

LM - 2015 - COMPETITION AND CONSUMER LAW

2015-16

Every student of this course is required to present a paper in the class for discussion on a topic assigned by the teacher teaching the course. No student shall be permitted to appear in the examination unless a certificate is issued by the teacher that the paper presented by the student was to his/her satisfaction.

Every Student in this course is required to submit a Term Paper carrying 20 marks for valuation latest by 30 April 2011.

The topics and readings given below are not exhaustive. The examiner shall be free to set the question paper from any area relevant to the title of the course.

A - The Consumer Protection Act, 1986

1. Objects and Reasons, Scope and Applicability, Definitions - complainant, complaint, consumer, defect, deficiency, goods, manufacturer, service, spurious, restrictive trade practice, unfair trade practice.
2. Consumer Disputes Redressal Agencies, Three-tier-structure
District Consumer Disputes Redressal Forum, State Consumer Disputes Redressal Commission, National Consumer Disputes Redressal Commission - Constitution, Powers, Jurisdiction, Procedure, Appeals - Nature of relief which can be provided by the consumer disputes redressal agencies including Cease & Desist Order, Compensation and Corrective Advertisements, etc.
3. Meaning and scope of service - Splitting the definition of service into three parts - the main part, the inclusionary part and the exclusionary part, i.e. rendering of any service free of charge or under a contract of personal service. Medical Services rendered by medical practitioners, Government Hospitals/Nursing Homes and Private Hospitals/Nursing Homes - whether service rendered free of charge would make the patient a 'consumer'?

Cases

5. *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243.
6. *Indian Medical Assn. v. V.P. Shantha*, AIR 1996 SC 550.
4. Unfair Trade Practices : Meaning and scope of the expression "unfair trade practice".

(a) General Definition

Unfair method or unfair or deceptive practice - scope of unfairness standard, Deceptive Practice - Deceptive to whom - Basic Rules of General Application for determining the meaning of a representation. The puffing privilege reference to section 5 of the U.S. Federal Trade Commission Act, 1914.

(b) Specific categories of Unfair Trade Practices

- (i) False and misleading representations occurring in connection with promotion of goods and services such as:

- False Representation about particular standard Grade, Quality, Quantity, Composition, Style and model.
 - False Representation that goods are new
 - False Representation that supplier has sponsorship or approval or affiliation.
 - False or Misleading Representation Concerning the needs for or usefulness of any Goods or services.
 - Misleading and illusionary Guarantees/Warranties
 - Misleading statements concerning prices
 - Disparaging the Goods, service or trade of others
- (ii) Bait Advertising
- (iii) Offers of Gifts, prices and conduct of promotional contests and lotteries - withholding information about results of schemes offering gifts/prizes.
- (iv) Non-compliance of standard prescribed to reduce risk of injury.
- (v) Hoarding/Destruction of goods.
- (vi) Manufacturing/offering spurious goods.

B. Rule of Reason

2. Restrictive Trade Practice - Conceptual Analysis - Rule of Reason ✓

- (A) General Definition of RTP - Anti-competitive effect - 'rule of reason' and 'per se' rule - Reference to section 1 of U.S. Sherman Act, 1890 & Provision of MRTP Act. ✓
- (B) Deemed Restrictive Trade Practices - such as Territorial restrictions, Tie-up sales, Full-line forcing, Exclusive Dealings, Resale Price Maintenance, Uniform conditions of sale/purchase, Discriminatory discounts and ring-tendering/bidding, etc. ✓

Cases

1. *Mahindra & Mahindra Ltd. v. Union of India* (1979) 2 SCC 529.
2. *Tata Engineering Locomotive Co. Ltd. v. RRTA*, AIR 1979 SC 973.
3. *Voltas Ltd. v. Union of India*, A.I.R. 1995 SC 1881.

Note:

As per the Competition (Amendment) Act, 2009, all cases, investigations and proceedings which were pending before the MRTP Commission including those subsequently transferred to the National Consumer Disputes Redressal Commission under the Consumer Protection Act, 1986, shall be adjudicated or conducted by the Competition Appellate Tribunal (CAT) established under the Competition Act, 2002 in accordance with the MRTP Act as if that Act had not been repealed.

C - THE COMPETITION ACT, 2002

1. Legislative History: Report of the High Level Committee on Competition Policy and Law; Need for a competition policy and its pre-requisites; Objects and reasons of the Competition Act and its applicability; definition of terms; Appreciable Adverse Effects on Competition (AAEC) - effects doctrine

2. Prohibition of anti-competitive agreements; Horizontal and vertical agreements; Prohibition of abuse of dominant position; Regulation of combinations; Acquisition, merger, amalgamation - types of mergers; factors to determine AAEC

3. Institutional Framework: Competition Commission of India (CCI); Director General of Investigation (DGI); Competition Appellate Tribunal (CAT) - Constitution, powers, Procedure.

PREScribed READINGS

1. S.M. Dugar, *Commentary on the MRTP Law, Competition Law and consumer Protection Law* (4th ed., 2006)
2. J.N. Barowala, *Commentary on The Consumer Protection Act* (2008).
3. V.K. Agarwal, *Consumer Protection - Law and Practice* (6th ed., 2006).
4. Abir Roy and Jayant Kumar, *Competition Law in India* (2008).
5. Rajyalakshmi Rao, *Consumer is King* (2009).
6. S.N. Phukan, *Consumer Court Cases* (5 volumes) (2009).
7. Yang-Ching Chao et. Al. (eds.), *International and Comparative Competition Law and Practice* (2001).
8. *Report of the High Level Committee on Competition Policy and Law* (2000)
9. Advocacy Booklets on *Bid Rigging, Combinations, Cartels, Abuse of Dominance* (available at www.cci.gov.in)
10. Aditya Bhattacharjee, "India's New Competition Law: a Comparative Assessment", *Journal of Competition Law & Economics*, 2008, Vol. 4, No. 3, pp. 609-38.
11. Vinod Dhall (ed.), *Competition Law: Concepts and Practices Relevant for India* (2007)
12. T Ramappa, *Competition Law in India: Policy, Issues and Developments* (2009)