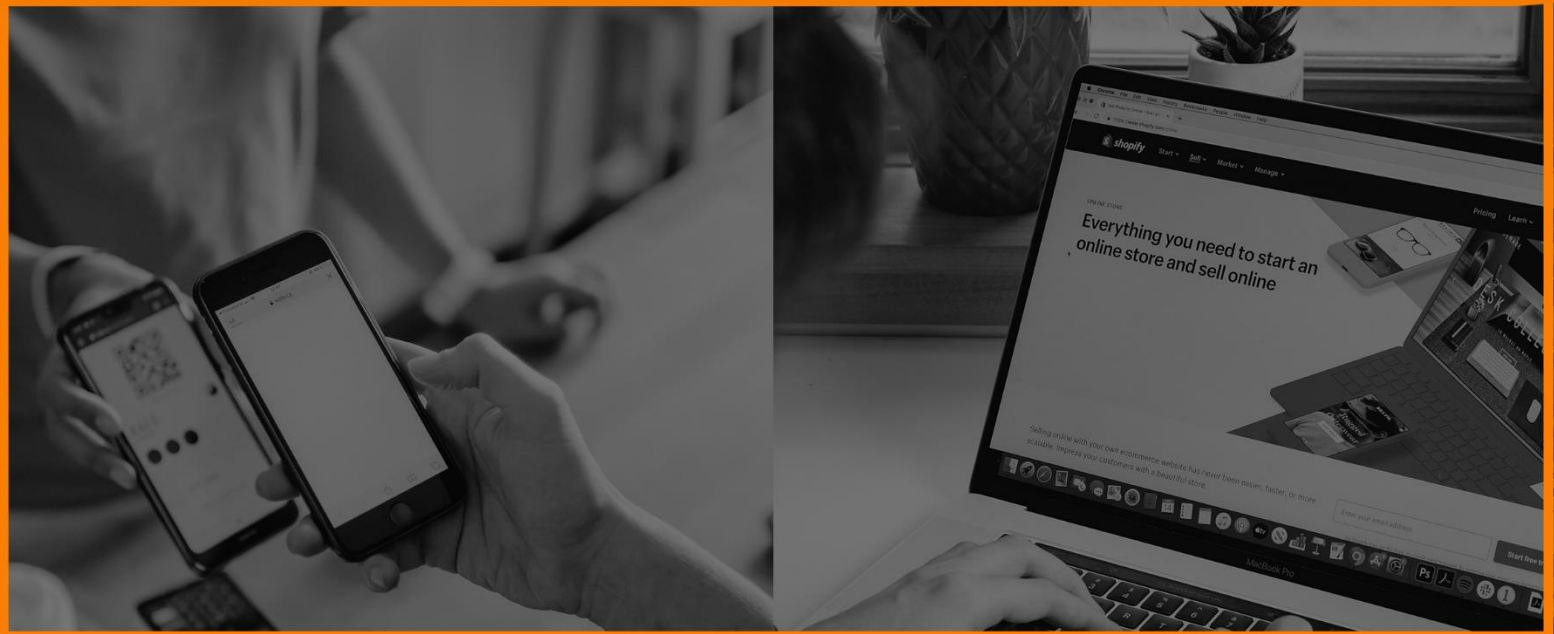




The Conceptual Framework of Online Consumer Rights in Nigeria



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INTRODUCTION

It is an indisputable fact that the Internet has added to the quality of life in so many ways including the commercial transactions. Before the advent of the internet, transactions were carried out in close proximity and by post. However, the internet has brought with it some faster and in some instances more efficient way of doing business. Every day in Nigeria, hundreds of thousands of transactions are concluded online which is accompanied by the release of some personal data. Due to the dynamic nature of the technologies that power e-commerce, laws in many jurisdictions are often playing catch up with the changes which include the laws made to ensure the protection of consumers that engage in online commercial transactions. To protect the growing number of consumers who are online, Federal law makers have developed laws designed to help ensure the safety of consumer transactions because without these legal protection consumers will be subject to scams, frauds and illicit activities that put their personal finances and privacy at risk.

A consumer is any person who purchases or offers to purchase goods, products and commodities for consumption. This includes persons to whom services are rendered. *The Federal Competition and Consumer Protection Act, 2019 (FCCP ACT)* which was enacted recently has copious provisions on the right of a consumer. When you shop online you are protected under consumer law. The consumer contract regulations give you online cancellation rights and the consumer rights act protects your rights to return a faulty good.

DEFINITIONS

Growth of the Internet and electronic commerce has brought with it legal and economic issues and peculiarities. As a direct consequence, online business has brought with it some negative side effects or disadvantages; chief of these disadvantages is the potential vulnerability of the consumer. The main risks involving the online shopper are- financial, product performance, psychological and time/convenience loss. However, it seems that all barriers to purchasing online mostly revolve around safety issues.

Online Consumers

They can be seen as those who purchased goods and services electronically using different types of shopping platforms. They are the largest economic group, affecting and affected by almost every public and private economic decision Rights¹, yet theirs is the only important group whose views are often not heard (Kennedy, 1962)². Consumers are the largest economic group and central point of all marketing activities (Gupta and Panchal, 2009)³.

Consumers Rights

These are those privileges entitled to a consumer or a buyer of a product. In Ireland or any other EU country, the Consumer Rights Directive (CRD) gives you strong protections when transacting with any EU based business⁴. However, these regulations do not apply in certain circumstances such as purchasing a product from a business not within the EU countries⁵.

In 1962, President John F. Kennedy outlined what he called the Consumer Bill of Rights. The bill stated that every person has four basic consumer rights—the right to be informed, the right to choose, the right to safety, and the right to be heard. These rights received a lot of attention from the consume movement, a

¹ Venus C. Ibarra ,& Charito D. Revilla : CONSUMERS' AWARENESS ON THEIR EIGHT BASIC RIGHTS: A COMPARATIVE STUDY OF FILIPINOS IN THE PHILIPPINES AND GUAM

² Op.cit

³ Op.cit

⁴ <<https://www.ccpc.ie/consumers/shopping/buying-online/>> accessed on 2nd December, 2020

⁵ Op.cit

movement to pass laws protecting consumers from unfair and unsafe business practices. Over the years, three other rights were added: the right to have problems corrected, the right to consumer education, and the right to service⁶.

Online Consumer Rights

Online Consumers Right is the right of an online consumer to have information about the quality, potency, quantity, purity, price and standard of goods or services as the case may be before paying for such goods and services. It's meant to protect the consumer against any unfair practices of trade. Online Consumers Rights are those privileges and protection entitled to persons that purchase goods and services online.

⁶<https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.jenksps.org/pages/uploaded_files_23_874768_mt.pdf&ved=2ahUKEwjcrNjrm6_tAhWrxYUKHYW1CPoQFjAEegQIBBAE&usg=AOvVaw0wdRiUsShw76GdpcnhTgKI> accessed on 2nd December, 2020

THE POSITION OF THE LAW ON ONLINE CONSUMER RIGHTS IN NIGERIA.

Every day, we are involved in electronic contracting either through the use of the Automated Teller Machine (ATM) to transact business or when we book our flight tickets online. These electronic transactions are mostly not directly covered by our legal regime, the European Union in the year 2000, approved directive on electronic commerce which required member-states to implement same, the United Kingdom had in 2000, passed the Electronic Communication Act, South Africa also passed the Electronic communications and transactions Act, 25 of 2002. All the developed countries including Malaysia, China, India, Brazil, Singapore, Japan, etc. have laws on electronic contact, and this result into remarkable increase in their business transaction, but the reality in Nigeria is that there is seemingly dearth or inadequacy in the extant laws that directly govern Electronic transactions and hence, the vulnerability of online consumers⁷.

In Nigeria, under the current legislation in place, security of our data or card (ATM) transactions are not specifically regulated by any Act of the National Assembly, however, the Central Bank of Nigeria is impliedly empowered by the Central Bank of Nigeria Act 2007 to make regulations to facilitate these transactions and exercise its powers provided under section 28(1)(I), that is to issue guidelines for the maintenance of adequate and reasonable financial services for the public and to ensure high standards of conduct and management through the banking system, the Central Bank of Nigeria implemented the guidelines on transactions switching services⁸.

Rule 1.5 and 3.5 under the guidelines are to the effect that the consumer is liable for any fraud committed if he is in possession of the card (ATM) and has knowledge of the pin code, however, once the consumer reports any theft or loss of card, he/she is automatically absolved of any liability for any future

⁷ Senator Ademola Ibikunle Amosun (APC –Ogun cebtral), sponsor of a bill to provide enabling framework that would legalize all forms of electronic transactions undertaken in Nigeria. “the bill aims at resolving this legal challenges by removing barriers to electronic commerce, while validating and effectuating electronic records and signatures” amosun explained

⁸ The Act empowers the central bank of Nigeria with the powers to regulate and facilitate transactions in relation to Automated teller machine (ATM) card transactions for all financial institutions in Nigeria Teller Machine.

unauthorized transactions on that card. Furthermore, if a fraudulent or unauthorized transaction can be traced to the negligence or breach of contract of the issuer or merchant, then the consumer would not be liable. So if you (consumer) get notification that your transaction has been carried out on your card, report it to your bank immediately and if any further transaction takes place after the report, it is not the consumer's fault but the bank becomes liable⁹ and a remedy for this has been provided in section 7(3) of The Advance Free Fraud and other Related offence Act 2006 which provides:

When as a result of negligence, or regulation in the internal control procedures, a financial institution fails to exercise due diligence as specified in the Banks and other Financial Institutions Act, 1991 as amended or the Money Laundering (prohibition) Act, 2004 in relation to the conduct of financial transactions which in fact involve the proceed of lawful activity¹⁰.

And subsection 3(a) of the above cited section provides that:

The financial institution commits an offence and is liable on conviction to refund the total amount involved in the financial transaction and not less than N100, 000 sanctions by the appropriate financial regulatory authority¹¹.

Furthermore, when a contract is made online and the website's terms and condition states how long it will take for the goods to be delivered and the delivery exceeds the specified duration, the company is technically in breach of contract, the consumer may refuse to take the delivery and request a refund, but where there is no stated time frame, this may lead to some uncertainties, the provision of section 29(2) of the Sales of Goods Act states that:

"Where under the contract of sale the seller is bound to send the goods to the buyer, but where no time for sending them is fixed, the seller is bound to send within a reasonable time"

⁹ These rules provide for the exculpation of customers of financial institutions in case of fraudulent transactions after the lost of card and makes it a responsibility on the financial institution to indemnify users if there is any fraudulent activities on the card

¹⁰ The section provides for protection to customers when illegal activity occurs as a result of negligence from the financial institutions with the data of their customer

¹¹ This section provides for sanction and penalty for liability by financial Institution set out in the Banks and Financial Institution Act, 1991 as amended and the money laundering (prohibition) Act, 2004

The question is what does reasonable time mean within this context? This issue is succinctly covered by the Jamaica Electronic Transaction Act 15 of 2006 where it is stated in section 30(1) as follows:

(1)- where an agreement is made for the supply of goods, services or facilities, the supplier shall supply the goods, services or facilities (as the case may require) within the specified time in the agreement or, if no time is so specified, within thirty days after the date on which the agreement is made-

(2)- where the supplier fails to supply the goods, services or facilities (as the case may require) within the time required under subsection (1), the consumer may cancel the agreement seven days after giving the supplier notice of that intention-

(3)- Where the supplier is unable to carry out the agreement because of the goods, services or facilities in question are unavailable, the supplier shall-

(a)- Forthwith notify the consumer of the inability; and

(b)- within thirty days after becoming aware of the inability, refund any payment made by, or on behalf of the consumer in respect of the goods, services or facilities¹²

We often place order of goods online, but upon delivery, we discover that those goods are substandard and faulty, this is because goods displayed online usually look nice, what will happen if the consumer discovered that the goods supplied are not the same with his order? The provision of section 34 of the Sales of Goods Act is very clear on this point and it provides that:

Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract¹³.

And section 13 of the Sales of Goods Act also point this clear to say that, where there is a contract for the sale of goods both by description as well as sample,

¹² The law provides for the explanation of what reasonable time in cases of delay or inability of supplier to deliver on time

¹³ Sale of Goods Act, 1893

there is an implied condition that the goods shall correspond with the sample and description.

Most online merchants have standard term contract which are created to favor them and to the disadvantage of consumers, the consumer is left with a sort of *fait accompli*, to either accept any possible onerous terms which may be placed on him by the seller, who is clearly in stronger bargaining position, or to back out of the transaction. In Nigeria, the consumer protection laws are not as robust as we would hope and expect them to be. It will not be wrong to say that there is virtually no exact statutory legal instrument that currently exists which would serve to protect the consumer from the harsh burden which extremely lopsided standard form contracts may place on them¹⁴. A number of E-commerce companies in Nigeria have ruthless terms which resulted in what is called "unconscionable contract": which is in a nutshell, is a contract that is so one-sided that it is unfair to one party and therefore unenforceable under law. In a lawsuit, if the court finds a contract to be unconscionable, they will typically declare the contract void.

Generally, the legal principle is '*pacta sunt servanda*', which means contracts should be enforced, if someone voluntarily entered into a contract, he /she should be bound by it. Section 11 of the Consumer Protection Council Decree 1992 provides that:

Any person who issues or aids in issuing any wrong advertisement about a consumer item, is guilty of an offence and liable on conviction to a fine of N 50,000 or to imprisonment of five years or both such fine and imprisonment¹⁵.

And section 8(1)(a) and (b) of the same Decree provides that whereupon an investigation by the council state committee of a complaint by a consumer, it is proved that the consumer's right has been violated¹⁶ by way of trade, provision of services, supply of information or advertisement thereby causing injury or loss to the consumer, the consumer shall in addition to the redress which the state

¹⁴ <https://lawpadi.com/rights-shopping-online-nigeria>

¹⁵ Consumer Protection Council Act, chapter 25(Degree NO 66 of 1992) laws of the Federation of Nigeria

¹⁶ Section 8(1)(a) of Consumer Protection Act, chapter 25 (Decree NO 66 of 1992)

committee subject to the approval by the council may impose , have a right to civil action for compensation or restitution in any competent court¹⁷.

The need for the National Assembly to enact an enabling legal protection to online consumers cannot be overemphasized, online businesses would flourish and the data of the consumers would be safer and secured from fraudsters, many people these days are afraid of E-commerce due to the realities and uncertainties posed by it in Nigeria and this hampers the growth of online transactions in Nigeria.

¹⁷ Section 8(1)(b) *ibid*.

CASE LAWS

The Federal Competition and Consumer Protection Act, 2019, Part XV provides for consumer rights, which if flouted, would result in the breach of the consumer's right and thus, the institution of an action.

The emergence of e-commerce has spurred evidential issues in relation to transactions carried online. The area of computer generated evidence is important to e-commerce as it has to do with Online Consumer Rights pertaining to infringement of same. Nowadays, consumers are scared as it has to do with the security of their online transactions. Section 84 of the Evidence Act, 2011 contains criteria for admissibility of electronic generated evidence, but this has always been met with disappointment in the courts as it is sometimes difficult to prove most especially when the original of the document is not available.

*In the English case of **R V. Brown**¹⁸, Lord Hoffman lucidly captured the thrust of the problems associated with data protection in e-commerce as follows:*

"Vast amounts of information about everyone are stored on computers, capable of instant transmission anywhere in the world and accessible at the touch of a keyboard. The right to keep oneself to oneself, to tell other people that certain things are none of their business is under technological threat".

Most statutory ecommerce law now makes it clear that an online contract cannot be denied enforcement solely because it is in electronic form or signed electronically, though statutes do not resolve all disputes that may arise from the form of an electronic contract. The cases of **CSX Transportation, inc. V. Recovery Express, inc**¹⁹ and **Brantley v. Wilson**²⁰ illustrate some of the problems that consumers need to consider when entering into electronic transaction.

¹⁸ [1996] 1 All ER 545, 556

¹⁹ (2016) 15 F. Supp. 2d 6

²⁰ Civil No. 05-5093 (2006), U.S Dist LEXIS 17722 (W.D. Ark. Feb. 22, 2006).

The case of **Lane V. Facebook Inc**²¹, was a class action lawsuit with regard to internet privacy and social media. The defendants claimed that during the launch of Facebook's advertisement system 'Beacon', it resulted in user's private information being posted on Facebook without the user's consent.

CONCLUSION

All over the world, one significant thing in a lawful country is Human rights. In line with this, individuals are entitled to certain rights as provided in the constitution. This paper as discussed above gave an insight to the rights Consumers have in a digital age; Rights of Online Consumers.

Online consumer right on its current scale is a rising modern phenomenon. Its formulation is as a result of the growing development in the online consumer society. After the outbreak of the Covid 19, Nigerian internet users grew to about 126 million, making the country moving to the top 6 users in the world. The total internet users in the world also skyrocketed to about 3.425 billion. Hence the need for a better, convenient, safer means for transaction and the internet seems to be the perfect bet. However, there are certain tensions in this area as to the rights of online consumers. The growing rates of cybercrime in the world and security breaches have brought about the need for a structured policy which will stand like a two-edged sword safeguarding users and reprovig its defaulters. While the first world countries are easing pass this, the third world seems to be crawling.

righ.

²¹ 17-cv-04412