

**ANALYSIS OF THE SALE OF GOODS AND SUPPLY OF SERVICES ACT, 2017  
IN RELATION TO CONSUMER PROTECTION IN UGANDA.**

**BY**

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### DECLARATION

I **BASEMERA EDITH**, do hereby declare that to the best of my knowledge that this paper is entirely the fruit of my hand and has never been presented to any institution for any award

Signed.....

Dated.....29<sup>th</sup>/06/2019.

BASEMERA EDITH

RESEACHER

Submitted with my consent

Signed.....

Date.....29/06/2019

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## **DEDICATION**

I dedicate this work to my late parents Mrs. Kabatooro Margret Bitubyo Akiiki and Mr. Bitubyo Christopher, my uncles Mr. Mandellor Robert Asaba Bitubyo, Mr. Mandy Roberts Bitubyo and Mr. Mandela Ajuna Bitubyo.

## **ACKNOWLEDGEMENT**

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## **LIST OF CASES**

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Ailibhai Panju and Sons Ltd V Uganda Foundry and Machine Works 12 EACA 33

AirTrans world Ltd V Bombardier Inc. (2012) EWHC 204 (COMM)

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Andrews Bros V Singer and Co Ltd (1934)1 KB 17

British cars Auctions v Wright [1972]3 ALLER 462

Donoghue V Stevenson (1932) AC 562

Fenwick v Macdonald Fraser and Co. [1904] 6 F

Hilas v Arcos Ltd and Co. Ltd (1932)147 LT 503

Hon. Mable Bakeine v Yuasa investments ltd HCCS NO. 136 OF 2013

Imperial Loan Co. v Stone. [1892] 1 QB 559

Livio Carli V Salem (1959) EA 701

Lloyds Bank Ltd V Bundy (1974) AC 72

Mamje Bros V Awadha (1969), EA 52

May and Butcher Ltd v The King, [1934] 2 KB 17

Merchantable Bank India V Central Bank of India (1895) AC 56

Micro beads AC V Vinhurst Road markings Ltd (1975)1 WLR 218

Nash V Inman (1908)2 KB 1

Tusabagha Enterprises V Nyanza Textiles Ltd

## **LIST OF STATUTES**

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The Constitution of the Republic of Uganda 1995 as amended

The Sale of Goods Act Cap 82

The Sale of Goods and Supply of Services Act, 2017

The Uganda Communications Act No 1 of 2013

The Financial Institutions Act No. 2 of 2004 as amended

The Adulteration of Produce Act 2000 Cap 27

The Public Health Act 1935 Cap 281

Food and Drugs Act 1959 Cap 278

The Drug Policy and Authority Act Cap 206

Weights and Measures Act 1965 Cap 103

The Contracts No. 7 of 2010

## **LIST OF ACRONYMS**

UNBS	Uganda National Bureau of Standards
ICT	Information Communication Technologies
UICPA	Uganda ICT Consumer Protection Association
SOGA	Sale of Goods Act
SOGASSA	Sale of Goods and Supply of Services Act
BOU	Bank of Uganda
CAP	Chapter
WFTO	World Fair Trade Organization
ULRC	Uganda Law Reform Commission

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## **ABSTRACT**

This research set out the legal circumstances that have obtained in Uganda for a very long time in the area of consumer protection on the sale of goods and supply of services with the legislations that underpin it. The study established that legislation on consumer protection in Uganda is fragmented, over time however, a new disjointed legal dispensation has taken Centre stage. Even with the few interventions in the form of legislation, there is a disconnection between the legal provisions and their practical application. However, as per now, there is less influence of foreign laws on consumer protection legislation in Uganda since there has been the formulation of an independent Ugandan Act on consumer protection known as the Sale of Goods and Supply of Services Act, 2017. The objective of this Act is clear in its long title as it states that An Act to provide for the formation, effect, obligations and performance of contracts for the sale of goods and supply of services; to provide for remedies of the parties under those contracts; to provide for consumer protection; and for related matters. The objective of the study was basically to analyze The Sale of Goods and Supply of Services Act, 2017. The methodology of the research was a doctrinal research where the Sale of Goods and Supply of Services Act, was the primary source of law as well as decided cases and other secondary sources of law like journals and articles. It was found out under the study that since the commencement of Act, there were no regulations to operationalize it. And that the study recommended that Government should formulate and implement an independent national consumer protection law.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background to the study.

A consumer is defined under the sale of goods and supply of services Act, 2017 as a person who purchases goods or services for final use or ownership rather than for sale or use in production<sup>1</sup>. A consumer is also defined as a person who buys goods or services for personal, family or household use with no intention of resale; a natural person who uses products for personal rather than business purposes<sup>2</sup>. Furthermore, a consumer was also defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.<sup>3</sup>

Whereas Consumer protection is central to the Sale of Goods and Supply of services Act, 2017<sup>4</sup>, there is no definition put to the concept. However, the concept of consumer protection is defined as a group of laws and organizations designed to ensure the rights of consumers as well as fair trade, competition and accurate information in the market place<sup>5</sup>.

The rights that are supposed to be ensured are provided for under The Sale of Goods and Supply of Services in different sections<sup>6</sup> to include, buyer's right of examining the goods, the right to repair or replace the goods, right to reduce purchase price or rescind contract and other related remedies. Consumers also have certain rights under communication services<sup>7</sup> and these include; access to basic communications services at responsible prices, full pre-contractual information that is clear, helpful. Receive a

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<sup>1</sup> The Sale of Goods and Supply of Services Act, 2017, section 1.

<sup>2</sup> Garner. A Bryan, *Blacks Law Dictionary* (8th Edition, 2004) 335.

<sup>3</sup> Amelia Kyambadde (MP), Minister of Trade Industry and Cooperatives, *National Competition and Consumer Protection, Regulated Competition for Efficiency and Enhanced Consumer Welfare*, 29<sup>th</sup> July 2013, accessed from <https://www.newvision.co.ug> on 14<sup>th</sup> June 2019.

<sup>4</sup> The long Title to the Sale of Goods and Supply of Services Act, 2017, provides that one of the major objectives is consumer protection.

<sup>5</sup> Brian W. Harvey, *The law of consumer Protection and Fair Trading* (2nd Edition, Butterworth 1978) see preface.

<sup>6</sup> The Sale of Goods and Supply of Services Act, 2017, sections 42, 47 and 49.

<sup>7</sup> UCC, Consumer rights 2019 accessed from [www.ucc.co.ug](http://www.ucc.co.ug) on 26<sup>th</sup> June 2019.

service with a quality that reflects the cost of the service, fair treatment without undue discrimination from another consumer, right to complain about quality, delay, quantity and tariff and so many other rights provided by different sources of law.

The World Fair Trade Organization asserts that they believe in changing the practices in supply chain to follow the ten principles of fair trade as it is the path of seeking trade justice and equity in the international trading structures, to be able to deliver the promise of fair trade, practices from the production to sale of products should pass the global Fair Trade standard set by World Fair Trade Organization (WFTO). The principles of fair trade include; creating opportunities for economically disadvantaged products, transparency and accountability, fair trading practices, fair payment including fair prices negotiated between the buyer and the seller, and so many other fair trade practices.

The competition in the market place<sup>8</sup> was asserted by the ULRC (Uganda Law Reform Commission) which was a predominant objective of the commission. The commission aims at pursuing policies to facilitate productive and creative activity in the economy in the most competitive and efficient way possible for the benefit of everyone, that is by maximizing output and contribution to prosperity at minimum cost rather than simply efficiency in the popular cost. This however in one way or another provides for a variety of products to the consumers and reduces price hiking due to the competition on the market place on product supply. Competition also refers to the way firms behave in the market place and how they respond to the actions of other suppliers and consumers<sup>9</sup>

**The market accurate information by Andrew W. Shepherd<sup>10</sup>** provides for market information for consumers as it should pay attention to the information needs of consumers than as hitherto been the case. Market information should ideally be collected by people who both have the time available to do the job accurately and have

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<sup>8</sup> Uganda Law Reform Commission; *Study report on selected Trade Laws –Consumer Protection law* (Law compub no 27 of 2004) accessed from <https://www.ulrc.go.ug> on 14<sup>th</sup> June 2019.

<sup>9</sup> Amelia Kyambadde (MP) Minister of Trade Industry and Cooperatives, *National Competition and Consumer Policy Protection, Regulated Competition for Efficiency and Enhanced Consumer Welfare* 29<sup>th</sup> July 2013. Accessed from <https://www.newvision.co.ug>, 19<sup>th</sup> June 2019.

<sup>10</sup> Andrew W. Shepherd; *Market Information Services, Theory and Practice* (1982) 40-41.

an interest in ensuring the success of the service. It is also feasible for information to be provided by market traders through, for example traders association or chambers of commerce or agriculture.

Consumer protection refers to measures established to; promote the free flow of truthful information in the marketplace, prevent business that engage in fraud or specified unfair practices from gaining an advantage over other market players, provide additional protection for the weak and those unable to take care of themselves, and ultimately ensures fair trade competition.<sup>11</sup> Consumer Protection laws in Uganda therefore among others attempt to guard consumers against harmful, fake or substandard products and services, excessive pricing to balance the unequal bargaining power between the sellers and consumers caused by poverty and lack of relevant information by consumers about goods and services .Any consumer protection legislation should assist consumers to avoid deceptive or unfair trade practices in trade and commerce in Uganda .In this vein, such legislation is expected to guide the sellers on how to conduct their business and provide information to consumers on the goods and services they are buying and remedies to consumers who are injured by unfair and deceptive practices as it was stated by Reid and Priest 1998 at page 1.

**Flavian Zeija**<sup>12</sup> in his article established that legislation on consumer protection in Uganda is fragmented. And that however, overtime, a new disjointed legislation has taken Centre stage. Even with the few interventions in form of legislation, there is a disconnection between the legal provisions and their practical application. The influence of foreign laws on consumer protection legislation in Uganda is apparent and that there is a positive relationship between the level of development and the degree of consumer protection. There is also direct relationship between the source of funds to sponsor legislation and the nature of legislation that is enacted as the writer recommends an overhaul of the current legal regime and enactment of comprehensive consumer

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<sup>11</sup> ibid(n 10).

<sup>12</sup> Flavian Zeija, *Consumer Protection in Uganda: The Law in Theory and Practice*, (August 2018) accessed from <https://link.springer.com> on 13<sup>th</sup> March 2019.

protection legislation.

Despite the fore mentioned milestones by the Parliament of the Republic of Uganda coming up great improvements in the protection of the rights of consumers in the supply chain of services and sale of goods in Uganda through the enactment of this new legislation<sup>13</sup>, Ugandan consumers are still suffering from unfair trade practices, fake products, economic exploitation the safe guards put in place notwithstanding.

This background therefore calls for an analysis of the new Sale of Goods and Supply of Services Act, 2017 with a view of appreciating the consumer protection safe guards, identifying the gaps and suggesting the possible mechanisms of enhancing the protection of the rights of the consumers of goods and services.

## **1.2 Problem statement.**

The economies of developing countries of which our country Uganda is inclusive are in many ways more vulnerable to undesirable trade practices of one sort and another for two basic reasons. The first one is that their consumer protection laws are not usually as sophisticated and complete as their more developed counterparts. This is often partly because governments who are desperately trying to build up their country's economic base by attracting new industry from abroad are loath to compass entrepreneurs about with laws which may be regarded by them as tiresome and expensive to comply with them. The second reason is that the enforcement agencies, whether they be an efficient weights and measures inspectorate or an officer in a department of Trade, are often lacking in the resources of trained staff and general expertise to undertake such duties as may exist on the Statute book.<sup>14</sup>

A consumer movement is almost sure to exist, but where general standards of products quality may be low and unrestrained advertising permitted, this together with widespread public ignorance of consumer rights makes the task of the movement

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<sup>13</sup> The constitution of the Republic of Uganda 1995 as amended, article 79, mandates parliament to make laws on any matter order and development.

<sup>14</sup> Brian W. Harvey, *The law of consumer protection and Fair Trading* ( 2<sup>nd</sup> Edition , Butterworth 1978) 14, 35-36.

greater. Consumer protection is also attacked, usually covertly for being middle class, the middle classes for this purpose being defined as those with the opportunity and education to look after themselves. The implication is that the poor are out of reach of this movement since they are too ignorant or under too many pressures to resist protection.

### **1.3 Objectives**

The objectives of the study are divided into general objective and specific objectives.

#### **1.3.1 General objective;**

To analyze The Sale of Goods and Supply of Services Act 2017 in relation to consumer protection in Uganda.

#### **1.3.2 Specific objectives;**

- 1) To examine how the Act protects Ugandan consumers against economic exploitation.
- 2) To find out the relevance of the provisions of the Sale of Goods and Supply of Services Act, 2017 in Consumer Protection.
- 3) To examine the gaps in the Sale of Goods and Supply of Services Act 2017 towards the protection of consumers in Uganda.
- 4) To suggest possible mechanisms of enhancing consumer protection in Uganda.

### **1.4 Research questions.**

- 1) How does The Sale of Goods and Supply of Services Act 2017 protect Ugandan consumers?
- 2) What is the relevance of the provisions of the Sale of Goods and Supply of Services Act, 2017?
- 3) What are the gaps identified in the protection of consumers in Uganda under The Sale of Goods and Supply of Services Act, 2017?
- 4) What are the possible recommendations for enhancing consumer protection in Uganda?



### **1.5 Scope of the study**

The study was divided into geographical scope, time scope and content scope as seen below.

#### **1.5.1 Geographical Scope**

The study analyzed the Sale of Goods and Supply of Services Act, 2017 of Uganda on consumer protection mechanisms.

#### **1.5.2 Time scope**

This research was carried out for a period of four months that is from March of 2019 to June 2019.

#### **1.5.3 Content Scope**

The study covered the sale of goods and supply of services Act. Reference was also made on other laws in regard to consumer protection in Uganda. The study focused on provision of the Act relating to unfair trade practices like the selling of expired goods to the consumers, price hiking by the sellers amongst others.

### **1.6 Purpose of the study**

To understand the provisions of consumer protection under laws most especially the Sale of Goods and Supply of Services Act, 2017 and other laws regarding consumer protection measures.

To explain the various measures under The Sale of Goods and Supply of Services ACT, 2017 relating to the protection of consumers.

To improve on the existing knowledge, for references by future researchers on matters relating to consumer protection in Uganda.

## **1.7 Methodology**

This research was a doctrinal research where I analyzed the provisions of the Sale of Goods and Supply of Services Act 2017 which is a primary source of law as well as decided cases on consumer protection. Reference was made to laws on consumer protection especially the Sale of Goods and Supply of Services Act, 2017, other laws regulations which are the secondary sources of law as they include; policy reports, Guidelines on consumer protection in Uganda and other jurisdictions.

Leading judgments were also quoted so as to find out the judicial position and opinion of different judges, journals, articles from various libraries for example the Kampala international university library, the different commissions, and the other consumer protection laws in Uganda.

## **1.8 Literature review**

This part deals with the different opinions of different writers on the situation of consumer protection especially in Uganda though relating with other countries as it is discussed here under;

**Ayebare Tumwebaze** in his book<sup>15</sup> provided that a consumer, who is normally a person who buys any goods for consideration or hires or avails of any services for consideration, has a right to be protected against marketing of goods which are hazardous to life and property, to be informed about the quality, quantity, potency, purity, standard and price of goods, to protect himself against unfair trade practices, to be assured access to a variety of goods at competitive price and to seek redress against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers. He further provided that the Sale of Goods Act lays down several conditions that all goods sold by a trader must meet. It provides that the goods must be: as described, of satisfactory quality and fit for purpose; as described refers to any advert or verbal description made by the trader, satisfactory quality refers or covers minor and cosmetic defects as well as substantial problems. It also means that the products must

last a reasonable time. He further more provides that if you buy something which doesn't meet these conditions, you have the potential right to return it, get a full refund, and if it will cost you more to buy similar goods elsewhere, compensation (to cover the extra cost) too. If these remedies are in appropriate, then you are entitled to a suitable price reduction or to return the goods and get refund (reduced to take account for any wear and tear. The Act covers second hand items and sales. But if you buy privately, you are only entitled to your money back as if the goods are not as described. If goods which are expected to last six months do not, it will be presumed that the goods did not conform to the contract at the time they were bought, unless the seller can prove to the contrary. This write up is relevant to consumer protection as well as relate to the sale of goods and supply of services Act as it provides for relevant remedies to a consumer. It is also important to note that whereas the author raises key principles on consumer protection, he largely relies on the repealed Sale of Goods Act cap 82.

**Bazekuketta** from Makerere University School of law in his article<sup>16</sup> analyzed that the Sale of Goods Act Cap 82 is not comprehensive in that common law rules of law merchant also apply to a contract for sale of goods. He provided that the Act doesn't make mention of the essential elements of contract .In this regard recourse is made to the law of a contract, as offer, acceptance, consideration and intention to be legally bound are also other important elements of a valid contract. And that the Act is not comprehensive. Common law rules relating to merchant law and the general law of contract continue to apply to a contract of sale of Goods in order to fill the lacunae created by the incomprehensiveness of the Act. The Act did not indicate the terms of a contract for sale of goods. Parties are free to contract as freely as they wish. Under section 54 of the Act, the parties may by express agreement vary or negative any right, duty or liability which may arise by implication of law. The terms implied by the Act under sections 13, 14, 15 and 16 apply in so far there are no express terms verifying or

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<sup>15</sup> Ayebare Tumwebaze; *The law of Sale of Goods in Uganda* ,(Kampala Uganda, 2006) 7.

<sup>16</sup> Bazekuketta Derrick; *Analysing Uganda's Sale of Goods Act Cap 82* 4 September 2015 accessed from <https://dbazekuketta.wordpress.com> on 13<sup>th</sup> March 2019.

inconsistent with them. **In Andrews Bros V Singer and co. Ltd<sup>17</sup> Greer J** explained that using the expression implied condition in section 13(our section 14) doesn't mean that it is not an express obligation in the contract between the parties that is the seller and the buyer who may be the consumer. Additionally section 15(d) provides that an express warranty or condition does not negative a warranty or condition implied by the Act unless inconsistent with it. This simply means that where an express term is inconsistent with an implied term, the implied term under the Act will be negative. This therefore means that the sellers who would want to exploit the consumers who are ignorant about the implied terms which were provided by the Act would be forced to proceed with the contract basing on the decision of the seller even when these terms are unfair to the buyer who may be a consumer hence encouraging un fair bargaining power on the side of the consumer who is ignorant. The above provision by the writer is in line to some extent with the current provisions of the Sale of Goods and Supply of Services Act, 2017 which also provides for different rights and remedies to the consumer though the recent Act for it provides further that the express terms shall not negative the implied terms.

**Ronald Irving<sup>18</sup>** in his book provided that, that if the seller refuses to serve a shopper on request with fruit or vegetables of the same quality as those displayed at the same quality as those displayed at the price marked up, he will be committing an offence. That means in case the seller has displayed the goods and he or she has marked those goods with specific prices at which they will be sold, then the if the buyer comes to buy those goods then they should be sold at that specific price that has been marked on the goods hence this protecting the consumer from being sold at different prices from those on which is marked on the displayed good<sup>19</sup> of the same book, it was stated that The sale of goods act 1979 provided that an item is as fit for its purpose in the case to be eaten as is reasonable to expect, having regard to all circumstances that is section 5 of the same act. This means that for goods to be sold to a consumer these goods are

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<sup>17</sup> Andrews Bros (Bournemouth) Ltd v Singer and co. Ltd(1934) 1 KB 17.

<sup>18</sup> Ronald Irving; *An outline on the law of product liability and consumer protection* (Barry Rose Publishers Ltd, 1980)31.

supposed to be of a merchantable quality of which the consumer can be able to use this good for its purpose without fail hence the protection of a consumer from consumption of poor quality goods. Page 46 and 47 of the same book provides for special requirements regarding food stuffs that is all food stuffs whether bought in a shop or in a restaurant, must be fit for human consumption. And that its no difference that sellers have taken all reasonable precautions as to hygiene. And this applies only where you pay for the food for example a paying patient in a hospital or nursing home will have an automatic claim if the food makes him ill. However despite the write up of this book, though there is a provision of goods being of a merchantable quality as those that are being displayed, some sellers still sell some goods which are not of a merchantable quality since The Sale of Goods and supply of services Act 2017 does not provide for offences in case of failure to fulfill the sale of goods of merchantable quality but the Act instead provides for rights and remedies and not offences which creates a loophole in the Sale of Goods and Supply of Services Act creating a need for the improvement of the Act to provide for offences and in this way, the consumers will be protected as the suppliers of services and sellers will take caution for the awareness of available offences in the case of breach of a contract of sale of goods and supply of services.

**Brian W Harvey<sup>20</sup>**; It was provided that the consumers common laws rights depend also on any express or implied terms applicable to the contract of services and any right of action he might have in tort particularly the tort of negligence for example an implied term under skill. This means that a consumer is being protected from acquiring services from unskilled suppliers of services. In the case of **Donoghue v Stevenson<sup>21</sup>**, in this case, it's instrumental in that it shaped the law of tort and doctrine of negligence in particular the negligence of a manufacturer or the supplier of the goods for the consumption of the consumer. Furthermore Brian Harvey provides for the private consumer protection against fraudulent trading practices, unsafe products, qualitatively

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<sup>20</sup> Brian W Harvey; *The Law on Consumer Protection and Fair trading*, (2<sup>nd</sup> Edition Butterworth, Oxford Univ Pr 2000) Chapter 7.

<sup>21</sup> Donoghue v Stevenson ( 1932 ) AC 562.

deficient goods and services, insufficient information, and economic exploitation through lack of competition or excessive prices hence consumer protection. However the writer in his writing relates with The Sale of Goods and Supply of Services Act for it provides for the different rights to consumers in case of the Sale of Goods agreement and supply of services as well as remedies available to the consumer in case of breach. And that the Act provides for the duty of care towards the supplier of services and the seller of goods.

**John Mickleborough in his book<sup>22</sup>** he stated that, the expression of consumer protection has not yet achieved the full status of a term of art. John took consumer protection law to mean that body of law which is concerned with the supply to the consumers of goods and services whether for cash or for credit. However meaning that a consumer can be protected from consuming goods which are defective whether he has acquired them on cash or on credit and the method of acquiring these goods doesn't matter on the need for consumer protection.

**An article by the I-NETWORK<sup>23</sup>** an ICT for development organization that is mainly supported by International Institute Communications and Development which introduced the Uganda ICT Consumer Protection Association (UICPA). It was stated that following a series of discussion on various mailing lists for the past two to three years in regard association. The association recognizes the existing institutions and channels of dealing with consumer concerns and will work collaboratively with these institutions with the aim of improving ICT services and goods for the consumers. From internet services to voice services and all the way to hardware products, the situation is running out of control, and the few bodies mandated to protect consumers like the Uganda communications commission and the UNBS seem to be overwhelmed by their wide mandates, limited budgets and inadequate human resources. ICT services and products in Uganda, a few individuals decided to explore the idea of bringing together grieving

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<sup>22</sup> John Mickle borough; *Consumer Protection* ,(Professional Books Limited, 1966).

<sup>23</sup> Bugembe Derrick Yawn Bazekuketta; *Consumer protection in the cyberspace in Uganda*, (4<sup>th</sup> May 2017) accessed from <https://dbazekuketta.wordpress.com> 16<sup>th</sup> May 2019.

ICT consumers. These individuals have now set up the Uganda ICT consumer protection whether such commodities conform to the standard of specification. This however enables the consumers to consume goods which are manufactured from non-harmful ingredients or components which are not dangerous to the health of consumers law from the Uganda law reform commission is the national commission hence consumer being protected. The Sale of Goods and Supply of Services Act also provides for the protection of ICT goods and Services.

**Bugembe Derrick Yawe in his article<sup>24</sup>**, stated that, two years ago the evolution of computer mainly affected the consumers. It is upon this basis that the essay discussed the adequacy of the law in protecting the consumer in the cyber space in Uganda. Despite the benefits associated with internet transactions, consumer in the cyber space face a wide range of risks. The independence of online-fraud has increased dramatically thus revealing a dark side to the benefits of the internet. The risks involved in the use of the internet make the need for protection of the consumer in the cyber space inevitable. Consumer protection policies seek to balance the interests of suppliers and consumers since suppliers prefer little or no regulation while consumers want protection in the cyber space can be achieved through various ways such as self-regulation and public law regulation. This article on the protection of consumers in the cyber space also fell under the Sale of Goods and Supply of Services Act 2017 which provides for the protection of computer software as it is included under the definition of goods hence both providing for the protection of computer software whether on land or in the cyberspace for under section 2 of the Act it provides for the definition of goods to include computer software.

**Katz, Alan M.<sup>25</sup>** provided for the efforts by parliament and the experience of the executive branch in enforcing the law against food adulteration and certain mechanisms were suggested for example private actions in the consumer interest under the civil law

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<sup>24</sup> Bugembe Derrick Yawe, *consumer protection in the cyber space*, (4<sup>th</sup> May, 2017) accessed from <https://dbzekuketta.wordpress.com> 16<sup>th</sup> June 2019.

<sup>25</sup> Katz, Alan M. *The Law against Food Adulteration: A Current Assessment and a Proposal for an Enforcement alternative*. "Journal of the Indian Law Institute 9, no.1 (1977):68-76.

is raised. He further stated that food adulteration been a persistent problem in independent India and that food adulteration was rampant. Parliament of India also found out the problem for of food adulteration was increasing rather than lessening. Despite apparent fluctuations in the extent of food adulteration as he cited in his article, within the past year both parliament and he United Nations food and agriculture organization have indicated that in India the practice of adulterating food has continued unabated. Although not all businesses in the food distribution chain engage in adulteration, it is found among producers of all sizes, wholesalers, distributors, and retailers. It is further provided under the same article that despite the availability of the law and introduction of other mechanisms on the prevention of food adulteration, most milk sold in India is diluted with water as provided under the Prevention of Food Adulteration (Amendment) Bill, and a substantial proportion of some other food stuffs including such basic staples as turmeric, ghee, tea, flour, edible oil, butter, and chili powder is adulterated. This means that this article proved so many loopholes in the law of consumer protection in India and that it is really a challenge to The consumers of India as well as most consumers who are in Uganda as so many milk diaries in Uganda sell adulterated milk and other food products hence a continuous challenge to the Governments of so many consumers in different countries. Relating the author's article with the current situation in Uganda, the current law that is the Sale of Goods and Supply of Services Act, 2017 is also against the alterations of products and also the sale of substandard products this is still ongoing among the sellers of different selfish sellers of goods and suppliers of services in Uganda.

**The free law essays on the doctrine of freedom of contract** provided that the doctrine of freedom of contract has always been respected by the Law, which allows parties to provide for the terms and conditions that will govern the relationship. This freedom is subject to the requirements of good faith, fair dealing and the mandatory rules established under the principles. Accordingly, the law has intervenes to guide the parties as to which terms they can contract on to effectively balance the inequality in their bargaining power, and ensure optimum protection for the consumer who, most



times, has limited expertise in the field<sup>26</sup>. Accordingly, the Sale of Goods and Supply of Services Act, 2017 in the Ugandan context, provides and entrenches implied terms in all sale of goods and supply of services contracts<sup>27</sup> in order to guide the parties as to which terms they can contract on to the effectively balance the inequality in their bargaining power and ensure optimum protection for consumers who, most times have limited expertise in the market place.

### **1.9 Organizational layout**

This research is comprised of five chapters;

Chapter one which includes the general introduction of the study

Chapter two includes the analysis of the Sale of Goods and supply of Services Act, 2017 on consumer protection.

Chapter three includes relevance of The Sale of Goods and supply of Services Act 2017 towards the protection of consumers in Uganda.

Chapter four includes the gaps in the Sale of Goods and Supply of Services Act, 2017.

Chapter five includes the conclusions, research findings, recommendations.

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<sup>26</sup>Tedoradze Irakli, *The Doctrine of Freedom of Contract, Pre-contractual Obligations Legal Review* ,EU and US Law,doi:10.19044/esj,2017,v13n accessed from URL:<http://dx.doi.org/10.19044/esj.2017.v13n4p62> 20th June 2019 .

<sup>27</sup> Sale of Goods and Supply of Services Act, 2017, sections 19 and 67.

## **CHAPTER TWO**

### **THE SALE OF GOODS AND SUPPLY OF SERVICES ACT, 2017 ON CONSUMER PROTECTION**

#### **2.0 Introduction**

The Sale of Goods and Supply of Services Act, 2017 is an Act that repealed the sale goods Act cap 82.<sup>28</sup> It provides for formation, effect, obligation and performance of contracts of sale of goods and supply of services; remedies for parties under those contracts; and most importantly for consumer protection and for related matters<sup>29</sup>. This law therefore is the current legal framework for the sale of goods and supply of services between buyers who are usually but not necessarily consumers and sellers. On 2<sup>nd</sup> of July 2015, having conceded to the defects in the then existing law and in an effort to support private sector development and private investment, the Minister of information through the Uganda media center announced that a new bill to reform and replace the Sale of Goods Act cap 82 had been approved by cabinet and aptly named it the Sale of Goods and Supply of Services Bill 2015. The objective of the Bill was to provide for the formation of contracts for the sale of goods and supply of services, the effect of contracts for sale of goods and supply of services and to reform and replace the existing Sale of Goods Act cap 82.

The Act was assented on 19<sup>th</sup> January and then it came into commencement on the 8<sup>th</sup> of January 2018.

The Sale of Goods and Supply of Services Act has certain key features and these include; provision or the interpretation part which deals with the preliminary matters of the Act especially with regard to interpretation, the formation of a contract, the effects of contract of sale, performance of contract of sale and supply of services, rights of unpaid seller against the goods, actions for breach of contract of sale and supply of services, remedies of the buyer, and then the miscellaneous.

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<sup>28</sup> *ibid*(n 27), Section 72.

<sup>29</sup> The Sale of Goods and Supply of Services Act, 2017, the long title .

This chapter however, was restricted to how the Act attempts to achieve one of its major objectives is that of consumer protection as analyzed hereunder;

## **2.1 Capacity to contract.**

The sale of goods and supply of services Act provides that a requirement of the parties to contract must have capacity to enter into contracts to be enforceable<sup>30</sup>. This includes parties being of majority age, sound mind; and not disqualified from contracting by the law. However minors and persons of unsound mind or affected by drunkenness being in a disadvantaged position, are protected and they can enter into enforceable contracts for goods and services in respect of necessities and the law requires that they pay reasonable price<sup>31</sup> to guard them against unconscionable bargain and entering in unnecessary contracts for luxurious goods and services . This is in line with Article 34(4) and (5) of the national Constitution which provide that children are entitled to be protected from social or economic exploitation. Furthermore, in the case **Nash v Inman**<sup>32</sup>, in an action against an infant for necessities, court observed that the onus is on the plaintiff to prove not only that the goods supplied were suitable for the condition in life of the infant but also that he was not sufficiently supplied with goods of that class at the time of the sale and delivery. **In an Article by Jean Murray**<sup>33</sup> acknowledges the difficulty in determining what is truly necessary as it varies from contract to contract. He however, he gives examples of necessities which include foods, clothing, and shelter. In one example, a minor took out a mortgage on a home, then tried to get out of it .The court held that the house was necessary. Transportation to get to work to pay for living expenses might also be considered a necessary item; a court would have to determine this. This therefore in one way or another can enable even a minor as a consumer to acquire necessities of life as mentioned above and that a seller cannot take advantage of minority in age or unsoundness of their mind to exploit consumers in this category in a contract for sale and supply of services.

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<sup>30</sup> *ibid*(n 27) Section 4.

<sup>31</sup> *ibid* Section 4 (2).

<sup>32</sup> [1908]2 KB 1.

## 2.2 Form of a contract.

**Section 5** provides that a contract of sale or supply of services may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or in the form of a data message, or may be implied from the conduct of the parties. This flexibility in formation of these contracts is not only advantageous by easing transactions but also contracts for sale of goods and supply of services made by word of mouth are of advantage to the consumers who are illiterate or unable to read and write which, means that all those consumers who are illiterate do not have to be stressed with the informal formalities of a contract hence being helpful to illiterate consumers and of protection against sellers who would want to take advantage of the consumers illiteracy by making them sign documents or thump print documents which may contain harsh terms against consumers in that category.

## 2.3 Implied terms.

**Section 11 (1)**<sup>34</sup> of the Act provides for the implied term as to time which is to the effect that the time of payment is not of essence to the contract unless a different intention appears from that of the contract. The provision weakens terms relating to payment therefore other terms may be of essence as delayed delivery, passing of goods and judges have approved it.<sup>35</sup> There is an implied term that the supplier will carry out the service within a reasonable time, and what is a reasonable is a question of time. This is of importance to consumer which makes the supplier or seller fulfill his or her obligations under the contract of sale and supply of services within a reasonable time.

Section<sup>36</sup> provides for an implied term that goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made. This means that before the buyer who is a consumer of goods and services enters into a contract for sale of goods and supply

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<sup>33</sup> Jean Murray, *Can I Enter Into a Contract With a Minor?*, (January 27<sup>th</sup>, 2019, accessed from <https://www.thebalancesmb.com> 19<sup>th</sup> April 2019.

<sup>34</sup> *ibid*(n 27) section 37.

<sup>35</sup> *ibid*(n 15) 23.

of services, the goods under the contract of sale must be free until the time when the property passes. This however protects the consumer from engaging with the seller where the goods to be sold to him belong to someone else and that these goods must have no owner that is they should not be belonging to anyone else until the property passes and that the consumer is prevented from buying goods that have already passed to someone else hence the protection of a consumer from buying a nonexistent good.

**Section 13 2 (b)** <sup>37</sup> provides that the buyer will enjoy quiet possession of the goods except so as far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known to the buyer. The Act therefore protects the consumer from being disturbed from enjoying quietly or peacefully the good that he or she acquired from the seller. The buyer is free to abuse and use the property thus enjoys quiet possession of such property. It applies to choses in action claims but not the possession being claimed for example when one buys a car from another but the seller keeps probing the user; a shirt seller of CK being probed by Calvin Klein's agent.<sup>38</sup> In the case of **Microbeads AC V Vinhurst Road markings Ltd**<sup>39</sup>, it was held inter alia that, the seller must warrant quiet possession at the time of sale which was not accomplished. Lord Denning said that the right to sell the goods means not only to pass the property in the machines to the buyer but also a right to confer on the buyer undisturbed possession of the property. The statutory provision in section 13(b) is to the effect that "the buyer shall have and enjoy his goods with quiet possession." And that this provision was not a mistake by the draftsman that the buyer who is the consumer is entitled to quiet enjoyment of the goods as well as the supply of the services provided by the seller hence consumer protection.

**Section**<sup>40</sup> provides there is an implied term that the goods shall be free from any charge or encumbrance in favor of a third party, not cleared or known to the buyer who

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<sup>36</sup> The Sale of Goods and Supply of Services Act, 2017, Section 13.

<sup>37</sup> *ibid*(n 27) section 13(2 b).

<sup>38</sup> *ibid*(n 15) 29.

<sup>39</sup> *Microbeads AC V Vinhurst Ltd* (1975) 1 WLR 218.

<sup>40</sup> The Sale of Goods and Supply of Services Act, 2017, Section 13(4).

in this case is a consumer before or at the time when the contract is made. **Ayebare**<sup>41</sup> asserted that the law implies a warranty when there is a contract for the sale of goods that nobody has a charge on the goods and nobody claims any interest in the goods which have been disclosed to the buyer before or at the time when the contract was made. This was also further illustrated in the case of **Mercantile Bank India V Central Bank of India**<sup>42</sup> where the issue was whether the respondents had failed to notify prospective buyers of their right in the goods or whether they had created an encumbrance which the appellants should have been aware of. It was held that the respondents owed no duty to the appellants in the matter that there was no relationship of contract or agency, and they had no reason to think that the receipts would ever be handled by appellants and that they were not therefore estopped by their conduct in returning the receipts to the merchants for the specific purpose of cleaning the goods, from delay as against the appellants, that merchants had a right of pledging the goods as owners from setting up their title as against the appellants to their goods.

**Section 14**<sup>43</sup> provides that where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. Where the sale is by sample, as well as by description, it is not sufficient that the bulk of the goods correspond with the sample if the goods do not correspond with the description. The general rule is that the buyer who is a consumer in this case should be aware of what he wants and express his wishes clearly to the seller before the conclusion of the contract.<sup>44</sup> This was further illustrated in the case of **Alibhai Panju and sons Ltd V Sumderji**<sup>45</sup> where court held that sorghum tendered by the plaintiffs appellants was not of the description for which the bargain was struck which was for the sale of white sorghum according to the custom of the trade. This is however of importance to the consumers as sellers are supposed to sell to the

<sup>41</sup> Ayebare Tumwebaze, *The law of Sale of Goods in Uganda*, (2<sup>nd</sup> Edition 30 Kampala Uganda SN 2006) 30.

<sup>42</sup> *Mercantile Bank of India v Central Bank of India* (1895) AC 56.

<sup>43</sup> The Sale of Goods and Supply of Services Act, 2017, section. 14.

<sup>44</sup> *ibid* (n 44) 32.

consumers the goods that have been described by consumers and not something else as illustrated by the Act.

**Section<sup>46</sup>** provides that there is an implied condition that the goods supplied under a contract are reasonably fit for that purpose. The basic rule as regards to fitness for the purpose is the principle of caveat emptor (buyer be aware). The buyer who in this circumstance is the consumer is deemed to know what he wants to order for such and should not hold the seller if the goods later fail to answer the purposes of the buyer. However there are exceptions to this section for example on instances where the seller sells goods in the course of business. In the case of **Doola Singh and Sons V Uganda Foundry and Machine Works<sup>47</sup>** where it was held that there was an implied warranty that the parts manufactured should be such as would when fitted together and made into a saw-bench be reasonably fit to constitute a machine capable of doing the work usually done by a saw-bench.

**Section 16<sup>48</sup>** provides that where materials are used under a contract for the supply of services, there is an implied term that the materials will be sound and reasonably fit for the purpose for which they are required. This protects the consumer in a way that the supplier of services will have to use the materials that are in conformity with the type of services that the consumer seeks to be supplied with.

**Section 18<sup>49</sup>** which provides that, in a contract for the supply of services where the supply is acting in the course of business, there is an implied term that the supplier will carry out the services with reasonable care and skill. **Brian W Harvey<sup>50</sup>** asserted that where advice is given which falls below the standard of expertise reasonably to be expected, or in the common case where services are defectively performed, the consumer must show in the absence of specific legislative provision, that there is an

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<sup>45</sup> Alibhai Panju and sons Ltd V Sunderji (1968) 16 EACA 72.

<sup>46</sup> Ibid (n 46) section. 15.

<sup>47</sup> Doola Singh and Sons Ltd V Uganda Foundry and Machine Works (1967) 12 EACA 33.

<sup>48</sup> Ibid (n 46) Section 16.

<sup>49</sup> Ibid Section 18.

<sup>50</sup> Brian W Harvey, *The Law of Consumer Protection and Fair Trading*, (2<sup>nd</sup> Edition, Butterworths, 1978) chapter 7.

implied term that the service would be rendered with reasonable skill and that the supplier is in breach of this term as it was further asserted by Willes J in 1858 that; When a skilled laborer, artisan or artist is employed, there is on his part an implied warranty that he is of skill reasonably competent to the task he undertakes. Thus, if an apothecary, a watch maker, or an attorney be employed for reward, they each impliedly undertake to possess and exercise reasonable skill in their several arts.

## **2.4 Entrenchment of implied terms.**

Unlike under the repealed Sale of Goods Act Cap 82<sup>51</sup> which allowed parties to contract outside and override implied terms, the sale of goods and supply of services Act, 2017<sup>52</sup> provides that implied terms cannot be negative by express terms. This was intended to remedy the mischief of unequal bargaining power to the detriment of consumers by setting the minimum standards in contracts of sale and supply of services above which the parties are allowed to exercise their freedom of contract.

The high court commercial division of England in *Air Trans World Ltd V Bombardier Inc.*<sup>53</sup> upheld exclusion of implied terms based on the Sale of Goods Act 1979 basing on sections 13 and 14 of that Act. The court however observed that this being contrary to all previous English authorities, that liability cannot be excluded for a breach of a condition implied by the their Sale of Goods Act, it could only be possible if the terms were in apt and precise words. It is important to note that the UK position herein cannot hold in Uganda since the law as stated above in sections 19 and 67 expressly prohibits exclusion of implied terms without exception. Therefore this serves as a great and new tool of consumer protection.

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<sup>51</sup> The Sale of Goods Act Cap. 82, section 54.

<sup>52</sup> The Sale of goods and supply of services Act, 2017, sections 19 and 67.

<sup>53</sup> (2012) EWHC 204 (Comm).



## **2.5 The doctrine of caveat emptor.**

This is in relation to section 15<sup>54</sup> as well as Walton H. Hamilton in<sup>55</sup> asserted that caveat emptor is Latin for "Let the buyer be aware". Generally, caveat emptor is the contract law principle that controls the sale of real property after the date of closing, but may also apply to sales of other goods. The phrase caveat emptor and its use as a disclaimer of warranties arise from the fact that buyers typically have less information about the goods or service they are purchasing, while the seller has more information. Defects in the good or service may be hidden from the buyer, and only known to the seller. A common way that information asymmetry between seller and buyer has been addressed is through a legally-binding warranty, such as a guarantee of satisfaction. But without such a safeguard in place the ancient rule applies, and the buyer should be war.

## **2.6 Transfer of title<sup>56</sup>.**

This deals with the regulation of issues relating to title in the form, first, of the implied term as to title, on transfers and conflicts of title the Act defines a contract for the sale of goods and supply of services identifies the transfer of the property in goods from seller to buyer as the constitutive feature of the sales transaction. The proprietary provisions of the legislation use a number of relate terms-property, title, owner/ownership- without fully defining their respective meanings. Only property is defined meaning the general property means the absolute interest in the goods or, for all practical purposes, their ownership. The original provisions provided that the implied condition and warranties as to title apply unless the circumstances of the contract are as such to show a different intention. Even where the seller makes clear that he is selling only a limited title, he could not exclude in their entirety the warranties of quiet possession and of freedom from charges or encumbrances in favor of third parties. The seller must disclose to the buyer, before the contract is made, any encumbrances

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<sup>54</sup> The Sale of Goods and Supply of Services Act, 2017 ,section 15.

<sup>55</sup> Walton H. Hamilton, *The Ancient Maxim Caveat Emptor*, *The Yale Law Journal*, Vol. 40, No .8 (1931)1133-1187 June 28, 2019.

known to him and must further warrant that no one claiming through or under him or the third party will disturb the buyer's quiet possession of the goods.

## **2.7 *Nemo dat quod non habet.***

Consumers who buy in good faith from fraudulent or sellers without title/ under the exceptions to the Nemo dat rule.<sup>57</sup> Where goods are sold by a person who is not the owner and does not sell with authority of the owner, the buyer acquires no better title to the goods than the seller, except where the owner is by conduct precluded from denying the sellers authority. It is provided that when the seller of goods has a voidable title to the goods, but his or her title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, if he or she buys them in good faith and without notice of the sellers defect in title. The cases of voidable title include misrepresentation, undue influence, duress, drunkenness and so many others. In the case of **Mamje Bros V Awadha**<sup>58</sup>, Y forged delivery note in the names of a limited company and obtained delivery of the goods fraudulently. It turned out that Y was not the agent of the company, but sold the goods to an innocent party. It was held that the innocent 3<sup>rd</sup> party who dealt with Y must return the goods to the true owner and seek compensation from Y; for he had not obtained title to the goods from Y who had none to pass to him.

## **2.8 Remedies.**

The Act<sup>59</sup> goes ahead to provide for remedies as they have all been discussed below;

### **1. The right to repair or replace goods<sup>60</sup>**

Accordingly to the section where the goods do not conform to the contract the buyer (consumer) may require the seller to replace or repair the goods. The section further provides that where the buyer requires the seller to replace or repair goods, the seller

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<sup>56</sup>The Sale of Goods and Supply of Services Act, 2017, sections 29-33.

<sup>57</sup> The Sale of Good and Supply of Services Act, 2017, section 30.

<sup>58</sup> [1969] E A 52.

<sup>59</sup> The Sale of Goods and Supply of Services Act, 2017.

<sup>60</sup>The Sale of Goods and Supply of Services Act, Section 47.

shall repair or as the case may be, replace the goods within a reasonable time but without causing significant inconvenience to the buyer; and bear any necessary costs incurred in doing so, including in particular, the cost of any labor, material or postage. However, there are also exceptions to this provision which states that; the buyer shall not require the seller to repair or replace the damaged goods if that remedy is impossible, misappropriate in comparison to the other remedies available; or misappropriate in comparison to an appropriate reduction in the purchase price under section 4. However, the buyer requires the seller to repair or replace the goods the buyer shall not reject the goods and terminate the contract for breach of condition until he or she has given the seller a reasonable time in which to repair or replace the goods.

## **2. The right to reduction of the purchase price or rescind contract<sup>61</sup>**

This provision offers a buyer who in this case is a consumer the option to require the seller to reduce the purchase price of the goods by an appropriate amount or rescind the contract with regard to those goods if it is impossible for the seller to repair or replace the goods in comparison to an appropriate reduction in the purchase price; or if the seller neglects or refuses to repair the goods in question within a reasonable time and with significant inconvenience to the buyer.

## **3. Right to be afforded reasonable time to examine the goods.**

The sale of goods and supply of services Act requires that buyers/ consumers be afforded an opportunity by sellers to examine the goods with a view of ascertaining whether they are in conformity with the terms of the contract<sup>62</sup>. The law is strict in favor of consumers as against sellers in that a consumer is deemed not to have accepted the goods until the opportunity to examine the goods is so afforded. In the case **Hon. Mable Bakeine v Yuasa investments ltd**<sup>63</sup>, it was observed that the plaintiff had not been afforded an opportunity to examine the vehicle until the mechanic informed

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<sup>61</sup> Ibid(n 46) section 48.

<sup>62</sup> Ibid Section 42.

<sup>63</sup> HCCS NO. 136 OF 2013.

the plaintiff that it lacked enough thrust power and needed an engine overhaul and that until then he had a right to reject it and or exercise all the remedies available to her.

#### **4. Maintenance of an action.**

**Section 62<sup>64</sup>** provides that where the seller or supplier wrongfully neglects or refuses to deliver the goods or supply of services to the buyer, the buyer may maintain an action against the seller or supplier for damages for non-delivery of goods or failure to supply of services hence being of importance to the protection of a consumer.

#### **5. Specific performance.**

**Section 63<sup>65</sup>** provides that in an action for breach of contract to deliver specific or ascertained goods or services, the court may, on the application of the plaintiff, by its judgment or decree, direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. This was further illustrated in the case of **Tusabagha Enterprises V Nyanza Textiles Ltd<sup>66</sup>** where it was asserted that a mere difficulty in performance or an increase in prices of expense or profitability is not enough to relieve one party from carrying out the contract. The plea of frustration would not be upheld.

#### **6. Rejection and action for price.**

**Section 64<sup>67</sup>** which provides that where there is a breach of warranty by the seller, or where the buyer elects, or is compelled, to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of that breach of warranty entitled to reject the goods, but the buyer may; set up against the seller the breach of warranty in diminution or extinction of the price; or bring an action against the seller for damages for the breach of warranty. In the case of **Livio Carli V**

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<sup>64</sup> ibid (n 46) section 62.

<sup>65</sup> ibid section 63.

<sup>66</sup> Tusabagha Enterprises V Nyanza Textiles Ltd. H.C.C.S 51/1988.

<sup>67</sup> The Sale of Goods and Supply of Services Act, 2017, section 64.

**Salem**<sup>68</sup> where it was illustrated that in a sale of goods of different description entitles the buyer who is a consumer to reject the goods.

## **2.8 Conclusion.**

With the provision of rights, remedies, formation of a contract for sale of goods, and Supply of services as well as the transfer of title and the doctrine of caveat emptor by the Sale of Goods and Supply of Services Act 2017 as discussed in this chapter, the Consumers in Uganda will be able to be protected against the unfair trade practices of the greedy and selfish sellers of goods and suppliers of services in Uganda.

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<sup>68</sup> Livio V Salem (1959) E.A 701.

## **CHAPTER THREE**

### **THE RELEVANCE OF THE SALE OF GOODS AND SUPPLY OF SERVICES ACT, 2017**

#### **3.0 Introduction**

The need to reform the Sale of Goods Act Cap 82 so as to be compatible with the contemporary economic realities and encourage the consumer protection in the sale of goods and supply of services which is the most common commercial transaction with the quality and utility of goods in contracts of sale of goods and supply of services which is an important issue to anyone who is involved in the sale of goods and supply of services and purchase of goods on a regular basis. The common law decisions which originally covered quality of goods were seen as being inadequate in the face of fast changing economy.

#### **3.1 Meaning of a consumer**

Under section 1 a consumer is defined as a person who purchases goods or services for final use or ownership rather than for resale or use in production. However in the current situation, there are also people who purchase goods or services not for final use but actually for resale. This therefore means that the Act is still insufficient since there is a need for also protecting the buyers who purchase products or services for resale.

#### **3.2 Formation of a contract<sup>69</sup>**

A minor or infant is a person, who has not reached the age of majority, which in Uganda it is 18 or 16 years of age under the 1995 Constitution of the Republic of Uganda as amended. At common law, a minor's contract which does not involve the supply of necessities, or is not a beneficial contract of services, is voidable- that is the contract to which a party is entitled to rescind but which is valid and binding until rescinded. Following **Imperial Loan Company V Stone**,<sup>70</sup> the relevant rule regarding contracts entered into by persons of diminished mental capacity is that a contract is

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<sup>69</sup>The Sale of Goods and Supply of Services Act, 2017, section 4.

<sup>70</sup>[1892] 1 QB 559.

valid unless the mental illness was such as to prevent the person from knowing the nature of his actions and the other party was aware of that mental illness. Contracts for necessities are enforceable at a reasonable price even if the other party knew of the mental illness. The position on drunkenness is similar to that of mental illness. Before any question of unforeseeability arises, the party must be so drunk as not to know the nature of his actions; mild inebriation will not suffice in such a case. Once this is established, then if the contract concerns necessities, the drunken party, like the minor or the person of diminished mental incapacity, will be bound to pay a reasonable price therefor, even if the other party knew of his drunkenness. In the case of non-necessaries, the party will be bound unless he can establish that the other [arty was aware of the intoxication at the time of the making of the contract. The law reform commission returned to the topic in 2006 in its report on Vulnerable Adults and the Law.<sup>71</sup>It concluded that the necessities rule had a useful dual function in relation to adults with limited decision making capacity. On the one hand, it has facilitated the purchase of everyday items by such adults and ensured that these were paid for and, in this way, encouraged independent living by persons of restricted capacity. On the other hand the rule has a protective function in that its application was limited to items which could be regarded as necessary in the light of the individual's needs.

### **3.3 Determination of price.**

Section 9(1)<sup>72</sup> of the Act commences by stating that the parties to a contract of sale and supply of services are free to settle the price in the contract and goes on to say that the price may be left determined by the course of dealing between the parties. While this provision appears straightforward, it is not as unproblematic as it first appears. The section assumes that a contract has been made by the parties and then proceeds to set out the methods by which the price may be ascertained. The absence no agreement on something as fundamental as price, however, may mean that there is

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<sup>71</sup> Law Reform Commission, *Report on Vulnerable Adults and the Law* (LRC 83-2006).

<sup>72</sup> The Sale of Goods Supply of Services Act, 2017, section 19(1).

no binding contract in place. In **May and Butcher Ltd V The King**<sup>73</sup>, the house of Lords held that an agreement for sale of goods, where the price and other details were to be agreed later, was void for uncertainty. It should be noted however, that the case involved an executory transaction- that is, one in which no part had been performed- and the agreement was not merely silent on the points in question but expressly stated that further agreement was necessary on them.<sup>74</sup> As **Atiyah** observed, the latter case of **Hillas V Arcos Ltd and Co. Ltd**<sup>75</sup> shows that May should not be seen as laying down a general rule. The contract also contains an arbitration clause under which reasonable price cannot be fixed in the event of disagreement. Though there is still uncertainty as to the status of agreement to agree, the courts appear to regard the intention of the parties as the critical factor. The reasonable price to be paid according to section 9(2) of the Act is typically set by reference to the current market price at the time and place of delivery, although other factors, such as the cost of production, may also be taken into account.

### 3.4 Sale by auction.

Under section 70 of the Sale of goods and supply of services Act, which provides for sale by auction, the Act however does not provide for the definition of Sale by auction nor is the term defined in another Ugandan legislation. Benjamin defines auction sale as a sale by competitive bidding normally held in public, at which prospective purchasers are invited to make successively increasing bids of property, which is then usually sold to the highest bidder<sup>76</sup>, the Sale of Goods and Supply of Services Act 2017 and associated guarantees contains a discretionary provision permitting member states to exclude second-hand goods sold at public auction where the consumer has the opportunity to attend to the sale in person, it does not contain a definition of public auction. However, public auction is defined as a method of sale where goods are offered by the trader to the consumers, who attend the sale in person, through a

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<sup>73</sup> [1934] 2 KB 17.

<sup>74</sup> Fidelma White, *Commercial Law*, (Thomson Round Hall, 2002) 192.

<sup>75</sup> (1932) 147 LT 503.

<sup>76</sup> Judah P Benjamin, *Sale of Goods* (Sweet and Maxwell 1974), Para 2-004.



transparent competitive bidding procedure run by an auctioneer and where the highest bidder is bound to purchase the goods.<sup>77</sup> The section codifies the common law rules governing certain aspects of auction sales. The contract thus concluded relates to the particular lot which has been declared to be the subject of the bidding. In accordance with common law rules, the display of the goods by the auctioneer and the request for bids are an invitation to treat, and the bids made at the auction are offers.<sup>78</sup> A bidder can thus withdraw his bid prior to the fall of the hammer, the prospective seller can similarly withdraw the goods from sale even after the auction has begun,<sup>79</sup> and the auctioneer as, agent of the seller, is entitled to accept or refuse any bid.<sup>80</sup>

### **3.5 The implied terms.**

The implied terms in sections 12 to 22 of the Sale of Goods and Supply of Services Act, 2017, are based on the original Act as amended by the Act of 1980. Those provisions were drawn from the implied terms developed by the courts in a series of cases during the nineteenth century. Though the rights that buyers of goods enjoy under these sections of the Acts are rights conferred by the statute, breaches of their provisions do not involve a breach of sale of goods and supply of services Act per se. Because the terms are inserted into the contract between the seller and the consumer, their breach takes the form of a breach of the contract between the parties. If goods do not meet the implied quality or other terms under these sections of the Act, therefore, it is up to the buyer to pursue a remedy for breach of the contract. It is argued that the current reliance on implied terms injects an additional layer of complexity into the law and that the imposition of statutory requirements on a seller, vis-à-vis the goods sold, independent of an underlying agreement between the parties would provide protections

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<sup>77</sup> Proposal for a Directive of European Parliament and of the council on Consumer Rights, Article 2.15. This definition has been included in the text of the proposed Directive for the purpose of the exclusion of contracts concluded at public auction from the right to withdrawal for distance and off-premises contracts.

<sup>78</sup> In so-called Dutch auctions, however, the auctioneer states the price at which he is willing to sell and, if no bidder is prepared to meet this price, progressively reduces the price until the bidder is prepared to meet it. In such cases, the auctioneer is making an offer and the buyer's bid is an acceptance.

<sup>79</sup> *Fenwick v Macdonald Fraser and Co* [1904] 6 F. (Ct. Sess.) 850.

<sup>80</sup> *British Cars Auctions v Wright* [1972] 3 ALL ER 462.

for consumers independent of their contractual or other relationship with the supplier of goods and services. Placing statutory obligations of this kind on the seller of goods other than through the implication of terms into the contract is a change worth pursuing. The terms implied into contracts of sale of goods and supply of services Acts are just one element of the contract. Placing the implied terms on a non-contractual footing while the other terms remain contractual in nature would do little to simplify or rationalize consumer rights. Though the quality and other stipulations inserted into the contract by sale and supply of services Act are classed as contract terms, they are effectively statutory rules, particularly in consumer contracts where their exclusion is prohibited. Their substance will remain broadly similar if they are restated in some other way and, though the grounds for action where goods fail to meet the statutory standard will be couched in different terms, the consumer will still have to pursue a remedy against the trader who has sold goods or supplied services.

### **3.6 Passing of property.<sup>81</sup>**

As Bridge observes,<sup>82</sup> the passing of property in goods: affects contractual rights and duties. It is the fulcrum on which depends an issue as diverse as the seller's entitlement to sue for the price and the incidence of risk of loss or causality to the goods. The passing of property may also have an incidental effect on the remedies of the parties, including specific performance. This principle is also of prime significance in defining the position of the buyer and seller on the others insolvency or where the subject matter of a sale of goods contract is a subject of execution. The whereabouts of the property may affect third parties as it touches upon liability in conversion, insurable interest, liability in tax, criminal responsibility, and the amenability of goods to execution and insolvency. A retention of title clause stipulating that property will not pass until the price has been paid, for example is a clear expression of the intention of the parties. As some contracts, however, do not deal explicitly with the question of when property is to pass, this part contains four rules for the purpose of ascertaining the intention of the parties

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<sup>81</sup> Sale of Goods and Supply of Services Act, 2017, Section 22-33.

<sup>82</sup> Michael Bridge, *The International Sale of Goods* (Oxford, 1988) para 301.

in respect of specific goods. The rules concerning the passing of property in unascertained goods, are presumptive. The law permits the parties to settle the point for themselves by any intelligible expression of their intention. There is no doubt that the rules governing the passing of property are complex. They involve three different categories of goods (specific, unascertained, and future). A different core rule applies to the passing of property in two main categories of specific and unascertained goods, while there are four rules for ascertaining the intention of the parties in respect of the passing of property in specific goods, and a further rule, in two parts, for elucidating intention in regard to unascertained goods. Unconditional contract, deliverable state, sale on approval, return unconditionally appropriated- is not a model of consistency.

### **3.7 Conclusion.**

Therefore, the above are the relevancies of the Sale of Goods and Supply of Services Act, 2017, in the protection of consumers as seen in the different features of the Act as far as the transfer of title is concerned for the consumer is able to be protected against a void seller. Furthermore under the implied terms a seller cannot be able to exploit a consumer by ignoring the express terms and making their own terms that is a consumer cannot entrench implied terms over express terms hence the protection of a consumer.

## CHAPTER FOUR

### THE GAPS IN THE SALE OF GOODS AND SUPPLY OF SERVICES ACT, 2017 IN THE PROTECTION OF CONSUMERS IN UGANDA

#### 4.0 Introduction

Before the formation of the Sale of Goods and Supply of Services Act, 2017, there was a proposed bill known as the Sale of Goods and Supply of Services Bill which was a drastic improvement of the Sale of Goods Act Cap 82. This was Later in 2017 passed into law. One of its finest accomplishments was its dispensation of legalese for much simpler and comprehensible diction. The sections in the law as proposed are now well arranged and easier to follow, unlike its predecessor Act that stuffed too much information in single provision.<sup>83</sup> However, Several clauses remain unambiguous and unclear such as section 14(3)<sup>84</sup> which states that; "A sale of Goods is not prevented from being a sale by description by reason only that, the goods being exposed for sale are selected by the buyer". Equally the definition offered for contracts for the Supply of Services is very misleading and confusing. It offers not real interpretation as to what the legislators mean. This chapter will concentrate on that analysis as seen hereunder.

#### 4.1 Comprehensiveness.

This is so insofar as the legislators left room for application of common law principles in so far as they are not inconsistent with the provisions of the Act. The Act also heavily relies on the general law of contract. A case in point is its failure to provide for essential elements of contracts for sale of goods and supply of services. This implies the essential elements of a contract like offer acceptance, intention to create legal relations provided by the Contracts Act<sup>85</sup> equally apply to contracts envisaged under the sale of goods and supply of services Act. Apart from capacity to contract<sup>86</sup>, the other and only elements of provided by the Act, that is consideration is cited with limited detail and

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<sup>83</sup> Asiimwe T, (2016). *Salient Features of the Proposed Sale of Goods and Supply of Services Bill, 2015*. CEPA Policy Series Papers Number 10/10 of 2016. Kampala.

<sup>84</sup> Sale of Goods and Supply of Services Act, 2017, Section 14(3).

<sup>85</sup> Part II of the Contracts Act, 2010.

<sup>86</sup> The Sale of Goods and Supply of Services Act, 2017 section 4 of the Act.

consumers are susceptible to legal confusion.<sup>87</sup> The Act provides that in a sale of goods contract the consideration must be money,<sup>88</sup> however, there are situations like in the **case Aldrige V Johnson**<sup>89</sup> where the transaction involved an exchange of 52 bullocks (goods) with 100 quarters of barley (goods) and the difference in value was to be paid in money. In that case, court was preoccupied with a question of whether the transaction was a sale of goods or barter. This situation is inevitable to the detriment of consumers in Uganda since the Act does not give guidance on how to determine whether such a transaction can be a sale of goods or barter in the same set of circumstances in a Ugandan market where consumers at times seek to make top ups on money when buying goods.

#### **4.2 Scope of application.**

According this era of technology advancement in Uganda, the Act is wanting as far as it does not provide for statutory quality of digital content the determination and regulation of prices digital services .it follows therefore that relationships between consumers of digital content and the suppliers like telecom companies are left to exploit consumers.

#### **4.3 Inadequate remedies.**

The sale of goods and supply of services Act is devoid of some contemporary recourse like re-performance of services in cases failure by the supplier to exercise reasonable care and skill. This remedy consist of the consumer requiring re-performance of services or the part thereof which is defective, if such performance is not possible or is not done in reasonable time , the consumer can require a reduction in the price<sup>90</sup>.

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<sup>87</sup> The Sale of Goods and Supply of Services Act, 2017, section 2.

<sup>88</sup> Ibid(n 87).

<sup>89</sup> (1857) 7 E &B 885.

<sup>90</sup> Stevens & Bolton, *Changes to Consumer Law in the UK Consumer Rights Act 2015*.

#### **4.4 Mechanisms.**

The Act merely provides at great detail the rights and remedies of consumers but no clear direction is provided on how those rights can be enforced in a Ugandan situation where consumers are in a less privileged position due to less bargaining power or ignorance. At best the Act leaves the consumers with no choice to go to courts of law for legal redress which is expensive and time consuming.

#### **4.5 Public awareness.**

There is low or lack of awareness to Ugandan consumers about consumer rights and remedies set out in the law. This leaves consumers in the hands of fraudulent traders /sellers who still take advantage of this lack of awareness by imposing illegal and non-contractual terms in contracts of sale and supply of services. The commonest term usually included on receipts being "***once goods are sold are not returnable***". This is normally intended to illegally scare away consumers from freely exercising their statutory rights, remedies and safe guards in the Act intended to protect consumers from sellers who normally interested in limiting or excluding their liability<sup>91</sup>.

#### **4.6 Institutional framework.**

The Sale of Goods and Supply of Services Act, 2017 does not provide for the establishment of a competent authority to facilitate the work of international organizations as required in some of the international obligations. It does not enable Uganda to benefit from the rights and obligations she has under international agreements to which she is a party.

#### **4.7 Conflict of laws.**

The sale of Goods and Supply of Services Act, 2017, does not streamline its relationship with the other consumer protection laws especially on supply of services like the ones governing financial institutions for example deposit taking, money lenders

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<sup>91</sup>The Sale of Goods and Supply of Services Act, 2017, ss. 19 and 67 of the Act which prohibit exclusion of implied terms.

and insurance companies, telecommunications; Electricity generation and distribution; petroleum extraction, and so many others. The Act only is restricted to saving provisions of the application of the Act relating to contracts of sale not supply of services<sup>92</sup>. The Act also does not regulate comprehensively competition issues relating to mergers and acquisitions and anti-competitive practices such as predatory pricing practices, price maintenance, collusive tendering, bid rigging practices, cartels, collective and price fixing, price tying, price gauging and many others. This is due to the absence of a coherent institutional framework dealing with fair competition.

The Sale of Goods and Supply of Services Act, 2017 does not provide for representative or class actions on the side of the consumers in case there is a claim.

#### **4.8 Conclusion.**

Therefore, with the above gaps in the Sale of Goods and Supply of Services Act, 2017,

There will be an increase in the exploitation of consumers by the greedy and selfish

Sellers of goods and suppliers of services in Uganda. For example the gap of institutional framework as well as inadequate remedies and also lack of authorities to institute the protection of consumers against the selfish sellers.

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<sup>92</sup> ibid (n 46) Section 73.

## **CHAPTER FIVE**

### **CONCLUSION, FINDINGS AND RECOMMENDATIONS.**

#### **5.0 Introduction.**

In 2008, Government passed the National Trade Policy with the theme of “trading out of poverty into wealth and prosperity”. The National Competition and Consumer Protection Policy is cognizant of the country’s Vision 2040. In the Policy, the Government envisions transforming Uganda into a dynamic and competitive sectors. Government maintains a liberal trade policy; and commits to creating opportunities for equal participation in trade, providing an enabling environment for private sector growth and development, and targeted interventions in specific sectors as and if necessary.

#### **5.1 Conclusion.**

Though the Sale of Goods and Supply of Services Act, 2017 provides for the definition of supply of services, it still offers no real interpretation as to what the legislators meant under the definition, the Act is still less comprehensive, the Act does not provide for digital content in contracts for sale of goods and supply of services, there is also a gap of contemporary remedies in cases of breach of contracts for supply of services , the Act does not provide for the mechanisms and procedures on how the consumers can acquire their rights hence therefore leaving a big gap to be refilled so as the consumers can fully be able to acquire the relate rights and remedies available for them as there are stipulated in the Act.

#### **5.2 Findings of the research.**

1. Since the commencement of the Act, there are no regulations to operationalize the Act. That means putting something into working order as we still see there are so many products that are still put into the market and yet they are defective hence so many consumers are still consuming these defective goods that are not fit for purpose and for consumption.



2. At the time of this research, the Act is one year and approximately five months, this explains that the Act has not been fully implemented. This therefore means that the Act is shortly put into action and that it has only been used for a short period of time.
3. The provisions of consumer protection are not yet fully published. This therefore means that there is still ignorance on the side of the consumers on the matters related to the protection of the consumers.
4. For the first time in the legal regime of consumer protection, the Act provides for both sale of goods and supply of services which is an Act that caters for both the sale of goods and the supply of services since yet the previous law which was known as the Sale of Goods Act cap 82 only provided for the Sale of goods and not supply of services.
5. The Act lacks coercive powers as there are no offences created for breach of consumer protection measures as well as the procedures to acquire the remedies provided for in the Act. This therefore means that the sellers of goods and suppliers of services commit offences against consumers but no action can be taken against them since the Act does not provide for offences.
6. The Act is inadequate in a way that it provides for the definition of a consumer meaning that the persons who purchase goods and services for resale are not catered for under the Sale of Goods and Supply of Services ACT, 2017.
7. The Act does not provide for the procedure under which the rights and remedies that are provided for hence creating a gap on how the consumers that have been aggrieved on how they can acquire relevant remedies.

### **5.3 Recommendations.**

In view of the foregoing analysis, the Government of Uganda adopted a multifaceted approach to foster the development of domestic trade, including strengthening of domestic trade policies and laws. Accordingly, one of the key policy actions Government

undertakes to implement in the cause of implementing the National Trade Policy is **to "formulate and implement specific sectorial policies necessary for promoting efficiency, competitiveness and consumer welfare in a liberal environment."**<sup>93</sup> Competition refers to the way firms behave in the market place and how they respond to the actions of other suppliers and consumers.<sup>94</sup> Consumer protection is required so as to; Establish appropriate standards while maintaining maximum freedom for participants to effectively operate in the market place, guard against exploitation, ensure value of money and thus improve the quality of life and general welfare, empower consumers with adequate knowledge and skills to enable them make informed choices, and avoid unnecessary payments or risks associated with the goods and services available in the market place; instill confidence in consumers on the market, boost up-take of appropriate products, enhance savings, reduce indebtedness, eradicate poverty and generally stimulate economic growth. Promote efficiency in the supply of goods and services and in response to consumer needs and consequently increase general demand in the country, and promote consumption of healthier and safer products<sup>95</sup>.

Therefore, in the implementation of consumer protection in Uganda, the following are the mechanisms that Ugandan Government should put in place;

1. The Government and private sector organizations should invest in enlightenment consumers about small claim procedure recently established by the judiciary. This as intended by the judiciary will assist consumers in resolving their disputes timely and cheaply. This procedure is best for consumers protection as their claims normally involve small amounts of money, is accessible to consumers in order to provide simple, speedy and inexpensive justice; complementary to regular court system to ensure expeditions determination of matters. In this way therefore, the consumers will easily be protected.

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<sup>93</sup> Amelia Kyambadde (MP), Minister of Trade Industry and Cooperatives, *National Competition and Consumer Protection Policy, Regulated Competition for Efficiency and Enhanced Consumer Welfare*. November 2014.

<sup>94</sup> *ibid*.

<sup>95</sup> *ibid* (n 7).

2. The Government should create awareness on consumer rights and among the general public. This can be done by providing consumer information and education. Information and education are studied together, as they form a continuum in the panoply of devices for consumer protection. Consumer information has become a necessity as a result of the increasing complexity and proliferation of goods and services. Ideally, it is meant to provide objective and impartial information to consumers at the point of purchase, in order for them to decide which of the many branded products and services available will best suit their own needs. Consumer information is especially needed where; the products take up relatively high proportion of consumer expenditure; the products are technically complex; there is no basis for consumer assessment at the point of sale; there is little advance consumer knowledge of required performance. Consumer education involves which can possibly involve the curriculum approach and include it as part of home economics. It could also be by way of incorporation of these concepts into existing subjects right from the primary level up to the University level in this way therefore the consumers will be able to be aware of their rights and the possible remedies available in case of breach of a contract.
3. The Government should formulate and implement an independent national consumer protection law. Despite the fact that there is the Sale of Goods and Supply of Services Act, 2017 which provides for the protection of consumers to some extent that is in relation to formation of a contract for sale and supply of services, there should be made an independent law which is only made for consumer protection just like how other countries have the consumer protection Act which is only meant for consumer protection. The Act should also involve offences since the Sale of Goods and Supply of Services Act, 2017 is silent on the offences available in case of the breach for a contract of sale and supply of services.

4. The Government should provide a mechanism for redress in instances of breach of consumer rights. This will mainly be of importance in the situations of dispute resolution and redress. The Government should establish and publicize redress mechanisms that are expeditious, fair, affordable and accessible, especially taking into account the needs of the low income consumers. It is also required that the Government should ensure that businesses set up mechanisms to handle consumer disputes in a fair, expeditious and informal manner.
5. There should be the fostering and formation of consumer associations in the context of Public-private partnership. Consumer associations have a role in consumer protection which are premised in the following principles; there is a need for an independent actor which is non-party-political and non-commercial to give voice to the issues that impact on consumers; there is a need for the views of the underrepresented, including the inarticulate and disadvantaged, to be heard in order to address the disparity in bargaining power, knowledge and resources between consumers and business; there is need for associations to have a wide membership base and command popular support to represent the specific interests of consumers; and there is a need for participatory decision-making, consultation and consumer associations which can form a part of the democratic process.
6. Promotion of collaboration between consumer advocacy and protection agencies or associations by the Government is also essential in consumer protection. There should be promotion of consumer protection agencies. When an agency is delegated with both rule making and administrative powers, its powers include the following; Enforce consumer protection and competition laws; register and issue licenses for certain designated types of business activities; issue administrative rules to regulate conduct of business entities and ensure protection of the consumer interest; advise the government on the appropriate measures for consumer protection; represent the consumer interest in other intergovernmental committees; advise consumers and businesses of their rights

and obligations under the relevant consumer protection laws; conduct, or commission , market surveys and research into consumer protection problems and so many others. Where the agency's role is not interventionist in nature, its functions would be advisory to ensure that both businesses and consumers are informed of their rights and responsibilities through public education and information programs.

7. The Government should promote collaboration with regional and international institutions on issues of consumer protection policy and law. There should be international cooperation, in terms of policy development and implementation, joint procurement of essential goods and services and exchanges of information on defective products , especially but not only, in a regional or sub-regional context. There should also be promotion of technology transfer and financial support to ensure sustainable consumption and ensure that consumer protection measures do not become unjustifiable barriers to international trade.

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