-318 |
| 20. | 316-318 (middle of page before “two other obstacles”); 353-357 (before note 4); Kansas Consumer Protection Act § 50-639(b) |
| 21. | 318 (middle of page)-326; 349 (Lemon Laws before note 1); Kansas Lemon Law § 50-645 to 646; 357-359 (notes 4-8); 362 (top half of page) |
| Chapter 8. Limits on the Price of Credit | |
| 22. | 383-385 (read B); 412-421. |
| 23. | 421-435, 448-452 (notes 4-8) |
| Chapter 9. Other Limits on the Terms of the Deal: Unconscionability, Unfairness, Abusiveness, and Good Faith | |
| 24. | Page 472 (note 3)-477; 489 (note 6); 495 (note 4); 508-512 |
| Part 3. Remedies for Breach of Consumer Contracts: Enforcement by the Creditor | |
| Chapter 11. Coercive Collection Tactics | |
| 25. | 575-578; 593-595; compare U3C § 5-108 with Kan. Stat. § 16a-5-108; 596-597 (Questions 3-7, 9); read 609, Question 10, but no need to answer its questions until the next class |
| 26. | 609 (do answers to Question 10) -620, skip 614 Questions 12-13 |
| Chapter 12. Enforcement of the Security Interest; Leases | |
| 27. | UCC §§ 9-203(b), 9-609 to 614; Kan. Stat. § 16a-5-109 to 111; 621-630 (note 5); 633-635 (before questions); 640 (note 8) – 641 (before First Fidelity); 678-679 |
| 28. | 195-197 and 199-201 (notes 5-6); UCC 2A §§ 523, 525, 527 and 528; 680-681 (Questions 1-3) |

| Chapter 13. Other Devices to Facilitate Collection | |
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| 29. | 683-700 (up to <i>Peoples</i>); skip 683-84 (questions 1-4); Read 706-709; Kan. Stat. § 16a-1-201(8) |
| 30. | <p>Graded Assignment #3. Your client is a corporation that both leases goods to consumers and sells those goods to consumers on secured credit. Your client has long operated in 12 states and knows the relevant law of those states, along with federal law and the UCC. Your client is preparing to do business in Kansas. Write your client a summary of any ways Kansas law goes beyond federal law and the UCC in restricting your client's ability to <u>collect</u> from its consumer debtors who have breached their contracts with your client. Discuss your client's collection as:</p> <ol style="list-style-type: none"> 1. lessor, 2. secured creditor, and 3. unsecured creditor (e.g., pursuing a deficiency claim). <p>We will not meet as a group during this class session. Instead, I will be available to meet with you privately to discuss your Graded Assignment #2 or, if emailed to me at least two hours before the scheduled start of this class, a draft of this assignment. Graded Assignment #3 is due 48 hours after the scheduled start of this class.</p> |

| Part 4. Remedies for Breach of Consumer Contracts: Enforcement by the Consumer | |
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| Chapter 14. Enforcement Against Whom? | |
| 31. | 711-714; 730-741; skip 735-737 questions except do Questions 1a & 1d (see TILA 104) |
| 32. | 741-755 question 2; skip 742 questions 3-5 & 746 question 6 |
| Chapter 15. Remedies for the Consumer | |
| Rescission: Escape from the Deal | |
| 33. | 763-777 |
| Attorney's Fees, Minimum Damages, Punitive Damages | |
| 34. | 777-794; 797 note 3 to 798 before Morrow; 801 (notes 5-6) |
| Arbitration, Small Claims Courts | |
| 35. | 802-820, 828-830 |
| Class Actions | |
| 36. | 830-845 (note 2), 848-850 notes 6, 8 & 9 |
| 37. | 850 (note 10) - 854 |
| Public Agencies | |
| 38. | 820-828, 153 n.15 |
| Review and Synthesis | |
| 39. | |

The Consumer Rights Act 2015 is an Act of Parliament of the United Kingdom that consolidates existing consumer protection law legislation and also gives consumers a number of new rights and remedies. Provisions for secondary ticketing and lettings came into force on 27 May 2015, and provisions for alternative dispute resolution (ADR) came into force on 9 July 2015 as per the EU Directive on consumer ADR. Most other provisions came into force on 1 October 2015. I joined Kingston University as Professor of Sociology and Gender Studies in 2014. I am normally module leader for two new undergraduate courses: How to Change the World (L5) and War and Society (L6). In 2018-9 I have a Leverhulme Research Fellowship. I began my working life as a journalist and photographer at Searchlight, the anti-fascist magazine founded in the 1970s. After that I worked intermittently as a freelance writer, with a spell as researcher for a feminist NGO specialising in the design of the built environment. Following the publication of my book *Beyond the Pale* (1991) I taught a Stephen Weatherill is the Jacques Delors Professor of European Law. He also serves as Deputy Director for European Law in the Institute of European and Comparative Law, and is a Fellow of Somerville College. S R Weatherill, 'Justification, Proportionality and Consumer Protection' in P. Koutrakos, N. NicShuibhne and P. Syrpis (eds), *Exceptions from EU Free Movement Law: Derogation, Justification and Proportionality* (Bloomsbury/ Hart 2016). S R Weatherill, 'The Lex Sportiva and EU Law: the academic lawyer's path before and after Bosman' in A. Duval and B. Van Rompuy (eds), *The Legacy of Bosman: Revisiting the Relationship between EU Law and Sport* (Asser International Sports 2016).