



# TRADING LAW BULLETIN

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### CONSUMER CREDIT

**Employees.** A firm of Solicitors employed an assistant Solicitor and the contract of employment provided for commission to be payable and for payments of salary in advance of the commission which was anticipated. The County Court Judge held that the claim for repayment of the advances when the commission did not materialise constituted credit and therefore an unenforceable consumer credit agreement. The Court of Appeal overturned the decision holding that the time to determine whether the agreement was within the 1974 Act or not was when the agreement was made. At that time it was not known whether there would be a shortfall of salary against commission and therefore there was no credit (*McMillan Williams v. Range*, 17th March 2004).

**Proper law.** A claim to recover monies under a loan agreement raised the question of the proper law of the agreement. It provided that it was to be governed by English law, but the Defendant maintained that nevertheless the loan agreement was illegal as a matter of French law. The High Court held that the law applicable to contractual obligations gave the parties a freedom of choice and French law did not apply (*Caterpillar Financial Services v. SNC Passion*, 19th March 2004).

**Proper law.** An agreement provided that it was to be governed by English law but that was subject to the principles of the "Glorious Sharia'a". The Court of Appeal held that there was no reference to identification of the principles intended to be incorporated and therefore they were inevitably repugnant to the choice of English law (*Shamil Bank of Bahrain v. Beximco Pharmaceuticals Limited*, Times, 3rd February 2004).

### FOOD

**Condemnation.** If food is brought before a

Justice of the Peace for condemnation and it was found that it did not comply with the food safety requirements there was no discretion as to whether to condemn it or not (*R (on the application Food Standards Agency v. Brent Justices*, 27th February 2004).

**Herbal remedies.** The Secretary of State for Health prohibited the sale of Cava-Cava. A challenge to this decision in the High Court was dismissed. The information provided to the primary decision maker had been adequate and appropriate (*National Association of Health Stores v. Secretary of State*, 19th December 2003).

**GM foods.** The Regulations in respect of genetically modified foods come into force on 18th April 2004.

**Adulteration.** A Crown Court hearing an appeal from convictions by the Magistrates, dismissed a company's appeal in respect of adulterated spirits in a wine bar. The Court said that no checks had been conducted except on a change in management. However, the appeal of the licensee who reasonably acted in accordance with the company policy, was allowed because of the due diligence defence (*Six Continents Limited v. Cheshire CC Trading Standards*, TS Today February 2004).

### ANIMALS

**Removal.** A local authority did not have power to remove cattle from a Defendant's land when a disqualification order had been made by a Magistrates' Court (*Worcester CC v. Tongue*, 17th February 2004).

**Point of entry.** A local authority appealed by way of case stated from a decision by a District Judge that the Defendant, which operated trains from France to Great Britain, had not landed a dog outside of Great Britain. The High Court

allowed the appeal. The Judge had been correct to find that the deemed landing in the control zone in Paris was to be read in addition to the subsequent actual landing in London. However, the offence was one of strict liability and the Defendant had been properly prosecuted as a primary party (*Corporation of London v. Eurostar UK Limited*, 20th January 2004).

### **CONSUMER SAFETY**

**Furniture.** The High Court held that the Magistrates had ruled incorrectly in concluding that an ignitability test used by the local authority satisfied the 1988 Furniture and Furnishings (Fire) (Safety) Regulations (*Northumberland CC v. PR Manufacturing Limited*, 30th January 2004).

### **SALE OF GOODS**

**Car Registration Number.** If a personalised registration mark was mistakenly sold with a car, it should be returned and if not, damages were payable (*MacDonald v. Coys of Kensington*, 5th February 2004).

### **UNFAIR TERMS**

**Housing.** The Court of Appeal held that the Unfair Terms Regulations 1999 applied to contracts relating to land and to local authorities in respect of functions under the Housing Act 1996 Part VII (*Newham LB v. Khatun*, NLD 24th February 2004).

**Building Contracts.** A JCT standard term contract provided for adjudication procedure in the event of dispute. Following adjudication the Defendant did not comply with the decision and asserted that the adjudication clause was unfair under the 1999 Regulations. The Technology and Construction Court said that the clause did not contravene the requirements of good faith and was not unfair (*Westminster Building Co Ltd v Andrew Beckingham* NLD 4TH March 2004).

**Estate Agents.** The High Court ruled that the 1999 Regulations applied to a contract for estate agency services and that a provision for commission at a higher rate in the event of default in payment was unfair (*Bairstow Eves London Central Limited v. Smith*, NLD, 20th February 2004).

### **SUNDAY TRADING**

**Notification.** The requirement to notify the local authority in respect of large shops is removed by the Regulatory Reform (Sunday Trading) Order 2004.

### **ENVIRONMENT**

**Waste Management.** The Divisional Court allowed an appeal from a conviction of failing to prevent the escape of waste. An employee had deposited two bin liners of waste on adjacent premises contrary to the employer's orders. The Court held that the word "escape" was not apt to include the deliberate deposit of waste (*Gateway Professional Services v. Kingston-upon-Hull*, NLD, 8th March 2004).

### **UNSOLICITED GOODS**

**Winding up.** The High Court granted a winding up order against a company which employed telesales personnel who sold advertising space in publications by means of unsolicited telephone calls (*Supporting Link Limited*, NLD, 19th March 2004).

### **MISLEADING ADVERTISEMENTS**

**Injunctions.** The Office of Fair Trading complained that unsolicited faxes were being dispatched by the Defendants and they contained misleading advertisements. The High Court granted an injunction because there were very serious issues to be tried as to whether the wording was misleading within the terms of the Control of Misleading Advertisements Regulations 1988 (*DG Fair Trading v. Planet Telecom Plc*, 6th March 2002).

### **TRADEMARKS**

**Plea of guilty.** The Court of Appeal dismissed an appeal where the Defendant had pleaded guilty to offences under the Trademarks Act 1994 Section 92. After the plea of guilty the prosecution indicated an intention to pursue confiscation proceedings. The Court said that the Judge had exercised his discretion not to allow a withdrawal of the plea correctly (*Parvey Sheikh*, 8th March 2004).