

LAW AND CONTEMPORARY PROBLEMS

VOLUME 33

AUTUMN, 1968

NUMBER 4

FOREWORD

This symposium is stimulated primarily by the appearance of the Uniform Consumer Credit Code (UCCC),¹ which emerged last summer after several years of drafting undertaken under the auspices of the National Conference of Commissioners on Uniform State Laws. The editors would like to think that this drafting effort was in part a consequence of advice offered by our predecessor in these pages in 1954 on the occasion of an earlier symposium on consumer credit.² Indeed, this is the third venture of *Law and Contemporary Problems* in this field,³ and the cumulative result is an enlightening history of the emergence and changing character of a problem and of the operation of legislative mechanisms in dealing with it.

The developments since the 1954 volume which are catalogued in this symposium include most notably the remarkable growth of consumer credit; from 1954 to 1968 outstanding consumer credit grew from \$38 billion to over \$100 billion, suggesting how the subject has transformed itself from one primarily of small loan laws and loan sharks to one of much wider dimensions. Of particular importance also is the recent entry of the federal government into the field by the enactment of the Consumer Credit Protection Act of 1968 (CCPA),⁴ which deals primarily with the uniform disclosure of interest rates and terms. Finally, the UCCC is now being considered by state legislatures and promises, if widely enacted, to assure that a new chapter in the history has begun.⁵

The new regulatory pattern that is emerging in the CCPA and the UCCC is of special interest because, unlike most regulatory schemes, it evidences a substantial faith in the market, providing a corrective for market imperfections rather than a substitute for market forces as the means of determining prices and quality of service. Thus, while a considerable amount of new regulatory machinery is being

¹ All citations to the UCCC in the symposium are to the 1969 Revised Final Draft as approved by the Special Committee on Retail Installment Sales, Consumer Credit, Small Loans and Usury, and the Executive Committee of the National Conference of Commissioners on Uniform State Laws, pursuant to authority granted to those committees by the Conference. This draft was prepared in light of the exemption requirements of the federal Consumer Credit Protection Act § 123, 82 Stat. 152 (1968), and the final regulations issued by the Federal Reserve Board, Regulation Z, 34 Fed. Reg. 2001 (1969).

² Kramer, *Foreword*, in *Symposium—The Loan Shark Problem Today*, 19 LAW & CONTEMP. PROB. 1 (1954).

³ See also *Symposium—Combating the Loan Shark*, 8 LAW & CONTEMP. PROB. 1 (1941).

⁴ 82 Stat. 146-164.

⁵ To date the UCCC has been enacted in one state (Utah, H.B. 2000, to take effect July 1, 1969), introduced in 23 state legislatures, and set for careful study in 4 others. See P-H CREDIT UNION GUIDE ¶ 6.1 (1969).

introduced, at least as much is expected to be accomplished by deregulation as by new controls. Reduced restraints on entry and less constrictive rate ceilings, together with more complete and uniform disclosure, are the chief themes of the UCCC, and the object of all three thrusts is to improve the workability of competition in consumer finance.

Objections to the UCCC are inevitable, and those most sympathetically received will have to do with the Code's failure to provide a sure remedy for the credit problems of the low-income consumer. The generalized arguments may run as follows: reliance on disclosure presupposes a degree of sophistication not found among the poor; raising interest ceilings to as high as thirty-six per cent per annum invites new abuses; reliance on competition is naive; and creditors' remedies are too effective and potentially unfair to the debtor lacking legal counsel. Beyond these general assertions, but pursuant to the last, are criticisms of the Code's failure to incorporate specific provisions adjusting the remedies available to both debtor and creditor and to limit more substantially certain practices of creditors; and indeed the Code does fail to go as far in some of these directions as legislation already enacted in some states. Nevertheless, while some of these more specific objections are cogent, all of these questions must be resolved in the light of a lesson in counterproductivity which should have been learned from the experience with usury laws and the loan shark: ceilings on interest rates and restrictions on debt collection can tend as much to deprive the poor of credit altogether, at least from law-abiding lenders, as to protect them from overreaching. The UCCC's greater emphasis on competition and policing the unscrupulous seems appropriately placed. Supplemented by consumer education and better legal representation for the poor, the UCCC should provide something approaching an optimal balance of credit availability, low cost, fairness, and efficiency.

Finally, it is necessary to disclose here, for the benefit of those who wish to discount the Editor's endorsement of the UCCC, that his father, Harold C. Havighurst, was a member of the drafting committee that produced it. It is also necessary for the Editor to acknowledge, with special gratitude, the advice he received from this source in conceiving and planning the symposium.

CLARK C. HAVIGHURST.

April 1, 1969.