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A Primer on the Law of Deceptive Practices

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BOOK REVIEWS

A PRIMER ON THE LAW OF DECEPTIVE PRACTICES. By Earl W. Kintner.¹ New York: The Macmillan Company. 1971. Pp. xiii, 593. \$10.95.

The general practitioner will find Mr. Kintner's book a valuable research tool. The author facilitates an understanding of the subject matter with a relaxed writing style combining the historical narrative and case study methods. The result is a strong analysis of and an excellent foundation in the law of deceptive trade practices.

The author first guides the reader on a quick-paced tour of common law relief from commercial torts to the adoption of "Printer's Ink" statutes in forty-four states.² The public clamor that resulted in the widespread adoption of the "Printer's Ink" statutes reached its climax in 1914 with the passage of the Federal Trade Commission Act.³ Section five of the Act contains the central prohibition: "Unfair methods of competition in commerce . . . are declared unlawful."⁴ The Federal Trade Commission [hereinafter referred to as FTC] was given the authority to determine what constituted an unfair practice.

The author points out that the FTC's jurisdiction over advertising may well be described as a "fortuitous by-product," since it was originally thought by many that the Commission was limited to enforcement of federal anti-monopoly policy.⁵ Had these early commentators been correct, the FTC would not be the viable consumer protection agency it is today.

Since the establishment of the FTC nearly sixty years ago, the change in the law of the market place has been drastic. No longer is the consumer at the mercy of the merchant. Instead, a consumer's market is rapidly developing. Mr. Kintner devotes the majority of the book to categorizing those practices that have been determined unfair or deceptive. After establishing these categories, the author examines, in a brief, yet thorough, manner, the state of the law in each area. Several of Mr. Kintner's topics are of particular interest to the general practitioner, *i.e.*, deceptive credit practices, warranties, and guarantees.

¹ Former general counsel for the Federal Trade Commission and member of the FTC Advisory Council.

² Many of these statutes were based on a model fair advertising statute proposed around 1911 by *Printer's Ink Magazine*. West Virginia's statute may be found in W. VA. CODE ch. 61, art. 3, § 38 (Michie 1966).

³ 15 U.S.C. § 41 (1970).

⁴ *Id.* § 45(a)(1).

⁵ *E.g.*, G. HENDERSON, THE FEDERAL TRADE COMMISSION 339 (1924)..

Mr. Kintner discusses Title I of the Consumer Credit Protection Act, known as the Truth-in-Lending Act.⁶ It is the most important piece of federal legislation dealing with deceptive credit practices. The Truth-in-Lending Act requires two significant disclosures of interest to the average practitioner. The creditor is required to disclose the finance charge⁷ (the cost of the credit) and the annual rate⁸ (the eighteen percent that is becoming so familiar).⁹

The scope of the Act was broadened by Federal Reserve Regulation Z¹⁰ to encompass any person or organization who in the ordinary course of business regularly extends or arranges for the extension of credit to consumers, if a finance charge is imposed or if payment is to be made in more than four installments. To insure that the intended protection is afforded the consumer, the required disclosures must be made before the obligation is incurred.¹¹ With open-end credit,¹² the disclosures must be made when the account is opened or before it is first used.¹³ Rescission is available as a remedy to the deceived consumer.¹⁴

The author devotes considerable effort to the area of warranties and guarantees. His summary and overview provide a concise, yet complete, survey of the law from the common law's privity of contract,¹⁵ through *Henningsen v. Bloomfield Motors, Inc.*,¹⁶ to the Uniform Commercial Code¹⁷ and the strict liability standard of the California court in *Greenman v. Yuba Power Products, Inc.*¹⁸ He

⁶ 15 U.S.C. § 1601 (1970).

⁷ *Id.* § 1631.

⁸ *Id.*

⁹ The normal finance charge on charge accounts is 1½% per month or 18% per annum. These finance charges have been held to be "time-price differentials" and, therefore, not illegal as usurious. *Standard Oil Co. v. Williams*, 288 N.E.2d 170 (Ind. 1972).

¹⁰ 12 C.F.R. § 226 (1972).

¹¹ *Id.* § 226.7.

¹² 15 U.S.C. § 1637 (1970). "Open-end credit" exists where the consumer is permitted "to make purchases or obtain loans by using a credit card or other similar device. The customer has the privilege of paying the balance in full or in installments, in which case a finance charge is computed at intervals on the outstanding balance." E. KINTNER, A PRIMER ON THE LAW OF DECEPTIVE PRACTICES 337 (1971).

¹³ 12 C.F.R. § 226.7 (1972).

¹⁴ *Id.* § 226.9.

¹⁵ *Chandelor v. Lopus*, 79 Eng. Rep. 3 (Ex. 1625).

¹⁶ 32 N.J. 358, 161 A.2d 69 (1960). *Henningsen* established the principle of an implied warranty of merchantability, i.e., that goods are fit for the ordinary purposes for which they are sold.

¹⁷ UNIFORM COMMERCIAL CODE §§ 2-213 to 2-215, 2-318.

¹⁸ 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962). *Greenman* held that a manufacturer is strictly liable in tort when an article he places on

states that recovery for breach of warranty or contract, despite the looming presence of the FTC, must be predicated upon state law.¹⁹ The regulations of the FTC are used solely to curb deceptive practices.

Lawyers will find that Mr. Kintner covers areas of everyday concern, ranging from interference with a competitor's business to offers of free goods and contests. For the attorney who practices preventive law, this book is a must.

*Edward D. McDevitt**

THE MODERN SUPREME COURT. By Robert G. McCloskey.¹ Cambridge: Harvard University Press. 1972. Pp. x, 376. \$12.95.

At the time of his death in 1969, Robert G. McCloskey had achieved preeminence as a scholar of the history and politics of the United States Supreme Court. His lectures caused indifferent undergraduates to burst into enthusiastic applause; his books and articles inspired beginning students and veteran Court-watchers with their erudition and wisdom. He was asked to write the foreword to one of the Harvard Law Review's annual surveys of the Supreme Court's work,² an honor almost never granted to a political scientist. Professor McCloskey's scholarship was especially valuable for two reasons. First, he never let the reader fall into the trap of believing that Supreme Court history was irrelevant to present day problems of power and judgment; nor did he try to convince the reader that every crisis faced by the present Supreme Court was the exact analogue of a problem confronted by the Marshall, Taney, or Fuller Courts. Second, he never attempted to disguise his disagreement with substantive decisions of the Court. Unclouded by envy of the Justices' power or disdain for the results of their activity, Professor McCloskey's criticisms are perhaps the most incisive and significant of any contemporary writer.

At his death, Professor McCloskey was at work on a book cover-

the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being.

¹⁹ The latest word on the law in West Virginia is found in Cady, *Law of Products Liability in West Virginia*, 74 W. VA. L. REV. 283 (1972).

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¹ Late Jonathan Trumbull Professor of American History and Government, Harvard University.

² McCloskey, *Foreword: The Reapportionment Case, The Supreme Court 1961 Term*, 76 HARV. L. REV. 54 (1962).