

**A CRITIQUE OF THE LEGAL AND INSTITUTIONAL FRAME WORK FOR  
CONSUMER PROTECTION IN UGANDA**

**BY**

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### DECLARATION

I Tinka Wilfred declare that the research proposal “a critique of the legal and institutional framework for consumer protection in Uganda” is my own original and it has not been presented and will not be presented to any university for a similar or any other degree award.


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**APPROVAL**

This is to certify that this field attachment report has been submitted for examination with my approval as academic supervisor

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**DEDICATED TO**

My father Hon. Tinka Stephen Amooti and my Mother Nightrose Florence Abwooli, Sisters Kamakune Evelyn and Kobusinge Grace, Brothers Mwesige Patrick, Maylean, Dr, Vicent and Mwebaze Stephen for their continuous and unconditional support they have offered me until my success.

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## ACRONYMS

UNBS	Uganda National Bureau of Standards
URA	Uganda Revenue Authority
NDA	National Drug Authority
KCCA	Kampala Capital City Authority
UCPA	Uganda Consumer Protection Association
UCC	Uganda Communications Commission

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## CHAPTER ONE

### INTRODUCTION

#### 1.1 Background of the Study.

In the world and Uganda in particular, everyone is a consumer is so far as everyone uses some item or other made by some other person other than him/herself<sup>1</sup>. The idea of consumer protection is an old one. It is aimed at avoiding deceptive trade practices which victimize consumers and impair the rational allocation of resources. This abuse of consumers is usually due to the defects in manufacturer's products. Consumer protection can be taken to embrace almost anything connected with trade, consumption or even personal safety. It includes the laws relating to exemption clauses, implied terms, privity of contract and many others.<sup>2</sup>

In the recent years we have seen an increase in the volume of legislations to protect the consumers not only against fraud and dishonesty in commercial dealings but also oppressive bargains and harmful products. There is a wide range of statutes for the protection of consumers some of which are of general application<sup>3</sup>. The statutes of general application include, the consumer protection acts 1961, The consumer safety Act 1978, the weights and measures act 1963, the trade descriptive Acts 1968 and 1972, the unsolicited goods and services act 1971, and the fair trading Act 1973 and the consumer credit act 1974. Most of these statutes have broadly similar provisions and to who may be liable and what defenses may be available to a person charged with an offence and as to their general enforcement<sup>4</sup>.

In addition, there are many institutional agencies charged with the enforcement of consumer protection Laws in Uganda. These include the local council courts, Uganda Bureau of standards, urban authorities, inspectorates, censorship committees, consumer protection associations and courts of law.

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<sup>1</sup> D.Mabirizi, ideals and realities in Uganda protection, cases of price control and product liability 1970

<sup>2</sup> Brian Harvey: the law of consumer protection and fair trading 2 Ed. Butterworth London 1982, p4

<sup>3</sup> Phillip.S. James "Introduction to English law" Ed. Butterworth London 1985

<sup>4</sup> Micheal mark, chalmes sale of goods 11<sup>th</sup> Ed. Butterworth London 1981

However despite the presence of these agencies, problems of the consumers are vast. A number of reasons have been advanced to explain the problems, among which is the declining government involvement in protecting the people from threats of hazardous and substandard technologies coming into the market. This is particularly so in the market for chemical, pharmaceutical and similar products, products that have been long banned in the developed world are finding their way into Africa without difficulty. Chemical products like pharmaceutical products that do not meet western standards or these with expired dates are finding ready market in Africa<sup>5</sup>.

In addition the concept of free market that the African countries are encouraging to adopt is creating favorable conditions for unscrupulous business operations to charge high prices. This is a direct result of too little competition in the production and distribution of services.

In addition, there are too many fragments of the law, laws that do not recognize consumer interest but just try to enforce their rights. Other problems are related to the available remedies which do not act as deterrent to further abuse of consumers. Reluctance of the institutions charged with this duty to perform their duties is another reason.

In a newspaper report<sup>6</sup>, Kimera Henry of the Uganda consumer protection association (UCPA) talked of the expired products Ugandans are being fed on mainly bottled and finned products like tomato sauce, juice, blue band and things like chocolate. And in a new vision paper a letter was written inquiring what the bureau of standards was doing. This was in reflection to expiry dates put on some consumables. These among others show the relations to perform their duties for which they were created. The bureau of standard the supposed custodian of quality and quantity is still helpless because it is underfunded and lacks the technical personnel, the necessary equipment and operation funds.

The consumer themselves are very ignorant of their rights and most unfortunately do not seem to be aware of these substandard merchandise on the market shelves. They simply buy after judging them the deceptive beautiful looks of these goods and even when they discover the defect never bother to report such cases.

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<sup>5</sup> The Africa consumer Vol 4 No 4 official publication of consumer international regional office for Africa, (Sep-Dec 1998) p.16

<sup>6</sup> Daily monitor. "KCCA to destroy expired food products" March 8<sup>th</sup> 2015

Therefore consumer protection in Uganda has remained no more than a ideal limited by the realities in Uganda.

### **1.2 Statement of the problem.**

There are a number of laws and institutional agencies charged with consumer protection in Uganda but despite this, consumers still face very many problems. . First of all, the law in Uganda is a mere transplant of the laws developed in England during the feudal era which had different social context from Uganda. Therefore the laws do not reflect the local circumstances and the needs of the consumer in Uganda. In addition the laws have<sup>3</sup> failed to change with change in society and therefore outdated. Most of them emphasize the rights of the consumers but are silent on consumer interest. There is need therefore to investigate the interest of the consumers before making the law so that the laws put in place suit the purpose for which they are created. What is worth noting is that the laws are more inclined to protecting commercial transactions than the ordinary consumer leaving the concept of consumer protection more of a myth than a reality.

The institutions for protection are helpless because they are underfunded; they lack the technical personal, the necessary equipment and operation funds. Some of the institutions like the Uganda consumer protection association marginalize poor consumers because they cannot afford the membership fee which must be paid before one can join the association. The police, the judiciary which is charged with the duty of enforcing consumer laws are corrupt and inefficient and do not discharge their duties.

To make matters worse there is ignorance among the consumers. They are unable to know, unaware of and incapable of enforcing their legal rights as consumers. Uganda market is always full of expired goods, banned drugs and all sorts of other dangerous and inferior merchandise. Unfortunately most consumers do not seem to be aware of these things on the market shelves. This therefore calls for sensitization of the consumers.

The government of Uganda has not taken consumer protection as a priority, government's involvement in protecting the people from threats of hazardous and substandard technologies coming into the market has declined. Government's investment policy like industrialization is at the expense of the consumers.

The concept of free market in African countries and particularly in Uganda are being encouraged to adopt creates of favorable condition for unscrupulous business operations to charge high prices which is a direct result of too little competition in the production and distribution of services and this leaves the majority of consumers in a precarious and weak bargaining position in the market. The remedies provided under the statutes do not act as deterrent to the further abuse of consumers. The fines are too low and the terms of imprisonment too short. These penalties need to be hardened to act as a deterrent against non-compliance.

### **1.3 Purpose of the study.**

To establish ways through which consumer protection laws can be put in effect by drawing examples on the current situation on how far have the current laws and institutional framework been in position to provide and enforce consumer protection in Uganda.

To find out the effectiveness of the laws and institutional framework responsible for consumer protection in Uganda

### **1.4 Scope of the study.**

The study was restricted to Kampala district because most of the enforcement institutions are in urban areas and Kampala in particular. Emphasis was made on the position of the working class and the peasant consumers because they are the majority consumers in Uganda.

### **1.5 Objectives of the study.**

To examine the efficacy of the present laws and institutional framework for consumer protection in Uganda.

To look into the appropriate modes on how best the present laws and institutional frameworks can properly provide for consumer protection and if there need promulgation if new consumer law.

To reviews the effects of the law and the various related laws, their operations and enforcement and reviews the effect of the available remedies to the aggrieved consumers.

To identify the various problems consumers face and the interest of the consumers plus the effects of advertisement on the consumers in Uganda.

### **1.6 Significance of the study.**

The concept of consumer protection in Uganda has remained a mere fantasy of the mind with no or very little enforcement. The study is significant because it will increase government's involvement in protecting the people from threats of hazardous and substandard technologies coming into the market.

The research will make recommendations that will compel policy makers to revise the law as well as stimulate further research to give a lasting solution to the problems of the consumer in Uganda.

And the research will provoke consumer consciousness and solidarity in order to build a consumer power relative to that of manufacturers to redress any imbalance between the organized manufacturers, retailers and the consuming public.

### **1.7 Literature review.**

A few books and scholarly writings have been written on consumer protection in Uganda. quite a number of foreign published literature has been made available for example in libraries like Kampala International University Library and Uganda National Library.

Okoth Owiro, in his article "Redress of Consumer Grievances"<sup>7</sup> puts forward the view that consumer protection laws are inefficient because some laws do not recognize consumer interest but only enforce rights. He further states that the attempt to redress these grievances through legal means is fraught with too many difficulties. He further says that these difficulties arise because some laws are silent on the rights and interest of the consumer.

Shinaaya B, in his article "strengthening the African consumer"<sup>8</sup> is of the view that the ineffectiveness of consumer protection laws is due to the fact that there exists too many fragments in the laws, all of which are meant to protect consumers.

The research agrees with the view that some of the laws are silent on the rights of the consumers in Uganda they include, the national drug act and the Uganda bureau standard act.

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<sup>7</sup> A research carried out on the process and procedure in the Kenyan university of Nairobi

<sup>8</sup> A research presentation at the workshop on the 12<sup>th</sup> Feb. 1998 at Pope Paul memorial centre.

Miller and Lovell in their book "consumer law and practice"<sup>9</sup> are of the view that advertisements are only impressionistic and vague. They are accorded to the salesman and their truth cannot be assessed to any identifiable standard. They further assert that these add nothing to the seller's obligation and reliance on them is unjustifiable.

However the views that these authors express is untrue in reality, consumers are no longer in position to rely on their own judgment this is due to many factors but the role of advertising is too vital and cannot be left out. In Uganda consumers are exposed to a wide variety of goods and services as most of them are used or can be used for the same purpose.

There is a lot of competition because of competition, advertising of products increases and in this way consumers are exposed to a lot of information regarding the products or services.

In such circumstances the buyer has to rely on advertisements when exercising his choice.

Cranston in his book "consumers and the law"<sup>10</sup> seems to get the right position as it today. That advertisements make claims only literally true further that even the literally true statements mislead. They leave out the most important facts needed to influence attitude to the product in question. The fact that there exist many products which can be used for the same purpose. These adverts are meant directly to influence the consumers to buy the products of the maker. The position therefore is that they cease to be vague statements which cannot be relied on.

Today they have a big influence on the consumer's choice similar to that of contractual representation on the qualities or nature of the product. In my view when Miller and Lovell are taken into consideration, it's probable that at the time of publishing their book, 1977 in England traders then applied adverts in the way they were meant to be. These remained as more commercial puffs and vague in their nature today distraction between misrepresentation and puff is very thin, the law has been pushed to its limits and abused by modern advertising method.

Harvey in his book "the law of consumer protection and fair trading"<sup>11</sup> states that the existing law is founded on the principle of "Caveat Emptor" that is buyer beware. He puts forward the view that caveat emptor exists in village markets, most commonly. The researcher agrees with the view

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<sup>9</sup> Sweet

<sup>10</sup> Sweet and Maxwell, London 1977

<sup>11</sup> B. Harvey, 2<sup>nd</sup> Ed London Butterworth 19982



that the law is based on the principle of “caveat emptor” for example the sale of goods act has got provisions which has aspects of caveat emptor for instance the provision that there is no implied condition of merchantable quality where a sale is by patent or trade name.

However the view put forward by the same author that caveat emptor exists commonly in the village market is not true, most especially in developed countries; commerce is common in urban areas with little in village or rural markets. The views that caveat emptor exist commonly in the village markets tend to presume that consumers in urban areas are literate and may not be affected by this principle. However most consumers whether in urban or village markets are illiterate and or ignorant and are likely to be or indeed are affected by the caveat emptor principle.

The same author states that the economies of developing countries are vulnerable to undesirable trade practices because their consumer protection laws are not as sophisticated and complete as those of their developed counterparts.

The researcher does not agree with the view, sophistication of a law is not efficiency. A simple law easy to understand and interpret and is most effective since sophistication can only lead to misrepresentation. If the state of affairs of today’s consumers is taken into consideration, a sophisticated law would be hard to interpret, if so interpreted may be misunderstood.

Allot in his book “The Limits of Law” puts forward the view the message of a norm may be received and misunderstood. This is common with judicial misrepresentation of statutes by ordinary subjects of law who might easily get the wrong message.

Borrie and diamond, in their book “consumer,<sup>12</sup> society and the law” advocate for the removal of the privity doctrine. However they take the view that today’s consumers rely less on the sellers and more on the producers, this is because consumers have become aware of brand names thus will have little regard for the sellers skill. This coupled with advertising should establish a relationship between the buyer and the manufacturer upon which a buyer should be able to sue.

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<sup>12</sup> Politican books. London 1964 p.140

The views expressed by those two authors are true. Purchasers or buyers do not purchase only for their personal consumption but for their families and friends. Secondly, consumers also rely on brand names more than on the seller's skills.

However, those do not state that today sellers have nothing to do with the quality of products but are only a link between the manufacturer or producer and the market/consumers. Therefore to affix liability on the sellers who may not even know the process of production of what he sells is unrealistic.

Crouton and borne and diamond, further argue that the process of claiming compensation where goods are defective is very costly and troublesome to the consumer. It's also intimidating. They are also of the view that the burden of proof on the consumer is too heavy since the consumer has got to establish a duty of care, breach of duty and foreseeability so as to succeed. The researcher agrees with these observations and advocates for the shifting of the burden from the consumer to the manufacturer.

Charles Newdick in the article "the development of risk defense of the consumer protection act 1987" agreed with this view, he asserts that the burden should be on the manufacturers or test which would be proved or reveal the defect.

However this work has got some shortcomings. It is not stated whether the test for other manufacturers would or should be at an international or national level. In law developed countries for example it would be easy for the manufacturer to escape liability since this depends on the level of technology, the manufacturer, where the level is generally low will have little to prove. This also applies where there is a monopoly manufacturer or very few manufacturers.

The scope in which the manufacturer is to compare levels of technology is so limited, where the manufacturer in question has one of the best technology it will be easier to scope liability.

The institutional agency is crucial in consumer protection. It is concerned with enforcement of the law. They have many functions as Cranston, discusses like publishing of information on products and services based on comparative study on the products. They also concern themselves with the representing of consumer interest.

Furthermore, these associations expose business malfeasance and their activity represents the consumer interest by research, media publicity and appearances before courts and regulatory bodies.

It is further stated by Dick western drop in the article "consumer protection in Netherlands" that consumer organizations are established to represent the interests of consumers. They also provide information and other basic education services on matters like advertising, labeling and also on the consumer rights and obligations. They take legal action on behalf of the consumers.

Nanyonga PKT in "Consumer Protection in Uganda"<sup>13</sup> is of the view that the consumer organizations have not properly enforced legislation. This is because the inspectorates or inspectors concerned are not joined up.

While if it is true that organization/inspectorates have not enforced commodity legislations properly, Nayenda as a Ugandan writer should have noted that this is not solely because of Divisions of these organizations.

This as B. Harvey<sup>14</sup> asserts often lack resources of trained staff and general expertise to undertake such duties as may exist in the statute books. In addition as asserted by Cranston, consumer organizations face limitations in their advocacy role because their main focus is in publishing information of immediate benefit to their members, furthermore, that they are not representative of the population because of financial constraints.

While it is true that consumer organizations are limited in their advocacy role, this in the Ugandan situation is not because they are pre-occupied with publishing information. Most of these organizations lack legal power to advocate for the consumer interests. Furthermore as stated by Cranston these are limited financially. This explains why consumer organizations in Uganda today do not extend their functions or activities to the rural areas.

In addition, in Uganda these organizations are still affected by political interference because appointments from government since some of these are government organizations for example the

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<sup>13</sup> Part ii of the law relating to weights and measures: distribution of prices of goods at p.61

<sup>14</sup> B. Harvey 2 Ed London Butterworth 1982

Uganda national bureau of standards and national drug authority. Furthermore they are underfunded therefore cannot properly remunerate their employees, this drives them to corruption where they accept bribes to cover up wrongs. More so these organizations do not seem to work in harmony and have conflicting interest when enforcing their duties.

Conclusively R-A Anderson, in his book <sup>15</sup>“social forces and the law” argues that law should change with society as law seeks to improve its existence in order to attain more closely the standard of justice and morality. The change in law is in turn a reflection of social and economic change.

### **1.8 Methodology**

To obtain as much data as possible, the researcher employed different methods of collection. Inevitably, the opinions of a wide scope of consumer’s questionnaires were issued to the ordinary consumer to establish awareness, interest of the consumer sand their attitude towards the laws and institutions in place.

Interviews mainly with legal personal, law reformers, eminent writers, policy makers, academicians interested in the subject matter, consumer protection authorities as well as ordinary consumers were conducted. This was useful in the discovery of the up to date information which has not been published.

Leading judgments were quoted to find out the judicial position and opinion in this matter.

Library research, news paper reports, papers presented in seminars and workshops, journal articles in the various libraries KIU library, commission Kampala Capital City Authority, Uganda consumer protection and others.

### **1.9 Hypothesis.**

The study acknowledge that various laws and institutions are in place to ensure that the true consumers are protected but;

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<sup>15</sup> Furmston, “law of Contract” p14

(i) The institutional framework and the laws are inefficient and have many loopholes and do not satisfactorily carry out the work for which they were made leaving consumer protection a mere fantasy of the mind with no actual existence.

(ii) The consumers are not aware of their rights and cannot fight for self protection against profiteers who are always ready to use all sorts of schemes to get money.

### **1.10 Chapterisation**

This paper will be divided into five chapters for the purpose of presenting a coherent and systematic in depth critique of the subject matter under study.

#### **Chapter 1.**

This chapter gives a general introduction of the subject matter under study. It gives the statement of the problem as far as consumer protection is concerned, significance of the study, the hypothesis to be tested, the methodology employed, literature review and chapterisation.

#### **Chapter 2**

This chapter unveils the evolution and historical genesis of the phenomenon of consumer protection. This was the general in depth search of the evolution of the concept from continental Europe as far back as the 12<sup>th</sup> century during the feudal era, through the period of the merchants and states, laissez faire and competitive capitalism in Europe (England in particular) until their eventual reception in Uganda. With historical justification to their adoption and growth. The chapter also looks at the justification of the concept in Uganda. The United Nations guidelines for consumer protection and the model law for consumer protection in Africa were also given.

#### **Chapter 3**

This is a critical appraisal of the consumer protection enactments principles and rules of common law that form the laws concerned with the concept of consumer protection. This is because the laws play a very vital role in laying down and enforcing rights of the consumer.

Selected statutes will be looked at, these include, the contract act. The sale of goods act cap 82, the weight and measures act cap 101 (as amended), the foods and drugs act cap 278.

Contractual doctrines that are centered and pivoted around the concept are examined which include: freedom of contract, the exemption clauses and the privity of contract. Finally, the chapter critically discusses the available remedies to the consumers both civil (in tort and contract) and penal remedies.

#### **Chapter 4**

This chapter will lay down a critique of the institutional framework. Institutional mechanisms established by legislation and those directly related to our central concern as assessed in terms of their practical efficacy in protecting the consumers.

These will include bodies sponsored directly by the government like. The Uganda national bureau of standards, the inspectorates, the Kampala Capital City Authority, the Uganda Revenue Authority, (Investigation and Chemist Department) and the government chemist.

Plus assessments of the voluntary consumer organizations like the Uganda consumer protection organization and the media and finally the courts of law.

#### **Chapter 5**

This chapter summarizes the paper's conclusion. This certainly entails an overall conclusion based on the entire discussion in the other chapters.

A summary of the main findings are given from the interviews and questionnaires distributed. Broad recommendations are provided on how to make this concept a reality and measures the main acts that is government policy markers, NGOs (non-government organization), producers and the consumers themselves need to take to ensure protection and efficiency of the laws and the institutions

## CHAPTER TWO

### THE HISTORICAL EVOLUTION OF THE CONCEPT OF CONSUMER PROTECTION

#### 2.0 Introduction

The concept of consumer protection is an old one<sup>16</sup> and if it is clearly perceived that for us to adequately comprehend the present nature and operation of the laws that govern consumer protection, we need to trace rather deeply into their historical origins and how they were eventually adopted and introduced in Uganda.

As M.P. Furmston,<sup>17</sup> rightly put it.

“In a historical system of law change has both to be fitted into the past and if possible justified by reference to it”

Barrie and Diamond in their book, “The consumer society and the law” traced the history of the subject matter and have shown that although the subject is comparatively new, its roots are old.

Phillips S. James asserted

“There is nothing new about consumer protection only the phrase, the idea is older than the ancient law of Rome, which implied warranties of title into conveyances of land and forced slave dealers to warrant the quality of their wares. It is as old as the assize of bread and (1266) which decreed elaborate policing of false measures. As old as the Eyre of London (1321) of which it is recorded that justice approved the arrangement of hatters to enforce the labeling of caps of inferior quality and having fixed the prices for the poultries upon their plea that such low prices would be their ruin were forced to rise them again<sup>18</sup>.”

The law on consumer protection has to change with various changes in the needs of society from the natural economy, feudal era, laissez faire capitalist to today's, society dependant on high technology and industrialization calling for different needs and requirements. Recent years have

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<sup>16</sup> Brian w. Harvey, “The law of consumer protection and fair trading (Butterworth London 1987) p.1

<sup>17</sup> Cheshire and fit foots law of contract, Butterworth, London 1976 9<sup>th</sup> Ed p.16

<sup>18</sup> Phillip.S. James, introduction to English law, 11<sup>th</sup> ed. P.224

seen a rapid increase in the volume of legislation to protect consumers not only against fraud and dishonesty in commercial dealings but also against oppressive bargain and dangerous products.

## **2.1 Emergence of the concept.**

During the early days production was communal, so was consumption<sup>19</sup>. As production techniques improved with the introduction of iron, surplus product was increasingly appropriated to a class of non producers who consolidated themselves into the dominant class which led to class formation, where the producers exploited the consumers. Because of this there was need to protect the consumers and this lead to what is now known as consumer protection.

### **2.1.1 The 12<sup>th</sup> and 13<sup>th</sup> centuries (The Feudal Era).**

This was a period characterized by a state of society in which the main social bond is the relation between lord and man, a relation implying on the lords part protection and defense. on the man's part protection, service and reverence, the service including service in arms. The personal relation is inseparably involved in a proprietary relation, the tenure of land. The man holds for the lord, the man's service is a burden on the land, the lord has important rights in the land and the king at this time was the ultimate lord of all. He granted land to his lords in return for military and other services and they in their turn made further similar grants, the process being known as "subsidization"<sup>20</sup>

Among the protection the king gave his people was the protection form exploitation by the business people. Medieval law abounded in legislation which saw to the protection of consumers, the regulations controlled the prices of commodities and also saw to it that good quality produce was manufactured indeed, even the ancient days of the courts of custom they made it, there were local regulations governing quality generally and quality for food and drinks<sup>21</sup>.

Hamilton<sup>22</sup>, has suggested that medieval food control laws as well as other consumer protection legislation of the time, stood for the religious attitude of the day when under the prevalent church

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<sup>19</sup> F.Engels origins of the family, private property of the state

<sup>20</sup> Roger Bird, Osborn's concise law dictionary (7<sup>th</sup> Ed) sweet and Maxwell 1983

<sup>21</sup> Milson S.F.C historical foundations of the common law 2<sup>nd</sup> Ed, Butterworth London 1982  
p.276

<sup>22</sup> The acient maxim of caveat emptor (1931) 40 Yale Journal p.1113



hegemony everything sinful was frowned upon. He further suggested that it is this religious spirit that sale at extortionate prices and sale of poor quality produce were prohibited for they both stood for dishonesty.

A basic socio- economic characteristic of those days was feudalism under which the main producers were the peasants at the bottom of the feudal pyramid. It should be further noted that as the money economy gathered pace, the sale of producers became for the peasants and important way of making money for meeting his rent and other fees<sup>23</sup>.

In this period the difference between tort and crime was not well pronounced “a false seller” was often liable to action of deceit and trespass in a suit for compensation<sup>24</sup>. Consumer protection machinery was closely linked to them existing units of local government,

Those were the county and the parish. The hierarchy of government would have been expressed as being the king in parliament and locally the official dignitaries of the justices of peace as developed in the 13<sup>th</sup> century were both judicial and administrative<sup>25</sup>.

The statutory provision to enforce weights and measures also has a long history. There is reference to uniformity of measures of wine, ale, cloth in Magna Carta in 1215, the assize of bread and ale of 1266 laid down a scheme to control the amount of bread or ale obtainable for a penny, depending on the current price of wheat, barley or oats. Short weight or poor quality was punishable by affine or in more serious cases flogging.

The attempt to control the weight of bread obtainable for a specific price continued until the bread act 1836 which required bread to be unadulterated and sold by weight.

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<sup>23</sup> Mabirizi, ideals and realities in Uganda’s consumer protection, the cases of price control and product liability p.10

<sup>24</sup> Milson historical foundation P. 276

<sup>25</sup> Harvey law of consumer protection P.1

Milson<sup>26</sup> seems to suggest that there was a remedy of recession available to the consumer of those days; Parry<sup>27</sup> also says that before the common law developed definite contractual remedies, failure to perform was an ecclesiastic offence.

The common law courts gradually extended jurisdiction over contract, the avenue of justice for the consumer as for everybody else was the writ system which was truly rigid for to get a remedy one had to use the particular writ designed to deal with the type of case in question<sup>28</sup>.

### **2.1.2 The 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> centuries (merchant capitalism).**

From around the 14<sup>th</sup> to the 15<sup>th</sup> century, the long night of feudalism began approaching its end due to the growing merchant capitalism. It vanished in the dawn of arising new class that of the merchant. This new class was to color much of the legal developments in consumer protection from this time onwards.

Around the 15<sup>th</sup> century, Christianity was shaken and man's mind was prepared for the reception of the notion of statehood<sup>29</sup>, the crown in the 14<sup>th</sup> century lent its weight in favor of the merchants and the craftsmen royal charters which gave them monopoly powers of trade in the guilds.

Some guild merchants and craftsman became wealthy enough to begin specializing in trade and this leads to the emergence of a wealthy merchant class. Which became potent force in the life of the nation; some of the merchants used their capital to get more capital. It was also possible for them to keep buying up big quantities of commodities, which were on their way to the market reselling them at a higher price and thereby earning a profit by speculation<sup>30</sup>.

There was a similar attempt in this period to control the sale of almost all primary commodities of every life (particularly grain, cloth, wine, cheese, fish, honey, coal, salt, butter). The vital step of penalizing those using unjust balances was taken in the middle of the 14<sup>th</sup> century, towns having common balances and weights in the custody of the major and constable but

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<sup>26</sup> Historical foundation p.375

<sup>27</sup> The sanctity of contract in English law, Stevens London 1959

<sup>28</sup> Furmston "law of contract" P.40

<sup>29</sup> Mandell "Marxist economic theory" p.100

<sup>30</sup> Mabirizi "ideals and realities" p.18

enforcement was sporadic. Excommunication after the archbishop of Canterbury promulgated anathema in 1428 if unequal armed balances were used seemed to prove the most efficacious device<sup>31</sup>.

In the 15<sup>th</sup> century the government really encouraged agriculture and this policy crystallized into the Corn Law which imposed duties on corn export. This law was ostensibly geared to making more food available at home hence keeping the price down<sup>32</sup>.

The legislature then between 1551 and 1552 defined the offences of force stalling regretting and engrossing to revive the old branch of the law of price control which was now falling into destitute. It is also in 1548, prohibited a combination meant to rise commodity prices. The courts by endeavoring to enforce the old common law doctrine of freedom of trade followed a similar line<sup>33</sup>.

In the late 15<sup>th</sup> century, Christopher Columbus and Vas Coda Gama had “discovered” the route to America and India respectively<sup>34</sup>. In addition they got species and precious metals from the new land they had reached. The wealth was a source of immense attraction to English rich merchants who were the products of guild trade and usury capital. Granted royal charters and crowns support they began engaging in long distance trade using the newly found routes. By trading with people who still produced “use value” while England was already producing “exchange value” by dealing in slaves, piracy and precious metals they made tremendous profits.

The doctrine of consideration was in consonance with the growing business spirit of the day which abhorred bare promise. Due to the commercial expediency the doctrines of consideration emerged<sup>35</sup> to delimit the nature of promises which were to be legally binding because each and every promise would most probably impede trade and mercantilism. The doctrine of consideration was in consonance with the growing business spirit of the day which abhorred bare promise or a mere gift unless the same was by some contrivance to result in yet mere profit in fact, the notion of consideration as bargain is in proof to this reality.

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<sup>31</sup> Harvey, “law of consumer protection” p.6

<sup>32</sup> Miller, “product liability” p.364

<sup>33</sup> Mafirizi “ideals and realities” p.20

<sup>34</sup> Nabudere Wadada “Imperialism and revolution in Uganda” p.18

<sup>35</sup> Furmston “law of contract” p.6

Milson<sup>36</sup> has suggested that “caveat emptor” steamed from the presence of the medieval peddler who used to run around with goods for sale upon which liability could not be easily fixed because by the time the defect was found in his wares he would be a long gone.

In the 16<sup>th</sup> century, the function of the justices of peace as developed in the 13<sup>th</sup> and 14<sup>th</sup> century increased in duty and jurisdiction by giving them supervisory jurisdiction over the parish with regard to bridges and highways and later the poor law lighting and cleaning of streets.

If this time, a town that has secured its charter of incorporation and became a borough appointed its own justices and operated its own analogous system of local government through majors alderman and burgesses. The manor was the residue of the feudal system of land tenure. In this period the difference between a crime and a civil case was established, so an aggrieved consumer could sue for compensation or penal law would be applied.

### **2.1.3 The 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries (Laissez faire and competitive capitalism).**

As the royal courts became established and offered an efficient system of justice, manorial courts known as the leet persisted and played an important role in main regulatory functions of the local government in the 17<sup>th</sup> century and beyond. The supervision of the trading standards and the suppression of local nuisances, so to summaries the courts exercising functions which we could new associate with consumer protection’ and public health were primarily the pretty sessional court of the justices of peace and the manorial court of wet, whose jurisdiction was in practice concurrent with the concept of consumer protection to the thinking person throughout the 18<sup>th</sup> century at least would mean.

- (a) Protection from excessive prices levied on primary commodities.
- (b) Protection from short measure<sup>37</sup>.

Bread, beer, meat and Flél were singled out from the earliest time as being commodities which are crown though the agency of the justice or other local courts should regulate both as to the quality and quantity. As the bread statute of 1709 recites, the existing law is so obscure that little or no observance had in many places been made either in due assize or the reasonable prices of bread or

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<sup>36</sup> Historical foundations p.6

<sup>37</sup> Milson, “historical foundation.” P.2

crouton and evil disposed person have their own grain and mere deceived and oppressed. "Her majesty's subjects" the justices of peace as the majors of borough were therefore empowered to fix the weight and price of bread and bakers had to make their loaves with their size and quality. The price was to be fixed by reference to current market prices of grain, meat and flour. Setting the assize of bread remained the function of the majors or justices together with the enforcement of criminal penalties for contravention until the abolition of the assize in 1836.

Another similar system prevailed as regards the pricing weighing and marking of local from 1664. As regards ale both the justice of peace and the courts leet exercised jurisdiction over the price and measure of ale. This involved setting the price and ensuring that vessels made of wood, glass, horn leather pewter or some other good and whole sum metal, should be made, sized and stamped or marked as a quart or pint, (the half pint being nowhere mentioned participle on the basis "do minimums non Curat Lex").

There is a reference in Shakespeare's "jamming of the shrew" to Christopher Sly who told that he would.

"Rail upon the hostess of the house and say you would present her at the leet because she bought stone jugs and no sealed quarts"

The court leets contribution to the assessment of the ale was made largely through the investigation of its officer styled "the ale Conner"

The ale Conner is one of the direct ancestors of the modern weights and measures inspectors through his job was perhaps more interesting in one respect in that he was under a duty to undertake spot checks on the quality of ale by tasting. His duties all officially described in a contemporary record were to examine bread, weight, measures, ale and beer for sale and return such as offered against the assize or stand and or vend unwholesome liquor. The ale Conner was one of the many officials that a larger court leet might appoint, the others might include constables, market lookers, the searchers and sealers of leather the peck sealer.

The 19<sup>th</sup> century contract law was dominated by disputes about commercial contracts if litigation involved what we would now regard as a consumer transaction. It tended to involve questions like

the buying of horses where a judge would naturally assume that a gentleman could look after himself<sup>38</sup>.

David Ricardo, James Miller, Jeremy Betham and Adam Smith<sup>39</sup> were among the men that carried the banner of "Laissez Faire" Adam Smith argued that the wealth of a nation is best secured by giving free play to the efforts of the individual who should be left with unimpeded powers to maximize surplus value. since the workers and the peasant left to themselves would simply remain as poor as they were and willing therefore to work at low rates. If this "Laissez Faire" that manifested itself in the law of the epoch of competitive capitalism.

Under laissez faire capitalism, competition reached great pitch because inter alia, production was controlled; this heightened the need for guaranteeing some quality. This was to attract consumer to oneself rather than letting them go to another and it was in this concessional spirit that the implied warranty of quality became finally recognized in the heat of this competitive capitalism. under the competitive capitalism<sup>40</sup>, the British monopolistic bourgeoisie came to Uganda and brought with them some laws that had evolved in England.

## **2.2 Creations of consumer class and the evolution of consumer laws in Uganda**

Prior to the establishment of British rule in Uganda the mode of life was primitive agriculture based on subsistence farming, food gathering and hunting. Production and the whole society through some commodities exchanged on barter basis production were especially for use value and the main purpose for it was consumption<sup>41</sup>. There were also some crafts and using these and these and some agricultural products, some inter-regional trade developed.

Also in Uganda in Buganda was the trade with the Arabs involving among others the exchange of slaves for cloth, fire arms, gun powder and this was a monopoly of the kings and his chiefs since it provided for the supply of arms necessary to keep their trade in slaves thriving<sup>42</sup>.

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<sup>38</sup> Hopkins v Tanery(1854) 15 CB 130

<sup>39</sup> Eric Williams, capitalism and slavery, Butterworth London 1972 p.52

<sup>40</sup> Mbirizi, "ideals and realities" p.42

<sup>41</sup> Mukhorejee, R. Uganda a historical Accident.

<sup>42</sup> Mbirizi, ideals and realities p.166

At this stage there were no consumer problems, in pre-colonial era though consumer problems were bound to come up with time as Uganda continued to develop in accordance with the production forces arising within her. The advent of colonialism interrupted Ugandans development and subjected her to the needs of to British imperialist.

Upon this background, the advent of British rule imposed foreign administration and legal system in Uganda. Prior to the British each tribe followed its own body of customary law, such bodies of law had considerable similarities as indeed has auto many law throughout Africa and also differences both in content of the law and manner of distribution formalized courts presided over by chiefs existing in kingdom states and less institutionalized gathering of elders elsewhere<sup>43</sup>.

Colonialism arose as fiancé capital search for investment outlets, cheap labour, raw materials, market and potential areas for future exploitation since the home market had become saturated. The colonial's initial task in Ugandan economy was to mould the economy to suit their profit intentions.

It's in 1903 that production of cash crops was introduced in Uganda. This was to food the Lancashire cotton mills which were experiencing cotton famine. Coffee was introduced in 1932. Due to the resistance, the one method of enforcing cash crop production was the introduction of taxes. It's this introduced tax that forced Ugandans to grow cash crops to earn income and discharge tax liabilities<sup>44</sup>.

British capital goods were also sent to Uganda, which served the purpose of reducing the cost of production and resulted into the using of surplus value. With British manufactured goods flowing into Uganda and the Christian teachings, new tastes were acquired which could only be satisfied with the importation and use of money, with these money economy and consumer society were created.

There was a policy that northern Uganda was not to be encouraged to grow crops. This was because the area was earmarked as a labour reservoir, yet the people in these reservoirs were also subjected to paying tax which factor necessitated crop growing or some form of raising money. The people

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<sup>43</sup> Morris and Read, Uganda. The development of its law and constitution, Stevens and sons, London p.237

<sup>44</sup> Sideman, comparative development strategies in East Africa 1972. P.3346

especially the men moved to crop growing era in search for work and money<sup>45</sup>. Such people helped the growth of consumer society because having left their homes behind. They quite often had to depend on the market for their food and other day to day needs.

With the establishment of the protectorate, a consumer court was set up applying English law. The source of authority for this jurisdiction lay in the foreign judicature acts. English law was received in order in council 1902 as amended by that of 1911.

The laws to be applied included English statutory laws, civil, criminal and penal codes of India and the law applicable in United Kingdom and India (these were subject to modification) those laws were brought to Uganda wholesale without any consideration of the social economic context of the country.

It should be noted that before Uganda order in council 1902, legislation took the form of king's regulations and ordinances. they were enacted by the commissioner and order made by the secretary of state under the authority of order. In council 1889, an example of such legislation is the adulteration of produce act<sup>46</sup>.

Establishment of consumer protection laws in Uganda was mainly for the interest and benefit of the colonialists. Although the enactments like the sale of goods act 1893 existed in Uganda by 1932. These were not very much in use in Uganda at this time the English contract law was introduced and used as a vehicle for subjecting labour exploitation as a natural economy gave way to money economy<sup>47</sup>.

Actual consumer protection laws were introduced in form of penal laws. These were to deal with price control; it was first introduced under the defense regulations 1943, extended directly from Britain. The defense regulations were abolished after the Second World War, replaced in 1952 with the distribution and price of goods act, cap 104 laws of Uganda, and the law was meant to reduced prices and cost of living for migrant labourers who might have chosen to return home.

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<sup>45</sup> Mukhorejee, "class Nation and State formation p.255

<sup>46</sup> Morris and read, "Uganda" p.231

<sup>47</sup> Mbirizi "ideals and realities" p.89



Those laws served the colonialists to get easy access to cheap consumer goods since they were the people behind the migrant labourers who depended on market goods<sup>48</sup>.

In addition, using the power of the distribution and prices of goods act by general notice no. 567 of 1973, the minister of commerce ordered all traders to display prices of all items on sale. This however did not change the situation much. Therefore harsh laws and punishments on hoarding and over charging were passed. The laws of this time were the distribution and price of goods (amendment) decree no 1 of 1972 and the preventing of hoarding decree no 6 of 1974.

The law on product quality was the foods and drugs act enacted in 1959 act 278 laws of Uganda. This act ensured that the colonial staff was depend out on the market food did not get poor quality food. It also prohibited the use of misleading labeling.<sup>49</sup> It is very important to note that at this time, most of the local populations were illiterate, if is evident that these laws were meant to protect the literate class.

Subsequent laws aimed at protecting the consumers were enacted shortly before and after independence, these include the liquor act 95 in 1960, weight and measures act 1965, diary industry act 1967, the pharmacy and drugs (prescription of forms) regulations 1972 among other. Those laws continued, like the Uganda national bureau of standards act 1983. The national drug and authority statute 1993, the foods and drugs laws and every other which will be analyzed in the next chapter.

### **2.3 The 20<sup>th</sup>, 21<sup>st</sup> Century and today.**

The recent centuries have seen every different approach to consumer protection, increasingly sophisticated technology has such as cars, washing machines and television whose efficiency and durability they were quite unable to estimate for themselves as pressure groups for example consumer associations and government has created organizations to care for the consumer interest<sup>50</sup>. Consumer protection during this period can be taken to embrace anything connected with trade, consumption or even personal safety.

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<sup>48</sup> Mbirizi p.97

<sup>49</sup> Food and drugs Act CAP 278 Sec 3

<sup>50</sup> Furmston "Law of contract" p.15

It's important to note that consumer laws are unsatisfactory instruments since enforcement depends on the consumer knowing his rights and being able to afford to enforce them and considering the costs and time involved worthwhile.

Furthermore, the present consumer protection legislation present "cosmetic remedies" to the abused subtraction of society, the remedies fail to provide anything to stop the system of abuse in its tracks. And the laws are basically for the "middle class consumer" middle class defined for this purpose and whose with the education and opportunity to look for themselves.

#### **2.4 The need for the protection of a consumer**

It's asserted in the economic theory that in a market place a consumer is a king but in the courts he was uncrowned<sup>51</sup>.

In the simple translations of the market place no doubt the consumer in his best guide, when he buys a kilo of sugar, he has only himself to blame if it's less yet in the medieval times the law stopped in to protect the buyer of the adulterated wine or moldy brad. Now with variety of goods available in the market place since the industrial revolution, many of the goods are packed so that any deficiencies are inevitably hidden, far greater consumer protection is called for. In the complex field of consumer services too repairs, dry cleaners, garages, insurance companies legal rules are required to reduce the national imbalances between the individual consumers and the suppliers<sup>52</sup>.

One economist had this to say of the new situation.

"it's not a consumer who is the king, but it's the large cooperation who is the king in the economy, whatever happens is not because the consumers want it that way, but simply because powerful large cooperation's prefer it that way<sup>53</sup>.

It is this reality of the weak position of the consumer in the market place which led to the announcement of rights of consumers for the first time in 1962, when the American president John F. Kennedy moved the consumer bill of rights in the US congress. This is what he had to say.

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<sup>51</sup> Furmston "Law of contract" p.14

<sup>52</sup> Borrie, consumer society p.9

<sup>53</sup> Kenneth Golbraith, "an integrated consumer policy", 1996 p.1

If a consumer is offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose, the dollar is wasted, his health and safety may be threatened and national interest suffer.

Like their developed counterparts, economies of the developing world are in many ways vulnerable or even more vulnerable to undesirable trade policies, first because of the laws imported wholesale were to favour colonial masters which do not conform to the developing world conditions.

The present system of consumer protection is clearly merely propping up a concept system of supply palliative or cosmetic remedies to the abused substratum of society, the remedies which fail to do anything to stop the system is in tracks and for being middle class.

As much as the consumer is very deserving of protection, the laws in place are not effective at this points there is a need to look at the UN guidelines and the model law for consumer protection in Africa.

### **2.5 The United Nations guidelines for consumer protection 1985.**

There is a fairly well defined and formatted consumer policy statement at the international level; the UN guidelines in 1985<sup>54</sup>. The guidelines call upon governments to develop, strengthen or maintain astron consumer policy and provide for enhanced protection of consumers by enunciating various steps and measure around seven themes that is physical safety, economic interest, standards, essential goods and services, redress, education and information and health implicitly the guidelines spell out what government need to do to promote the rights of consumers.

It calls on government to adopt or encourage the adoption of appropriate measures including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

Distributors should ensure that goods in their care are not rendered unsafe or become hazardous through improper storage or handling. Consumers should be instructed on the proper use of goods

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<sup>54</sup> United Nations guidelines to consumer protection, 23 Dec. 1994 P.8

and should be informed of the risks involved or intended or normally foreseeable use vital safety information should be conveyed to consumers by intentionally understandable symbols.

## **2.6 The model law for consumer protection in Africa 1995.**

Following the UN guidelines for consumer protection 1985 and the extensions to the guidelines in 1995, a number of African countries developed an idea to write a model law for Africa on consumer protection. The idea of developing a model law arose from the need to have a legal instrument which would guide international agencies, African governments, consumer groups and associations, individuals, consumer experts and activists as well as individual consumers in promoting consumer protection.

A number of activists have played an important role in the development of this law, significant among these is the initial nations guidelines on consumer protection 1995, conference organized by consumers international office for Africa at Dakar, Senegal and at Kadoma Zimbabwe (1992) as well as consultations and exchange visits with consumer international member organizations, collaborating agencies and various other consumer protection organizations and experts<sup>55</sup>.

The Dakar and Kadoma conference<sup>4</sup>s brought together consumer leaders to discuss the state of consumer protection in Africa generally and to evaluate the actual and potential impact of the UN guidelines. The conferences have lately been followed by country reports on the state of consumer protection in Africa conducted by specialists in the various countries under the auspices of consumer international ROAF in 1995/1996. The major message from the reports is the fact that the UN guidelines have increased consumer awareness in Uganda Africa. However, implementation at the legal level s still weak in many states. Thus many states either have no legislation on consumer protection or what would pass for consumer protection law is either incidental to the applicable laws or scattered in numerous statutes, judicial determinations and administrative practices.

## **2.7 Conclusion.**

In Uganda, There are apparently no visible efforts by the government to formulate a policy on consumer protection or to enact comprehensive law on consumer protection similar to the model

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<sup>55</sup> B. shihanya, the state of consumer law in Kenya(Nairobi republic law institute, 1997) p.66

law for consumer protection in Africa or the UN model law, therefore what passes for consumer legislations is the scattered laws in the numerous states as will be analyzed in the next chapter.

## CHAPTER 3

### AN ANALYSIS OF THE LAWS RELATING TO CONSUMER PROTECTION IN UGANDA

#### 3.0 Introduction

Consumer protection laws play a very important role in laying down and enforcing rights of consumers. Laws on consumer protection prohibit unfair or misleading trade practices such as use of false weighing or measuring equipments, mislabeling and others. They also set standards for the quality, safety, and reliability of many goods so that failure to comply with these standards can result in legal action against the seller.

A consumer protection law usually establishes institutions or agencies that enforce the laws dealing with consumer protection. In Uganda for instance we do not have a consumer protection law but there are some laws that deal with aspects of consumer protection the main laws in relation to the consumption of goods are the contract act, The sale of goods act, the food and drugs act, the Uganda national bureau of standards act the weights and measures act, and the national drug policy and authority statute of 1993.

In this chapter the researcher looks at some of the basic laws relating to protection of consumer interest pointing out their strengths and weaknesses. The researcher has however not considered the laws relating to the consumption of services such as insurance banking, professional services such as medical, Legal and others.

#### 3.2 Contracts Act 2010 and sale of goods Act CAP 82.

A person enters into contract with the seller of a commodity each and every time he/she buys goods from the seller, that's why it's imperative to examine the laws governing contracts in Uganda with a view of discovering whether a consumer is cheated or less of property is adequately protected by these laws.

Both the contract act and the sale of goods act are part of the laws transplanted from Britain under the 1902 order in council. The contract act allows the common law of the United Kingdom on 11<sup>th</sup>

august 1992 and the acts of parliament of the United Kingdom mentioned in the schedule of the act to extend and apply in Uganda<sup>56</sup>.

The contract act does not enact a body of contract laws specific to Uganda but only states that the English common law will apply to Uganda subject to modification to make it locally suitable. To date the contract act has been amended or updated to suit local circumstances and incorporate developments in the laws of contract generally or consumer protection in particular. This means that where a consumer protection in particular. This means that where a consumer is cheated and he or she takes the matter to court, the Ugandan courts will use such laws to settle the matter.

Similar to the contract act, the sale of goods act enacts basic principles of general contract law but focuses on transactions involving the sale of goods. Both the contract law and the sale of goods law are based on the principle of freedom and sanctity of contract. Freedom of contract implies that the parties involved are free to choose whether to enter into a contract or not and that they freely determine the terms of any contract they choose to enter into.

The sale of goods act addresses the unequal status among parties to contract by enacting exceptions to the general rule of freedom of contract under the doctrine of caveat emptor (buyer beware). It cautions consumers to rely on their own resources and devices when buying<sup>57</sup>. The researcher understands this expression to refer to consumers in general and not just purchases because in most cases buyers do not consumer or use the goods which they purchase. An example is a man who buys cosmetics for his woman.

The exceptions to the caveat emptor rule under the sale of goods act apply in all sales contracts unless excluded by express agreement by the parties. Under this act, there is also an implied condition that the goods will be fit for the purpose for which they were purchased. “Where the buyer makes known to the seller the particular purpose for which the goods are required<sup>58</sup>.

The Act gives some protection to the buyer when it provides that where the seller delivers to the buyer quantity of goods less than what he contracted for. The buyer may reject the goods;<sup>59</sup> the

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<sup>56</sup> Section 3

<sup>57</sup> Section 15 (a)

<sup>58</sup> Section 15

<sup>59</sup> Section 14

jurisdiction here is that where such a situation arises. The buyer only has a recourse to court the act does not lay down any simple mechanism through which a buyer and a seller can settle the dispute.

In spite of these provisions which attempt to protect the buyer of goods the Act has a number of weaknesses for example section 54 permits parties to contract out of the provisions of the Act in stipulating that “where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or the course of dealing between the parties, or by usage or custom so as to bind both parties to the contract. In practice, most vendors and suppliers make consumers accept the exclusion or limitation of the protective provisions embodied in the Act.

Section 5 of the sale of goods Act requires that a contract for the sale of goods of the value of two hundred shillings or more has to be in writing if it is to be enforceable. This provision is also very limiting because today, two hundred shillings does not buy anything of value and most of the contracts for sale of goods are not in writing. Therefore, a consumer who buys defective goods may fail to enforce the breach in a court of law because the contract of sale was not in writing.

### **3.2. The weights and measures Act CAP 103**

The main function of this Act is to provide for and to regulate the use of weighing and measuring equipments. It seeks to ensure that a consumer of goods should be given the right quantity of goods. It seeks to achieve this by laying down detailed procedures of how weighing or measuring equipment is certified as fit for the use of trade. The Act also makes it an offence to sell or expose for sale under weight goods.

The weights and measures act was amended in 1969<sup>60</sup> and 1974<sup>61</sup>. The amendments give the inspectors more power in enforcing the Act.

Section 2 of the Act provides for units of measurement. The kilogram is the unit of measuring weights. The meter is the unit for measurement of length; Liter is for capacity, square meter for area while cubic meter is the measurement for volume.

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<sup>60</sup> Weights and measures (Amendment) Act No.9 of 1969

<sup>61</sup> Weights and measures (Amendment) Act No.14 of 1974



The Act prohibit a person to use any article as weighing or measuring equipment for trade unless the article or equipment has been passed by an inspector as fit for such use<sup>62</sup>. Any person who uses equipment which is not certified by the inspector commits an offence and is liable on conviction to a fine not exceeding five hundred shillings.

Section 15 requires a person who wants his or her weighing or measuring equipment to be passed as fit for use for trade to submit such equipment to the inspector at the inspector's office or any other gazette place. Where the equipment either due to its heavy weights or dedicated nature cannot be carried to the inspector's office, the inspector may after being paid a fee go to the premises where the equipment is located and inspect the equipment from there.

The inspector is empowered to examine and test any weighing or measuring equipment which is submitted to him or her. Where after the examination the equipment falls within the accepted or prescribed limits of error; the inspector shall stamp the equipment as fit for use of trade. Where the equipment fails the fitness test, the inspector shall reject the equipment as unfit for use for trade and shall deface any stamp such equipment might bear.

The inspector may with the consent of the owner of the equipment adjust any weight or measure or capacity which has been rejected as unfit for use for trade so as to bring such article or equipment within the prescribed limits of error.

Whereas this provision has a noble cause of ensuring that equipment not fit for use is out of circulation. that is by defacing the stamp, the provision has not achieved the desired goal of unfit equipment being removed from the shelves. This means that even if a stamp is defaced, even a conscious consumer would not be able to see it, this provision also assumes that the consumer is aware of the provision that a weighing equipment has to be stamped by the inspector, which in most cases is not true.

Every person who submits weighing equipment to the inspector is issued with a certificate of verification and the certificate shall indicate whether the equipment is stamped as fit for use, rejected or adjusted as the case may be, for the same person on the same occasion<sup>63</sup>. this provision

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<sup>62</sup> Section 14

<sup>63</sup> Section 16

is inefficient is that it does not require any person using weighing equipment to display the certificate of verification in much the same way as a trading license is displayed. Displaying certificate of verification or weighing or measuring equipment would give a good guide to any consumer or intruding buyer one only needs to look at the displayed certificate and he or she assumes that the weighing scales are right and hence he will take home the right quantity of goods.

The Act enjoins any person using weighing or measuring equipment to weigh or measure goods in the presence of the buyer of such goods. The minister is given power to make rules among others the inspection, passing as fit for use for trade and stamping of weighing equipment including the circumstances in which an inspector examiner may remove or detain any such equipment for inspection or testing<sup>64</sup>.

The act makes it all offence for any person who is not all inspectors to mark any plug or seal used for the reception of a stamp or who removes a stamp and inserts it in any other equipment. It is also an offence to make any alteration in the equipment after it has been stamped so as to make it false or unjust. A person convicted of this offence is to pay affine of an amount not exceeding two thousand shillings or in the case of subsequent conviction for similar offence, up to five thousand shillings<sup>65</sup>.

The Act makes it an offence for any person who uses for trade sells or disposes of any equipment which to his knowledge bears a forged stamp or is false or unjust. It is also an offence under the act to sell weighing equipment unless the equipment has a valid stamp of verification of a date not earlier than one year prior to the date of sale<sup>66</sup> the act crates the offence of using or processing equipment for use for trade which is false or unjust. A person charged with this office shall not be convicted if he successfully pleads that he used the equipment only in the course of his employment by some other person or that he did not know or could not reasonably be expected to know or suspect the equipment to be false or unjust<sup>67</sup>.

Under section 30 of the Act, there is a general defense given to a person charged in respect of any goods under this act namely. That the commission of the offence was due to a mistake, an accident

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<sup>64</sup> Section 20&22

<sup>65</sup> Section 24

<sup>66</sup> Section 23 (a)

<sup>67</sup> Section 25(2)(a)

or any after cause beyond his or her control and that he or she took all reasonable precautions and exercised all due diligence to avoid committing the offence.

The defense's provided in the proceeding paragraph greatly erode the purpose for which the provisions were intended. For the act to allow an accused person to give a defence that he did not know that the weighing equipment he is using is false is defeatist if may be very difficult for the prosecution to prove beyond reasonable doubt that such a person actually had knowledge that the equipment was false or that the packaged goods were less than the quantity indicated on the package.

The act provide for the appointment of inspectors and gives them wide powers to inspect, weighing and measuring equipment, seize false equipment and goods that do not meet the quality and quantity prescribed. One major weakness of the weights and measures act as amended is its heavy reliance on penal sanctions to enforce compliance. More over the offences created throughout the act attract very paltry fines ranging between five hundred shillings to two thousand shillings these fines have never been revised upwards.

A consumer who has bought underweight goods as a result of trader using false equipment is not interested in seeing the trader go to jail. What a consumer needs is just to get compensated or to be given the right quantity of goods that he or she paid for.

This act should be amended so as to provide for up to date ways of appeasing a cheated consumer. For example compensations or being given the right amount of goods.

These penalties need to be bolstered to act deterrent against non-compliance. The researcher's founding's indicating that a number of traders are not really disturbed once their equipment is seized or once they are arrested. This is because they are aware that the fines are too low and they can be ready to pay them and continue to trade using the same fake equipment.

In addition to this corruption, many of the inspectors are easily bribed by the sellers who pay them off and continue using the same equipment.

The weight and measures act is very complex; these areas depend for their effective enforcement on the high degree of technical training given to the inspector for enforcing them. To fulfill his duties the officials responsible for the enforcement of the law in this area must have knowledge or

at least access to the act, it is also important for the consumers and his advisors to be able to reorganize the main offences under the act. The act has not been much utilized in Uganda because of ignorance.

### **3.3 Food and drugs Act, CAP 278.**

The legislation relating to foods and drugs is massive and complex. This act makes provisions for the prevention of adulteration of foods and drugs. The act prohibits the sale of food unfit for human consumption or drugs rendered injurious to health. Any person found selling adulterated foods commits all offence and is liable on conviction to a fine of two thousand shillings or imprisonment not exceeding three months<sup>68</sup>.

Section 5 makes it an offence for any person to display food with a label which falsely describes the food or is calculated to mislead as to its nature, substance or quality.

The act empowers an authorized officer to examine any food for human consumption which has been sold, is offered or exposed for sale. The authorized officer is required to take the seized food to the magistrate. If the magistrate finds that the food seized is actually unfit for human consumption, he or she shall condemn it and order it to be destroyed<sup>69</sup>. Section 14 allows a medical officer of health who has reasonable ground to suspect that any food is likely to cause food poisoning to notify the person in charge of the food that until he finishes the investigation the food should not be consumed and be kept in a special specified place.

Under section 21 an authorized officer may procure samples of any food or drug and take the sample to the public analyst for human consumption. The authorized officer may also enter in any premises or vehicles at all reasonable times to ascertain whether there is food or drugs that are not fit for consumption<sup>70</sup>.

Section 40(1) of the act establishes a food hygiene advisory committee with a chairperson and members appointed by the minister. The act does not however clearly spell out the functions of

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<sup>68</sup> Section 6

<sup>69</sup> Section 7

<sup>70</sup> Section 24(1)

this committee but merely says that the minister may from time to time refer to the committee for consideration and advice on any questions relating to the act as it applies to food<sup>71</sup>.

Like the weights and measures act, this act has good provisions which if implemented would curb the sale of adulterated food and drinks. However the act also lacks effective provisions that would ensure compliance and relies on penal sanctions to enforce compliance and these are very low.

The food hygiene advisory committee is not active, probably if this committee was active, it would have innovated better methods of food hygiene and also halted sale of expired and adulterated food on the market. Some of the major challenges to enforcing the food and drugs act are poverty. In a situation where the majority of consumers are very poor, what matters to him is availability of food as opposed to quality of food.

After examining some of the main laws on consumer protection in Uganda. The researcher will examine contractual doctrines that limit the liability of the seller thus affecting the consumer and the remedies conferred upon the buyer.

#### **3.4 Exemption clauses and freedom to contract.**

The early law developed on the basis that it was for the parties to make their own bargain it was up to the buyer to decide whether the goods were merchantable and fit before he agreed to buy them<sup>72</sup> “there was the sanctity of freedom of contract, a concept meaning that both parties to contracts have equal bargaining power and that any contract they sign is mutually acceptable<sup>73</sup>.”

Liability on the part of the seller to pay damages for breach of contract can be expensive but avoiding that liability can also cost money, careful inspection, frequent testing and constant supervision of workers all increase cost so it is not surprising that suppliers of goods and services sought cheaper ways of avoiding liability. Since the duties were imposed as clauses in the contract, the way out was deaf. If parties had agreed expressly that the suppliers were not liable, there would be no room for the courts to infer a clause imposing liability<sup>74</sup>, in many business transaction (especially contracts) it has been customary for one of the parties to contract upon the basis that

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<sup>71</sup> Section 40(1)

<sup>72</sup> Lowe “consumer law” P.41

<sup>73</sup> Nanyenga “consumer protection” P.251

<sup>74</sup> Borie, “consumer law” P.32

restriction are to be placed upon his liabilities. They therefore outter transactions upon the basis that he is to be exempted from liability in numerous ways for example, for the results of his negligence, for breach of implied or even express terms, for accidental loss, for misdelivery and many others<sup>75</sup>. There are abundant examples of these exclusion clauses, thus a notice at a garage. "All work done at owner's risk", a dry cleaners receipt, no liability can be accepted for loss or damage of goods. Other examples include "all cars parked at owner's risk". All claims within 7 days and so on.

It's obvious from the examples given that in reality there has been no agreement between the parties, these express terms contained in written documents drawn up by one party and never freely accepted by the other. How far examples are "express terms" in railway ticket agreed between the railway authority and passenger<sup>76</sup>. Thompson V. London midland and Scottish railway co is atypical example Mrs. Thomson bought a half day excursion ticket from dower to Manchester.

If she had looked at the ticket she would have seen on its face the words. "for conditions see back" there was only one copy of the company's time table in the booking office of dower station and it cost . if she bought and read it she would eventually have come to page 553 and among a host of other conditions the following crucial words, "excursion tickets are issued subject to the conditions that neither the holders nor any other person shall have a right of action against the company in respect of injury (fatal or otherwise). Loss, damage, delay whenever caused, "the court of appeal dismissed her claim to damages when due to negligence of the employees she slipped and was injured, on the ground that she had agreed to the conditions on page 533 of the time table and had therefore voluntarily given up her ordinary right "she had agreed to the conditions by accepting the ticket which drew her attention to the conditions."

According to lord delving "the courts did their best to relieve hardships but they had to keep within the bonds of freedom of contract" in other words, though courts have been willing to battle on behalf of the consumers against the supplier of goods and services they have made it more difficult for themselves to wage the battles effectively by their reluctance to overthrow the fiction of

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<sup>75</sup> Phillip. "Introduction to English law" P.263

<sup>76</sup> Borrie. consumer society p.33

“freedom of contract” the efforts of the courts have had no impact because they have in the 20<sup>th</sup> and 21<sup>st</sup> century perpetuated the 19<sup>th</sup> century doctrines of “unbridled laissez faire”

Philips S. James in his book, introduction to English law, observed that the principle of freedom of contract comes dangerously near self defeat when one party is free to refuse to be bound by the very obligations which on the face of it appears to be undertaking”

Justification for the use of exclusive clauses includes the desire to avoid court proceedings in the event of a dispute; it is often felt that it gives each party clearer induction of where they stood, distrust of lawyer and more especially the judge’s ability to understand the businessman’s problems. Another justification put forward by Hodgin<sup>77</sup> is that since both sides are free to negotiate whether condition they like, if the condition is harsh or unfair then the other party can reject it.

It is of course great injustice to say that the average consumer has any bargaining power against large companies, manufactures or retailers. For instance if the railway ticket excluded the railway authorities from liabilities for injury suffered by you due to their negligent behavior a common consumer will not find another method of reaching her destination without being faced with a similar clause.

It is the duty of the court to prevent shape practice and protect the weak against the strong, no wonder that it has been hostile to the exclusion clause. When due allowance has been made for the justification above, there is no doubt that exemption clause are open to abuse. The following passage is taken from the commission’s second report on exemption clause.

We are in doubt that in any case, they operate against public interest and that the prevailing judicial attitude of suspicion and indeed of hostility to such exemption clause is well founded. All too often they have been introduced in a contract in such a way that the party affected by them remains ignorant of their presence until it is too late, that party, even if he knows of the exemption clause will often be unable to appreciate what he may lose by accepting it. In any case, he may not have sufficient bargaining strength to refuse to accept it. The result is that the risk of carelessness of failure to achieve satisfactory standard of performance is thrown onto the party who is not

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<sup>77</sup> Law of contracts in East Africa P.92

responsible for it or who is unable to guard against it. Moreover, by excluding liability for such carelessness or failure, the economic pressure to maintain high standard of performance is reduced.”

Reasons for judicial hostility in exclusion clauses include ignorance, no negotiations and inequality of bargaining power. The consumer when he made the contract would reasonably have expected the work to be done with reasonable care, and that he would receive compensation if this was not so. His expectations may have been increased by a glowing advertisement with this reasonable explanations are closely scrutinized by the courts. The courts have to decide basic problems.

- (i) Was the clause duly incorporated into the contracts?
- (ii) Does it on its true construction cover the events which have occurred?<sup>78</sup>

Philips S. James. Hodgkin and P.S. Atiyah. all examples of circumstances in which the seller may be disentitled from relying on the exemption clauses these include, situations where the seller has misrepresented the effect of the clause whether fraudulently or innocently, he will not be able to rely on it<sup>79</sup>. Similarly if it’s written on the reverse of the document in a foreign.

Language, and the buyers attention is not drawn to it, also an express oral statement made by the seller may in some circumstance be treated as a warranty or condition which overrides the terms of written agreement.

Finally there are some, though admittedly rare, circumstances in which a party may plead that the contract was wholly void because the nature or effects of the terms of the contract were actually different from what he had supposed.

Although the courts have done what they can to control the more extreme form of abuse of this type of contracting out. The position has become more and more unsatisfactory as it does nothing to protect the consumers but robs the consumers of the little protection she or he had under the law because in the first place the fact that the buyer has not understood, or even read the contract or the clause in question is immaterial, and secondly a party to written contract can rely on an

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<sup>78</sup> Lowe, “consumer law”, p.119

<sup>79</sup> Curtis v chemical clearing co.& deying (1951) 1KB 805



exemption clause, even where the other party has not signed it, if he has given reasonable notice of the existence of the clause before the contract is made.

### 3.5 Privity of contract

A contract creates a special world of law for the parties who enter upon it. It follows logically given this that only such people are “privity” (parties) to contract and are affected by it. This aspect of the law of contract is well expressed by the maxim “res inter alios acta alios non obligat” this may be loosely translated as “an agreement can only bind the parties. It can neither impose obligation upon other people nor confer rights upon them<sup>80</sup>. The rule that binds third parties to the contract acquire benefits under it costs upon logic alone, it’s not practically just.

Not only does the doctrine restrict liability to the seller it normally confers rights to the buyer alone, a sub-buyer, a donee, members of the buyer’s family, none of these can sue the seller for a breach of condition or warranty but only for negligence, given the limitation and difficulty of establishing negligence such third party are in a worse situation than the buyer<sup>81</sup>.

There is no doubt that the doctrine of privity can lead to some apparently analogous result take for instance a man who buys a bottle of perfume explodes and injures her, she cannot sue the seller for breach of warranty (though she may have a remedy in the form of negligence) if however her agent buys the perfume the position is different<sup>82</sup>.

In **Jackson V. Horizon holiday Ltd.** The court of appeal awarded damages for the inconvenience and disappointments of a ruined holiday not only for the plaintiff himself but also for that of his family. Whenever this would extend to personal injuries cases is still uncertain, but it seems unlikely.

In modern social conditions, it might well be possible for the court to hold that the husband was buying for himself and as agent for his family. An argument on this line should certainly be tried in appropriate cases. If it were accepted it could loosen the shackles of the privity rule<sup>83</sup> which is such an inconvenience to the consumers.

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<sup>80</sup> Phillip James, “introduction to English law” P.279

<sup>81</sup> Borie, consumer society P.38

<sup>82</sup> Atiyah, sale of goods P.224

<sup>83</sup> Lowe, “consumer society” P.41

### 3.6 Remedies

The law confers remedies on the aggrieved consumer. The remedies are both civil and criminal, their strength and weaknesses will be examined.

#### 3.6.1 Criminal Remedies

Criminal law offers remedies not only to the consumer but the public as a whole. It does not rely on action by isolated individuals. The proceedings are taken by public officials at public expenses which maintain high standards of moral conduct in trade.

The individual who has been wronged probably will not benefit financially from the court proceedings, for the object of the criminal case is not compensation for the aggrieved party but punishment of the guilty party, but he shares in the benefit with community as a whole<sup>84</sup>.

The main target of the criminal law is fraud and dishonesty and for the centuries it has afforded some protection against the most rampant kind of cheating. For example in 1905, two men one calling himself "a broker" the other "Portuguese merchant" Purported to sell port wine, there were had been mixed with vinegar and coffee grounds. They were convicted of a criminal offence. In another case in 1877, a door to door hawker called Aleistershire house wife and offered her "good tea" the country analyst showed that the iron oxide. The hawker was sentenced to six months imprisonment for obtaining money of false pretence.

Those were merely application of the ordinary criminal law to dishonest trading but special legislation to restrain trade abuses has also been with us for a very long time. The weights and measures Act date back to the middle ages. Today the weights and measures and the food and drugs act still afford the best example of a criminal based statute.

However criminal sanctions is not the remedy an aggrieved consumer wants, he wants to be compensated for his loss not to see the trader go to prison.

#### 3.6.2 Civil remedies.

Civil law is concerned with individual rights, if a person's right are infringed for example if the goods a person buys, are not of merchantable quality it is up to him to take action in the civil courts. if he is successful, he will obtain damages from the party liable, compensation for his loss

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<sup>84</sup> Borie. "consumer society " P.113

is in form of money. In exceptional cases the result of a civil action may be an order that the other party must carry out his contractual promise (a decree of specific performance) or that he must stop doing the something in question (an injunction) civil remedies are either in tort or in contract.

### **3.6.2.1 Contract based remedies**

Historically, the courts of common law granted only the remedy of damages, but the courts of equity supplemented this by granting decree of specific performance in cases where damages would not be adequate remedy. In the case of the sale of goods the power to award specific performance is now enacted in sections of the sale of goods Act.

There are case where the consumer is relieved of his basic duty to pay the price here he can recover the price or deposit. This will be so in three ways.

- (a) Where the contract is rescinded for misrepresentation, as provided in section 29 of the sale of goods Act
- (b) Where the goods perish before risk is passed
- (c) Where the contract for the sale of goods is discharged as a result of supplier breach. The buyer may reject the goods as provided for by section 12(1) of the sale of goods Act.

### **3.6.2.2 Compensation**

The consumer is always entitled to damages if the other party broken a term of the contract, express or implied and the consumer has suffered loss. It is irrelevant whether the term is a condition, warranty or intermediate stipulation.

When damages are not too remote, the general principle is that damages should so far as possible place the injured party in the same position as if the contract had been performed properly<sup>85</sup>. Thus where a negligent surveyor<sup>86</sup> causes a buyer to pay too much for a house the damage will be the difference between the price and the lower (defective value).

Another remedy that came up as matter of good practice is having the goods repaired or replaced. If for example a car, television set or a lawn mower proves to be defective, the consumer

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<sup>85</sup> Lowe, "consumer law" p.111

<sup>86</sup> Hart, "law of torts" P.45

will usually take it to the seller and ask for it to be repaired or rejected. In practice the seller (or the manufacturers in guarantee cases).

### 3.6.3 Tort based remedies.

Although the tort of negligence has over shadowed most of the torts in importance as contract based remedies. The person advising a consumer contemplating legal action must do so with the whole of the law of tort in mind. This is not simply a question of bearing in mind such matters as the defense available generally in the law of tort<sup>87</sup>. It may also be wise for the tort of deceit<sup>88</sup> or for supplying irresponsible persons with dangerous articles such as air guns or petrol to children<sup>89</sup> as well as or as an alternative action based on the breach of duty of care.

Consideration should also be given to the possibility of action for the tort of breach of statutory duty particularly where the consumer has been injured by a defective article covered by regulations made under the consumer protection act 1961 or consumer safety act 1978. These acts give a specific civil right of action in these circumstances.

#### 3.6.3.1 Negligence.

The well known decision of the House of Lords in the case of **Donoghue V. Stevenson** was something of watershed in the law of tort since the wide dicta of the judges encourages vigorous developments of the use of tort of negligence in a variety of situations<sup>90</sup>.

The principle of law was stated by Lord Atkins in the following well known passage.

“A manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation of putting up the products will result in an injury to the consumer’s life or property, owes a duty to the consumer to take that reasonable care”.

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<sup>87</sup> Parry, “consumer protection” p.121

<sup>88</sup> Langridge v. levy (1839)

<sup>89</sup> Bebee v sales (1916)

Lord Atkins added that this was a self evident proposition which no one was not a lawyer would for a moment doubt.

The duty outlined above is merely one particular type of duty situation” in the context of general law of negligence the case decided since 1932 show a gradual extension of liability thus there is no limit to the type of goods covered under this rule, examples include hair dye under pants, cars, lifts and even tomb stone.

Liability has been extended beyond manufactures to include repairers and assemblers in one case even a car dealer was held liable<sup>91</sup>.

The word “consumer” is not confined to the ultimate buyer; it means anyone likely to be injured by the lack of reasonable care. Perhaps the best illustrations is provided by the case of **Sennett V. Haycocks** and **peters**<sup>92</sup> where part of the wheel of a long case off and struck a pedestrian on the pavement. She recovered damages from the second defendant who had negligently repaired the wheel shortly before the accident.

Nevertheless the law as it stands at present makes the task facing the injured consumer to prove he must prove that:

a) The product was defective when it left the manufacturer in many cases, this should not present a problem. a ban containing a stone. aloft of bread containing a cigarette butt of a car with faulty brakes. These are obvious examples. But in **Evans V. Triplex safety Glass Co**<sup>93</sup>, where the buyer of a Vauxhall car was injured when the windscreen shattered. His action fouled for various reasons one was that he failed to prove that the windscreen was dangerous when it left the manufacturer.

b) That this was due to the negligence of the manufacturer, like in **Vacwell Engineering Co. Limited V. BDH**, the defendants who manufactured chemicals were liable in negligence for failing to appreciate and to warn prospective users that contact with water could lead to an explosion. Similarly in **Wright V. Dunlop Rubén co ltd and ICI**<sup>94</sup>. Court of appeal held that ICI

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<sup>91</sup> Andrew v Hopkins (1957). QB 229

<sup>92</sup> (1939)2ALLER 578

<sup>93</sup> (1936)1ALLER 283

<sup>94</sup> (1971) 1 QB 88

were liable in negligence for marketing products with the knowledge that it constituted a health hazard. The duty owed by the manufacturer does not involve him in strict liability; it is merely a duty to take reasonable care. **In Davie V. Newmenton Board Mills**<sup>95</sup>. An employer supplied his employees with a tool which the employer had bought from a reputable supplier the tool had a latent defect which the employer had no means of discovering. The employee was injured when the tool broke and he sued the employer for damages for negligence. House of the lords dismissed the claim on the ground that the employer had not been negligent.

As already stated, the onus of proving negligence is on the injured party and it can be immensely difficult especially in the case of a highly complex piece of equipment such as chemical or a drug.

c) That this was the cause of the injury, the injured party must be able to prove a causal link between the defect, the negligence and his injury. This again can be a difficulty matter in practice and the result of the case may turn on the inferences which the courts are willing to draw from the facts.

In the leading case of **Grant v. Australian knitting mills**<sup>96</sup> the plaintiff doctor contracted dermatitis. The Privy Council accepted his argument that it was caused by an excess of sulfite in underpants manufactured by the defendants. The court reached this a decision even though the evidence showed that more than 4 million of those underpants had been sold without complaint. On the other hand the plaintiff will fail if the injury would have occurred in any event. Thus a manufacturer of a car will not be liable for faulty brakes if the plaintiff was driving so fast that the accident would have occurred if the brakes had been in perfect working order. The plaintiff's task may well be inseparable unless the court is prepared to make a dangerous use of circumstantial evidence.

The courts have always been very cautious to extend the boundaries of liability and one weapon which they have used is the weapon of "economic loss" they had held that where the only damage is to protect itself this loss is "economic" and not recoverable in the tort of negligence<sup>97</sup>.

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<sup>95</sup> (1959) AC 604

<sup>96</sup> (1936) AC 85

<sup>97</sup> D&F estates ltd v Church Cornmbroness (1989)AC 177

### **3.6.3.2 Fraudulent misrepresentation. (Tort of deceit or fraud)**

A person commits the tort of deceit (fraud) if he makes a false statement of fact knowingly or without belief in its truth or recklessly (that is carelessness whether true or false).

With the intention that it should be acted upon by the plaintiff who acts on it and thereby suffers damage<sup>98</sup>.

In practice fraud is notoriously hard to prove if however the commissioner can prove for example that the dealer deliberately misrepresented the age or lineage of a car then he may have the remedies of damage and or rescission.

### **3.7 Conclusion**

It is evident that there is a substantial amount of protection afforded to the consumer through legislation these unfortunately can only be of use to the educated and the “middle class” consumers. Illiterate consumers are unaware existence of these laws and even if they were aware, they would not understand, let alone apply them and much criticism can be made on the limiting contractual doctrines. However favorable and complete the frame work of legal protection is, it might as well not exist if the rules are not adequately enforced if they can be ignored with impunity and sad to relies they can often be ignored without fear of the consequences this is because the law heavily rely on penal junctions which as we have noted are ridiculously low and therefore ineffective. The penalties imposed by most of these laws are party. There is therefore need to update those penalty fines to conform to the current currency values and enact a statute that specifically deals with consumer protection.

By laying down the rights of consumer, obligations of the suppliers and the remedies available to agreed consumers. There is also need for the establishment of small claims courts of tribunals to quickly handle consumer complaints.

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<sup>98</sup> Den. Yr v peek (1889)14 AC 337

## CHAPTER FOUR

### INSTITUTIONAL FRAMEWORK FOR CONSUMER PROTECTION

#### 4.0 Introduction

For any legislation to be effective in the administration and realization of justice and fairness, it should be noted that it must provide for the mechanism of enforcement and the implementation of its provisions. Much legislation provide for institutions that are charged with the duty of ensuring that consumers are protected against all kinds of malpractices in the market. In this regard we shall analyze critically the effectiveness of these institutions in handling consumer complaints and the constraints they face in protecting the consumer.

The main governmental institutions which address consumer interests in Uganda include the Uganda National Bureau of Standards, national drug authority, the government chemist and analytical laboratory, the public health departments in Kampala Capital City Authority, the Uganda Revenue Authority plus the judiciary.

There are also non government organizations or institutions which compliment the established institutions in protecting consumers. Notable among this group is the Uganda consumer protection association (UCPA) and the media.

Due to lack of literature, most of the work in this chapter was got from interviews conducted with the various officials working with these institutions and a wide scope of consumers and an interview with retailers.

#### 4.1 Uganda National Bureau of Standards.

The Uganda National Bureau of Standards (UNBS) is a statutory regulatory authority / body which was established under the Uganda National Bureau of Standards Act<sup>99</sup>, this body has played a major role in the protection of consumer's interests.

The Uganda National Bureau of Standards main role is to ensure that the manufacturers and producers of goods conform of certain standards. Some of the statutory duties of Uganda National

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<sup>99</sup> Uganda National Bureau of Standards Act 1 of 1983



Bureau of Standards include promoting standardization in industry and commerce, preparing, modifying or amending and undertaking education work in connection with standardization<sup>100</sup>.

The Act further establishes the National Standards Council which is the governing body of the bureau<sup>101</sup> and responsible for the general administration of the bureau as well as advising the minister of commerce on any matter in pursuit of the provisions of the Act. The normal daily administration of the Bureau is in the hands of the executive director appointed by the minister as provided by section 11 of the Act.

The Director is empowered to appoint standards inspection with the approval of the minister. Section 14 of the Act spells out the powers of these inspectors, which include the inspection of material components or substances used in the production or treatment of consumer products, the testing/processing, packaging, carriage and storage of products plus requisition of reports or documents relating to the same.

The practical efficacy of the Bureau is highly questionable in the first place being a statutory body enjoying a monopoly status in the field of the standards formulation and enforcement, the Bureau is subjected to political interference and direction and still due to the fact that the director and council members are political appointees there is a high possibility of servicing the interests of the political leadership than the ordinary consumer interest.

The activities of the Bureau strictly depend on the grants from government and loans extended to it approved by the minister. Like other statutory bodies, the Bureau are underfunded. According to the Executive Director and head of the documentation and information department, the Bureau is and has always been underfunded. This inhibits it from purchasing modern equipment adequate of inspectors is poor and as such the bureau cannot afford to organize intensive and regular mass sensitization and publication about standards. On the side of the standard inspector, these in addition to inadequate facilitation are few in number they can hardly cover the entire country in enforcing standards for example UNBS is present at only 5 entry border permits yet it's supposed to verify all products/ goods imported. Worse still some of these few inspectors who attempt to enforce standards are compromised by corruption they take bribes from sellers of shoddy consumer

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<sup>100</sup> Section 3

<sup>101</sup> Section 4

products others are intimidated by powerful businessmen who are not only covered by the stronger organizations like UMA and UNCCI but who also enjoy strong political favoritism because they are their “dear investors”.

It therefore follow that the general safety of the consumer contemplated by the Act is practically undermined and regularly abused by the “glorified” commercial and industry investor the majority who engage in unscrupulous and exploitative practices.

This calls for a redefined dimension to safeguard the gullible consumers.

### **4.3 Uganda Revenue Authority**

The Uganda Revenue Authority (URA) is a body corporate established by the Uganda Revenue Act<sup>102</sup> and its main function is to administer and give effect to the laws on the specified provision of the laws set out in the first schedule to the Act and to assess, collect and account for all revenues to which those laws apply<sup>103</sup>.

If is a common practice that the URA is not only responsible for collecting tax revenue but also charged with the duty of conducting, testing and inspection of the quality and standard of imported goods or local products if need arises. most consumer goods are imported, so there is need to look at both customs and the chemist department.

The anti smuggling unit (ASU) of the URA is responsible for eradicating smuggling and in this way expected to help in eradicating the unacceptable standards of imports through surveillance of entry points where quality and standards examination will take place.

Unfortunately, these inspectors are not situated in every entry point, there are some points where goods enter into the country without inspection. The biggest entry points are in Kampala, Jinja and Entebbe Districts.

Section 6 of the customs management Act provides that for the purposes of carrying out functions under the Act, the customs officer shall have all the powers, rights, privileges and protection of a police officer. The usefulness of this provision in relation to consumer protection is that where a

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<sup>102</sup> Uganda Revenue Authority came into being the 5<sup>th</sup> sep. 1991

<sup>103</sup> Uganda Revenue Authority Act Section 3(1)

customs officer checks goods and finds them to be unfit for consumption, he or she may seize or order for the destruction of those goods in the same ways as the police officer would do.

The Uganda Revenue Authority work closely and in fact helps perform some of the duties of the National Bureau of Standards. The Uganda Revenue Authority chemist also works closely with the National Drug Authority inspectors to check consignments of drugs entering the country.

However, the URA activities of verification of consumer products have been greatly compromised and weakened by corruption. This is evident in the dumping of substandard imported items of all sorts yet it is incumbent upon URA to prevent this menace. It is quite common to hear big tax payers complaining about the dishonesty and corruption of these officials. In such a scenario, the ordinary consuming public is left with meager institutional protection against faulty and dangerous commodities.

According to the assistant commissioner, investigations Mr. Geoffrey Tindimwebwa, the Uganda Revenue officers are very vigilant in refusing entry of expired stuff in the country. When the researcher sought an explanation as to the presence of large quantities of expired goods on the market, he explained that the bulk attributed to this poor procurement knowledge and insufficient market research which leads to importers bringing into the country goods far in excess of the demands of the consumer.

Some of the main limitations of the URA in protecting the consumer is the lack of a laboratory the URA has to rely on the government chemist and Uganda National Bureau of Standards laboratory to carry out analysis on goods and due to this they cannot get their investigations done in time.

The other limitation is that the Uganda Revenue Authority's mandate ends at the customs entry point. Once URA has cleared goods, it does not have a mandate under the law to seize or impound expired or adulterated goods on the market. The power lies with the Uganda National Bureau of Standards.

#### **4.4 Government Chemist and analytical laboratory.**

The government chemist and analytical laboratory is a department under the ministry of Internal Affairs. One of its functions is to protect consumers from substandard goods and goods that lead to health hazard. The Department is composed of four sub-departments which includes food

testing, water testing, toxicology (poisons) and Ballistics. The Government chemist is one of the oldest department in Uganda (has been there since the colonial times) and plays an important role in consumers protection. It is charged with the duty of carrying out tests and analysis on food items to find out whether they are fit for consumption. It does this by buying food items suspected to be unfit for consumption. If after analysis it is found unfit, the chemist give the results to the Uganda National Bureau of Standards for further action. This department does not have powers under the law to remove adulterated food from the shelf for purposes of destruction that is why it has to work closely with Uganda National Bureau of Standards.

Many times the consumer themselves, after buying food suspected of being dangerous to human health take the items to the government chemist for testing and analysis. A fee is charged ranging from twenty thousand shillings upwards. The Government chemist is also used by the National Drug Authority and URA to carry out tests and analysis on goods imported in the country.

The Government chemist thus has an important role; however an ordinary consumer does not easily access the services of the government chemist mainly because the service fee is too high. A consumer who has bought a good item of UGX 4000/= may find it illogical to pay a fee of UGX 30.000 to scientifically prove that the food or drink is actually unfit for consumption. Moreover the chemist findings will only be useful to him in court proceedings as evidence, bearing in mind the expenses of litigation in both time and money, the consumer suffers in silence.

#### **4.5 The National Drug Authority (AP 206)**

The National Drug Authority (NDA) is a body corporate established by law in 1993<sup>104</sup> but become operational in 1994. The main functions of the National Drug Authority are to regulate the use, supply, importation and registration of drugs. The national drug authority is also supposed to approve the national list of essential drugs.

There is a registration department in National Drug Authority. If a person wants to import a drug in the country, he takes a sample and details of the drug to the department for verification. If it passes the test, the drug is registered and the importer is issued with license to import that particular drug.

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<sup>104</sup> National Drug policy and Authority Act No 13 of 1993

Once the drug is imported, the national drug authority inspector at the entry point checks the drug to ensure that the label, packaging, quantity and quality is as submitted to National Drug Authority before importation.

The National Drug Authority has an inspectorate department headed by a chief inspector of drugs. Under him are inspectors of drugs their powers are spelt out in section 50 and 51 of the Act. The inspectors may pursuant of their powers enter at all reasonable times drugs on transit or require the furnishing of documents authorizing the person in custody or in charge to handle, keep or sell the drugs suspected to be dangerous and unfit for consumption. According to section 54, no one is to obstruct or hinder any inspector in exercise of his powers.

It is vital to note however, that the activities of the National Drug Authority are still centralized in the district of Kampala and the rest of the country has not benefited from the activities of national drug authority. There is an assistant inspector of drugs in each district who is supposed to carry out work of inspection on behalf of the National Drug Authority. They are facilitated with motorcycle and office impressed, being only one he cannot effectively cover the district.

It is regrettable to submit that even in Kampala the effectiveness of the authority is greatly questionable. Many times through the media and our personal experiences, we have bought adulterated drugs.

It is a common feature in our towns and rural trading centers to find lots of contaminated, unhygienic, expired and substandard drugs and cosmetics.

The officials of National Drug Authority interviewed admitted that there are cases of dumping of rejected drugs, stocks from exploitation transnational drug corporations such as sterling health. These companies sell drugs to our local greedy drug importers who in turn bombard the ignorant unsuspecting consumers with untold quantities of such dangerous drugs.

It therefore becomes indisputable that the authority lacks adequate capacity to curb the dumping of drugs, before they are put on the market. They only discover after poor consumer have already fallen victim. The incapacity of defecting and hunting down these town rascals before the consumers life is subjected to immiscible risks depict the glaring inefficiency and weaknesses of

the authority in light of consumer protection campaign the authority lacks enough highly trained vigilant inspectors who can prevent the faking of drugs. The few inspectors cannot even hunt down the mushrooming illegal drug dealers, the unlicensed and unhygienic drug shops in all towns and slum areas in Uganda.

Regrettably still, some of the members of the medical, pharmaceutical and veterinary profession as well as some of the National Drug Authority officials engage in unethical and illegal practices which are totally against public interest.

They are not only reportedly involved in importation of the cheap “about to expire” drugs but also despond them to some customers for their selfish aggradismount, Sihanya asserts that there is perpetual consumption in the public health system where some medical practioners refer patients to their private clinics for drugs that have been appropriated from public health centres.

In many rural and slummy areas where consumers are more desperate and gullible, recourse is to traditional doctors who administer anything as drugs. This puts the consumer’s life in jeopardy hence depicting the inadequate and unsatisfactory protection the national drug authority purports to afford to the consumers of drugs.

#### **4.6 Public health department in the Kampala Capital City**

##### **Authority.**

The Kampala Capital City Authority (KCCA) has a department known as public health department whose main function is to enforce the food and Drugs, cap 278 the public health Act and other public health related laws. in this department there is the chief health inspector. health inspectors. medical officers of health and other officers supposed to ensure food safety and hygiene in the city. The police are expected to work with the department to arrest, and prosecute individuals and co-operations who fail to comply with law. Consumers also register complaints with the department for investigations.

The public health department has played an important role in protecting the consumer of food in the city. For instance meat is inspected before it’s sold to the public<sup>105</sup>; any meat not suitable for human consumption is condemned. Kampala Capital City Authority inspectors have been very

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<sup>105</sup> Public Health (Meat) Rules section 1

vigilant in closing down eating places which are dirty or in poor conditions. KCCA health inspectors have worked with the police on a number of occasions to seize expired and adulterated food stuffs from the market for destruction. In spite of these achievements, a lot need to be done, screening of the food is done regularly and were it is done, it does not cover the whole city<sup>106</sup>, according to the report on food inspection and screening of food handlers in Kampala District, most of food handlers in hotels, restaurants, butchers, milk processing plants, confectionaries are not examined to ensure that they are disease free that can be passed on to consumers.

KCCA and other Local Authorities have to find funds and other ways of protecting consumers against consumption of expired poor quality and unhygienic food. Food quality should be given priority among other policies. KCCA alone may not fully be able to manage and supervise all food handlers due to limited and capacity of funds and personnel.

Government or KCCA should for that matter authorize intervention by the private sector, independent reputable private companies with the required capacity and experience should be authorized to do the inspection, supervision, micro biological tests of food at a fee.

### **The judiciary**

Although courts are established, staffed, funded and ran by government authorities, the judicial system should be regarded as an independent institution separate from the government. Courts have an important role to play in providing remedial or reactive protection to consumers and provide preventive protection.

Article 129 of the constitution of Uganda 1995 stipulates that the courts of judicature to comprise of the supreme court, court of appeal the high court and subordinate courts. Like magistrate courts. The 1996 judicature Act then spells out the jurisdiction of the respective courts and recites the high court as having unlimited jurisdiction. The magistrate's courts Act (MCA) buys down the jurisdiction of various grades of magistrates courts. All consumers concerns or commercial causes can be handled by the magistrate courts and the high court depending on the peculiarly position of such cases.

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<sup>106</sup> Report on food inspection and screening of food handlers in Kampala district

We ought to appreciate that consumer access to judicial remedies is comprised of multitude of factors. the consumer`s interests are more varied and diverse and in most cases appear to be relatively small in pecuniary terms; consumers are weaker and less organized. Due to object poverty many of them cannot afford legal representation<sup>107</sup>. There is general lack of self confidence among the illiterate consumers all these make it complex for the judiciary which employs procedural rigidities and conservation practices to be able to assist the consumers engulfed in the said obstacles.

Still there is too much delay in proceedings and litigation. This is worsened by the absence of a distinctive commercial bench in our judiciary. These delays occasion injustice and unfairness if it is a common legal dictum that, "justice delayed is justice denied". In this respect many consumers lose confidence easily in the judicial processes as consumption is a matter of life and death. It should not be postponed to the future till after litigation.

In addition, our judicial system employs complicated procedural technicalities, the difficult legal surgeon used in litigation simply scare away the many illiterate and legally ignorant would the litigant in consumer causes such technicalities and the absence of a specific consumer protection law tend to alienate the valve consumers from judicial remedies. Hence this institution provides remedies only to the rich, literate and assertive sellers who in all cases are the violators of the provisions of the consumer laws.

Most unfortunate to note is that our judiciary is not devoid of corrupt tendencies. Consumer surveys and personal interactions with the disgruntled losers in court reveal that the richer and well known litigants sometimes bribe magistrates or judges to decide in their favor. It is worse if the case involves a politician where magistrates are always intimidated by such high ranking government officials. This further portrays the inadequate safe guards afforded by our judiciary to the consumers.

#### **4.8 Uganda Consumers Protection Association (UCPA)**

Upon its inception in 1993, Uganda consumer protection association came up with an ambition demand driven consumer- oriented programme of action under the leadership of Mr. Sam K. Watasa. Its aims among others include the creation of a consumer forum for analysis of consumer

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<sup>107</sup> Shihanya, strengthening consumers" P.20-21



issues, massive sensitization and education of consumer's country wide about their rights and responsibilities, defend consumers' rights and lobby for their recognition by the government and develop unprecedented consumerism among the Ugandan consumers<sup>108</sup>.

At present Uganda consumers protection association continues to assert its voice to the entire national political leadership, manufactures, stake holders and consumer through the mass media and workshops in pursuit of its goals.

But the glaring factors that inhibit Uganda consumers' protection associations' activities include financial constraints. The association is handicapped in terms of its facilities and cannot employ a bigger number of officials to spread its mission. It can hardly afford upcountry operation and meaningful surveillance as it lacks adequate modern equipment to conduct testing and analysis. The absence of transport facilities and the intimidation action of the officials by stronger businessmen concern continue to hamper the fulfillment of its aims in this regard, the anxious consumer remain with little protection and defense from this upcoming hope of consumer advocacy.

#### **4.9 Media**

The media which include radio, television and the print press has played a major role in highlighting the plight of consumers and the state of consumer protection in the country. The print notable among others include. The newvision papers. Daily monitor which have ran incidents of consumer's abuses. There is no problem which can easily be recognized or given the attention it deserves unless it is given press coverage. For some time now, the Uganda consumer protection association is running a consumer protection corner in the monitor newspapers. The corner gives tips to consumers on what to do while buying goods and also encourages cheated consumers to report their complaints to Uganda consumer protection association or other institutions like Uganda national bureau of standards.

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<sup>108</sup> Conducted an interview with Mr. Sam K. Watasa the executive director of the Uganda consumer protection Association

Uganda national bureau of standards, Uganda revenue authority and Uganda consumers protection association have used the press to warn the public against consumption of certain products. The major limitations with the media (which is not of its making) relates to coverage.

As earlier noted consumers are too poor to afford newspapers and many are illiterate so they do not know anything about what is happening in the market, moreover due to this object poverty of many consumers. Cases have arisen where expired goods are disposed off but people are found scrambling to get a bite of such goods.

#### **4.10 Conclusions**

All together, the efficacy of the institutional frame work in consumer protection has no remarkable practical success. This is quite evident today that the ordinary consumers see no sense in the rather incapacitated institutional regime that purport to afford the next chapter to recommendations in a bid to reform the commercial laws and institutions to give consumers protection.

## CHAPTER FIVE

### SUMMARY OF THE MAIN FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

#### 5.0 SUMMARY OF THE MAIN FINDINGS

This chapter presents the summary of the main findings from which certain recommendations are drawn. It draws attention to the various problems consumers face. Some suggestions have been put forward to improve and make the laws and institutions more effective. The main findings of the study include the following.

The laws in place do not suit conditions in Uganda and as such. The rights of the consumers are prejudiced. Examples include the doctrine of privity, exclusion clauses.

The remedies available to the buyer are not suitable and are inadequate. The buyer would expect defective goods to be replaced or the return of the purchase price. However the seller is not under the duty to replace or return the goods or the purchase price. The remedies available have no different effort on the fraudulent or unfair practices of the sellers.

Consumer protection laws also impose criminal liability on the seller; legislations like the National Drug Act, Food and Drugs Act, Weights and Measures Act among others impose fines and terms of imprisonment. The fines are in many cases so nominal to be of punitive effect and the terms of imprisonment are too short to be a deterrent. Even the statutes that provide for long terms of imprisonment are never implemented.

The litigation process is too long, time wasting and costly. This is due to the technicalities involved. consumers do not understand such detailed arguments of the legal process and are not encouraged to seek litigation, besides the burden of proof on the consumer is too hand to discharge. A consumer cannot be in position to know the secrets for the production process. The litigation process favour the manufacturer or retailer more than the consumer.

The institutional framework meant to enforce the law is also inefficient. The inspectors charged with this duty are usually too few to discharge it effectively and in many cases have been reported corrupt. Most of the institutions are underfunded and lack skilled personal and up to date machinery. The only association of consumers (the UCPA) is not action for or on behalf of the

collective or class action for or on behalf of the consumers; it cannot fend for the disadvantaged consumers in court.

As far as the consumers are concerned most of them are illiterate and ignorant of their rights, duties and responsibilities, for instance one of the consumers interviewed did not even know that the blue band he had purchased had an expiry date. There is also negligence on the part of the consumers: they lack the zeal to enforce their rights which lack of vigilance frustrates the consumer protection cause.

In addition to this, there is poverty, most consumers live in object poverty, that their major concern is the availability of food rather than the quality of food. The role of government has not been significant as far as consumer protection is concerned. The government has pursued policy of investment and liberalization while the consumer protection laws have not been revised or reformed. These laws today cannot check the level of abuse by investors, sellers or manufacturers.

## **5.1 RECOMMENDATIONS**

### **5.1.1 The need for a new consumer law.**

There should be enacted a uniform and a comprehensive law to protect consumers. This has been taken on by the Uganda law reform commission. This law should cover all goods and services like the Danish product safety act. This applies to all goods on the market, whether by private individuals or for resale<sup>109</sup>.

This law should provide a framework under which sub-legislations should operate. Furthermore, it should provide for general provisions for consumer rights, information, contractual protection and consumer association among others, special attention should be given to the remedies under these various laws and as far as the sale of goods is concerned, the protection sections like the implied terms should be made unconditional. The following should be addressed.

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<sup>109</sup> African model law for consumer protection

## **5.1.2 Reforms of the law.**

### **5.1.2.1 Doctrine of privity.**

There is good reason for dropping the doctrine of privity to allow action whether or not the user is the actual purchaser, it is not realistic to think that a consumer transaction simply involves the purchaser and the trader. There is nothing more common than for a family member to purchase goods for the rest of the family, in the United Kingdom where the doctrine originated, the right to enforce liability is not confined to the buyer, if the nature of the goods is such that it can endanger one's life, and then any consumer can sue for it.

### **5.1.2.2 Exemption/ exclusion clauses.**

These clauses were established to limit or remove the manufacturer's liability; they are introduced on the basis of "freedom of contract". These are used against the consumers who do not have equal bargaining power with the manufacturers or retailers. In countries like Zimbabwe for example, consumer protection laws have adopted protection clauses to agreements on contracts to be construed most favorably to the benefit of the consumer<sup>110</sup>. This should be adopted in Uganda.

Exclusion clauses should be abolished in Uganda consumer protection laws; this is the only way an ordinary consumer can get protection against the manufacturers and sellers.

### **5.1.3 Dispute settlement**

In most cases the buyer wants simple remedies and in most cases he is not willing to use the court system because of procedural rigidities, expense and time involved. Therefore before recourse to court, proof and simple dispute resolution should be sought. Disputes between consumers and businessmen may be settled in the following ways.

1. Consultation and conciliation with businessmen.
2. Appeal to consumer organizations and administrative department concerned.
3. Submission to arbitration organs for instance ombudsman for arbitration.
4. The last resort should be to start legal proceedings before the consumer court in this case the small claims court.

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<sup>110</sup> Shihanya, B. "Model law for Africa" consumer international regional office for Africa Harare Zimbabwe may 1996.

Before the dispute is taken to court, the given forms of dispute resolving should be sought first.

#### **5.1.4 Remedies**

The amount of damages awarded to a successful consumer should be related to purpose and effect of deference these damages should be large in financial value so that the manufacturer finds it cheaper to provide good quality goods than pay damages or compensation. In the people's republic of china, business dealers whose commodities cause injury for working hours when one was sick and in case of death, pay funeral expenses, compensation for the death and cost of living for the dependants. Through this may not easily be applicable in Uganda, amount of damages should be increased so that their effect is felt.

##### **5.1.4.1 Imprisonment.**

Imprisonment should be a last resort as a remedy when all others have failed. When it is used as a penalty, the terms of imprisonment should be long enough to have a punitive effect. One year should be the shortest term.

#### **5.1.5 Inspectorates.**

Inspectorates should be merged most of the activities for example tests, inquiries, prosecutions all coincide at one time. Under the various duties upon one trader in respect of one article it makes no sense to separate for example inspectors of labels on food and those on drugs by the different institutions. The advantage of combining the various inspectors has effect of relieving economy in travelling time between places of inspection. Furthermore, the most effective deterrent to non-compliance is the knowledge that there is active enforcement. United control will eliminate fusion and chance efficacy. The creation of an inspector's term for each particular legislation wastes a lot of man power. The best alternative is set up a united force of inspectors for efficient and effective enforcement on consumer legislations.

#### **5.1.6 Role of government effort/policy**

The government should put in more effort in as far as consumer protection and regulation is concerned. As a major source of funding, it should be able to effectively fund the institutions. it should ensure the smooth running of institutions instead of interfering with their activities. Government should in addition take apposite role of fronting and advocating for the revision of

consumer protection legislations. The government of Uganda when granting investment licenses to investors should ensure they meet all necessary standards and prerequisites.

A system should be established for having the views of the consumers reflected in public administration. This is to contribute to the formation and execution of policy to protect consumers.

To encourage all sellers and producers, government should introduce awards to the best sellers in terms of their services to the public. The sellers top restrain from consumer abuse. The government is best positioned to do this.

## **5.2 Conclusion.**

The laws relating to consumer protection are ineffective and expose consumers to a lot of abuse. Victimization and a number of unfair trade practices, the process of litigation, remedies available in one way or another prejudice the position of the consumer. The situation is worsened by the consumer's ignorance, poverty and illiteracy.

The research looked at the different institutions or bodies and examined their role in promoting consumers rights, their limitations and constraints in performing their roles. Some of the core concerns of the consumer in Uganda were looked at and the main ones include the rampant sale of substandard, underweight, adulterated, expired and counterfeit goods and drugs on the market. The other major concern was found to be the improper disposal of expired foods which are later picked and consumed by poor unsuspecting consumers.

The researcher also examined the efforts of government through its various statutory bodies as well as the efforts of private association such as Uganda consumer protection association to enhance consumer protection.

Therefore there is need for a concerted effort from all sectors of the public and individual efforts. These should assist in educating the consumers. Advocating for reform in the laws, recognition of consumer rights, adoption of a more liberal; litigation process taking into consideration to state of affairs of the ordinary consumers. This cannot be undertaken by leaving out the producers or sellers. To encourage them, tax holidays and establishment of a good relationship between consumers, manufacturers and sellers is vital. Those should be geared at attaining effective consumer protection in Uganda.

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## APPENDIX A

Questionnaire to establish awareness, attitude of the consumers towards the law and institutions of consumer protection plus the effort the consumer put to ensure that their drugs are not violated.

1. Who in your opinion is a consumer?
2. What do you understand by the term “consumer protection”
3. Do you know of any rights and responsibilities of the consumer? If yes give example.
4. Are you aware of any laws meant to protect the consumer? If yes give example.
5. Do you think there is need for such laws in Uganda? Explain.
6. Have you had any problem(s) with goods or services you consumed (as to quality, quantity, price, delivery etc. give a brief account).
7. Did you take any steps to solve these problems/what steps did you take?
8. Who did you consult (give names of the company, association, persons you dealt with).
9. What was their reaction/did they intervene? (Explain).
10. Did you know of any organizations charged with the duty of protecting the consumer? If yes give example.
11. Are you a member of any consumer organization? If yes why did you join, has it been useful to you in anyway.
12. Would you advise other consumers to join the organization, (give reasons for your answer).
13. What recommendations would you give to make consumer laws and institutions in Uganda more effective?

## APPENDIX B

### INTERVIEW GUIDE

Mainly used to interview the officials in consumer protection organization.

1. Back ground information that led to the establishment of the institution.
2. What duties are the institutions charged with as far as consumer protection is concerned?
3. What achievements and success have you had?
4. What are the problems and limitations you get in carrying out your work?
5. What suggestions would you make to improve the quality of your work and effectiveness by the institution?
6. What is the work relationship between you and the other institutions charged with the same duty?

