



## Access to Justice for the Chinese Consumer: Handling Consumer Disputes in Contemporary China

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Taken as a whole, this is a rich and wide-ranging volume that contains reflections on a much-loved person, and thoughtful ruminations over a broad range of topics, principally in dispute resolution, that occupied so much of Derek's life. As the Contributing Editors put it, no single volume can hope to do justice to him, but it is hoped that the book will keep his memory alive and his erudition forever available. In this, there is no doubt the objectives of the book have been well met.

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**Access to Justice for the Chinese Consumer: Handling Consumer Disputes in Contemporary China**, by Ling Zhou, Oxford, UK, Hart Publishing, 2020, 192 pp., £ 55, ISBN 978-150-9931-057

For a long time, the development of consumer protection law was mainly an idea of Western countries. Consumer protection law began its triumphant advance in the 1960s in the US, and later spread to Europe and other Western countries in the 1980s. In the meantime, it can certainly be said for these legal systems that consumer protection law has become an integral part of their (private) law. As the European Union (EU) shows, consumer protection law with its legal innovations is often the engine for the further development of the *entire law*. In addition, the regulatory density of consumer protection law is often very high and continues to increase, as the numerous recent regulations and directives in the EU testify (see e.g. the Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services or the Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods).

The idea of consumer protection has in the meanwhile also become an integral part of *legal research*. This is impressively demonstrated by the numerous relevant publications and the journals specifically dedicated to consumer protection law such as the *Journal of European Consumer and Market Law*, the *International Journal on Consumer Law and Practice*, *Verbraucher und Recht* or the *Tijdschrift voor consumentenrecht*. It is certainly no exaggeration to say that the academic study of consumer protection law is part of the standard repertoire of legal scholarship in the Western world.

While for a long time the focus of research was more on substantive consumer protection law, the question of its *effective enforcement* now also plays a very central role. For if it is not effectively enforced, consumer protection law remains purely 'law in the books' and at best a 'fleet in being', without having any real significance in legal reality. The threat that consumer protection law will ultimately be no more than 'purely symbolic legislation', or at least mutate into such over time, should not be underestimated. This is due, among other things, to the

typical nature of consumer disputes themselves, as consumers are often subject to a phenomenon known as rational apathy: weighing up both their time and financial means, they simply decide that it is not worthwhile for them to pursue their claims. To counteract this rational apathy problem of consumers, many ideas are being discussed and partially implemented in Western countries, such as the introduction of consumer class actions.

However, when one looks at the development of consumer protection law in Asia and especially in China, a different picture emerges. The idea of consumer protection could only emerge as a result of the post-Mao economic reforms that have shifted the emphasis from state planning to market-based economy. The Chinese Consumer Protection Law was introduced in 1993 (revised 2013), followed by other laws on specific consumer-related topics such as the Product Quality Law in 1993 (revised 2000), the Advertising Law in 1994 (revised 2015), and the Food Safety Law in 2009 (revised 2015). The development of consumer protection law was not only delayed, but, in China, also received (and continues to receive) significantly less attention compared to the Western world. Chinese consumer protection law has so far not played a very significant role in academic discussions, either in China itself or abroad. This is an unfortunate circumstance due to China's importance as the world's second largest economic powerhouse and the second largest consumer market.

While the lack of Chinese consumer law scholarship is a source of concern, the unease only rises when one turns to the question of its practical enforcement or the Chinese consumer dispute resolution system. Both areas are crucial for the functioning of the Chinese consumer protection law as a whole but has hardly received any real attention, neither in China itself nor elsewhere. Empirical studies on these topics have been sought in vain. This lack of research may seem surprising from the West, but it is a result of Chinese socio-economic conditions and Chinese legal history or, if you prefer, the particular 'characteristics' of Chinese consumer law.

In her book, 'Access to Justice for the Chinese Consumer: Handling Consumer Disputes in Contemporary China', Ling Zhou has also identified these shortcomings in consumer rights research. As part of her PhD research at the Oxford Centre for Socio-Legal Studies, she aims to redress these grievances in this book (p. 3). Accordingly, she states her research approach as follows:

(...) that the book asks, how are consumer disputes resolved in China today, and in particular, in what ways do Chinese consumers pursue their grievances and secure resolution to their disputes? We need not only consider the ways the consumer is protected in law, but also the manner in which consumers are able to bring complaints and resolve their disputes with sellers and others.

The book focuses only on one local, but economically very important area in the South of China, namely the city of Shenzhen, one of the country's powerhouses. In order to address the mentioned research question, the author employs qualitative research methods. During one year of fieldwork, she conducted participation observation and in-depth interviews in Shenzhen with important consumer groups and administrative bodies. Therefore, Ling Zhou's monograph is ambitious, as it is not only restricted to substantive consumer protection. It also covers (alternative) consumer dispute resolution, socio-legal studies, and Chinese legal developments as a whole.

The book is divided into eight chapters and follows a clear train of thought. The first chapter introduces the topic on 18 pages, emphasizing both the lack of Chinese and foreign research on Chinese consumer protection law and its enforcement. The second chapter outlines consumer protection law in China and its problems and challenges. Despite its economic progress, China remains a socialist state with a long tradition of paternalistic governance. Thus, it is particularly interesting to see how the notion of a consumer with rights and interests (*quanyi*) is

understood in modern-day China law. The author also examines whether the concept of 'the consumer citizen' has emerged in China – as it has in the western world in. The statements in this chapter are well explained and convincing. Yet, it is not entirely clear as to what the author means by the term 'access to justice', which is after all a very central concept for her project. One might have wished for a more precise definition of this shimmering term in either the first or second chapter.

The chapters three to seven of the monograph discuss findings based primarily on the author's fieldwork in Shenzhen. In chapter three, Ling Zhou describes the structure, operations and methods of consumer dispute resolution bodies (the *Shenzhen Consumer Council* and the *Market Supervision Administration Bureau*) through the data she gathered. She shows the reader how Chinese consumers choose the forum for securing redress in practice, what processes they go through, and eventually how these bodies handle consumer complaints. Very insightful in this chapter are the author's findings on the Chinese understandings of 'mediation', which are culturally very distinctive from those of the Western world. Ling Zhou impressively shows that the preferred style of 'mediation' in China is one that is highly interventionist and judgmental in regard to the parties' conduct. This outcome might surprise lawyers educated in the West as it seems to be in strict contrast with the Western idea of mediation.

Chapter four then provides for case studies that show how consumers choose the dispute resolution form, how they make complaints and how grievances are normally handled. The chapter offers insights on how consumer cases are handled in the Shenzhen Consumer Council and analyses the language used by consumers, the business defendants and the 'mediators'.

The longest and arguably most important part of the entire monograph is chapter five on the 'Professional consumer or complainant' in consumer disputes as they are indispensable actors of the consumer dispute resolution mechanism in contemporary China. The author calls them a 'new category of actor in consumer protection' (p. 18, 75). Those persons are normally non-lawyers. They possess expert knowledge through 'repeat playing of asserting consumer grievances and report results in officialdom characterizing them as professional complainants/reporters' (p. 75). The author explores not only their style of complaining and reporting, their often-mixed motives in entering this 'work', but also the frequently ambiguous attitude of officials toward their presence and work.

In chapter six, the author examines how consumers seek redress through courts. She therefore explores the relationship between civil proceedings, administrative litigation and other forms of court-focused access to consumer justice in China. Like the preceding chapter, chapter six focuses on the 'professional' complainants, who are regular users of the courts in consumer disputes. In addition, this chapter also provides a study of a normal consumer case in which a lawyer represents the consumer.

In chapter seven with the title 'Going "Public": New Approached in Resolving Consumer Disputes' the author shows the various social and political methods that consumers use to assert their rights. Ling Zhou demonstrates how new, more public avenues are increasingly used to resolve consumer law disputes, such as the media, accessing government information, Chinese Communist Party pressure, the emerging processual possibility of public interest litigation, and online dispute resolution platforms. But more importantly, she points out in the chapter that, unlike many other Western legal systems, China has yet introduced an ombudsman system – neither generally nor specifically for consumer law issues.

In the eighth and final chapter, the author summarizes in an appealing manner the main findings of her research. She concludes that, although the Chinese consumer protection system is primarily based on negotiations mediation carried out in the shadow of

administrative authority, consumers often receive quick and affordable justice because of this system.

With her well-written monograph, Ling Zhou fills an important gap in the literature as it is one of the first empirical studies on how consumer protection laws are actually enforced in contemporary China. Through the lens of dispute resolution, she demonstrates that even in an authoritarian-capitalist system such as China, significant levels of consumer activism can be established, and the idea of consumer protection can flourish in a non-Western society. The author moreover vividly illustrates the particular 'Chinese characteristics' in the enforcement of consumer law in China, such as the country's own understanding of 'mediation', the absence of the ombudsman or the importance of 'professional consumers'.

It is hoped that this work will be the beginning of much more investigation into Chinese consumer protection law in general and its actual practical enforcement in particular. There is still much to be done. However, the author has made a good start.

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