Gordon Borrie
Disclosure Requirements to Consumers Within Contractual Relationships in English Law

Abstract
This paper examines the question of what information has to be given under English law to the consumer by the supplier of goods or services. It begins with a historical approach showing that the general rule has been that no information has to be given to the consumer. Progress has, however, been made by the law in two ways. Firstly, by ensuring that where there are contractual terms, they are less one-sided than they would be if the supplier's term always prevailed. Exemption clauses have been banned or restricted by Acts of Parliament in 1973 and 1977. Secondly, by requiring suppliers (or persuading them through self-regulatory codes of practice) to give more information to consumers. The greatest progress has been made in instalment credit, especially under the Consumer Credit Act 1974.

The general rule in English law is that the supplier of goods and services has no obligation to give to the consumer, orally or in writing, any information as to the goods or services being supplied or the terms on which they are being supplied. Generally speaking, contracts for the supply of goods or services do not have to be in writing and there is no requirement that the terms on which a contract is made have to be set out in writing. Indeed, the consumer is very often better protected by law if there are no written terms of contract because, where written terms are drafted by the trader or on the trader's behalf by a trade association, they may include terms which are onerous to the consumer whereas the absence of written terms has enabled the courts to indicate the terms that should apply through the device of implied terms. Certainly, written contracts, often in standard form (contrats d'adhésion) are unlikely to represent a fair balance between the interests of the trader and the interests of the consumer. The history of developing consumer protection in Britain has been a history of intervention by the courts and by Parliament to redress this lack of balance, and to a more limited extent, to require the provision of more information to consumers.

Looking at the subject from a historical perspective, it is convenient to specify five stages of development (to some extent overlapping in time) by which the consumer has been given by the courts and Parliament the benefit of contractual terms that are more favourable to him and information about these terms.

1. Where the oral or written contract does not specify the trader's obligations to the consumer, and there is subsequently a dispute between the trader and the consumer, the courts have been prepared to "imply" a term of contract on which the parties will be presumed to have agreed.

2. Where a written contract (including notices exhibited to the consumer) purports to exempt a trader from such an implied term of contract, the courts have developed rules to limit the effect of such "exemption clauses" but the courts have also allowed the terms to be enforced against consumers although the consumer has been given inadequate information about them.
3. Parliament has required or encouraged information, especially as to the terms of contract, to be given in writing to the consumer.

4. Parliament has nullified or restricted the effect of exemption clauses which seek to enable a trader to exempt him from his normal legal liability.

5. Britain's international obligations have required detailed information to be given to consumers in relation to certain contracts.

This paper seeks to comment on each of these five stages of development.

**IMPLIED TERMS**

In the nineteenth century the Common Law doctrine "caveat emptor" prevailed. It may be a cherished adage of the consuming public that the customer is always right, but in the eyes of English law this saying has never been significant. Far greater emphasis was placed by the courts on the maxim "caveat emptor" - let the buyer beware - which had its origins in the Middle Ages when goods were openly displayed in the market place and it was taken for granted that the buyer relied on his own judgement.

In the nineteenth century the courts began to appreciate that sometimes the buyer did not have an opportunity to examine the goods before sale and developed some important exceptions to the "caveat emptor" doctrine. Sir William Best, Chief Justice of the Court of Common Pleas, said in the 1829 case of Jones v. Bright: "If a man sells an article he thereby warrants that it is merchantable - that is, fit for some purpose. If he sells it for a particular purpose he thereby warrants it fit for that purpose." This view was not universally accepted by the judges but the development of judicial precedent in later years followed Sir William Best's view that even when the seller of goods made no express promises about the goods, there should be implied terms to the effect that the goods were merchantable and reasonably fit for the purpose for which they were bought. Parliament in 1893 passed the Sale of Goods Act and that Act, which still today constitutes the basic English law on the subject, embodied these basic exceptions to the "caveat emptor" doctrine. The Act also specified that where goods are sold by description, there is an implied term that the goods shall correspond with that description.

Thus, Parliament followed in the footsteps of the courts and specified implied terms in sale of goods contracts, favourable to the consumer, on which the parties were presumed to have agreed. The same sequence occurred in relation to contracts of hire purchase (instalment credit) that became significant in this century. First the courts and then Parliament, in the Hire Purchase Act 1938, specified implied terms on which the parties were taken to have contracted. Since the Supply of Goods (Implied Terms) Act 1973, the terms in sale contracts and in hire purchase contracts have been reformulated so that they are identical save for necessary differences in nomenclature to identify the parties to the contract.

In contracts for services, the courts have developed the law by establishing precedents on the duty owed by the trader to the consumer but Parliament has not yet enshrined such duties in the form of a statute. Where a person gives possession of his goods to another for purposes of cleaning or repairing or carriage, the contract is one of bailment and the courts have for many centuries held that, if the service is