

Consumer law in mauritius

Law



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TABLE OF CONTENTS

Acknowledgements.....	
Page 2 Sources And	
References.....	Page 3
The Emergence of Consumers in society.....	
Page 4 The Consumer viewed in an economical	
scope.....	Page 4
? Relationship between the	
consumer and the demand and supply theory.....	Page 4
? Factors	
influencing demand.....	Page 5
What	
is Consumer Law?.	Page
6	
Why the need for Consumer Laws?	
.....	Page 6
Consumer	
Vulnerability.....	
Page 6 The Implications of Consumer	
Laws.....	Page 7
The Socio-economic	
evolution of Mauritius.....	Page 8
? A brief	
history of Mauritius' economy.....	Page 8
? Consumer Protection Act 1998 (some sections)	
Page 9	
? Fair Trading Act	
1988.....	Page 11
? Breakthrough	
in the Consumer Protection Laws.....	Page 13
? ACIM as	
an advocate of consumer rights.....	Page 14
The	
right to SafeEnvironment.....	Page
15	
The right to Safety.....	

Page 16 The end

note.....Page 17

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2 Sources and References ? Major Achievements of ACIM Stat Sheet ? Consumer Law (Key Facts) Book ? <http://www.geocities.com> ? <http://www.google.com> ? <http://www.wikipedia.org> ? <http://www.supremecourt.mu> ? <http://www.wiki.answers.com> ? <http://openlearn.open.ac.uk> ? <http://www.bized.co.uk> ? <http://tutor2u.net>

3 CONSUMER LAW The Emergence of Consumers in society In ancient times the countries of the world were governed by sole figures. Kings, emperors, sovereigns, rulers or whatever way they were entitled, bore the same similarity; that is all of them lead their respective countries as chiefs. The people had to abide by the laws and the word of those individual characters and possessed no tangible rights. They were therefore treated by rulers as pawns on a checker board.

The condition of the people and their absence of rights stayed constant with the advent of a new type of social structure, the communist society. As <https://assignbuster.com/consumer-law-in-mauritius/>

centuries went by, the people became more aware of democratic methods and much more knowledgeable of the equality of other human beings in terms of gender, ethnicity and so on. This caused a revolution on a global scale as the rights of each and every human being started to be acknowledged and respected. With the emergence of a series of codes of conduct, later labeled as “Laws”, people began to enjoy a more civilized lifestyle.

Trade became more commonplace and people relished the buying and selling of goods and services which ultimately resulted in the “buyers” of goods and services being tagged as “consumers”. The Consumer viewed in an economical scope A consumer, as defined by the doctrine, is an individual who enters into a transaction primarily for personal, family or household purchases. Yet in many routine cases a consumer is not necessarily a purchaser in the real sense of the term; a consumer could also be someone enjoying public and free facilities and yet demanding a top notch quality and the same standards as services or goods they pay for.

Relationship between the consumer and the demand and supply theory A consumer is therefore expected to be someone who is a rational decision maker and who seeks to maximize utility and thus buys in accordance to his needs and wants for a greater satisfaction rate. 4 It is an undeniable fact that the consumer represents the demand in an economy; Therefore the greater the number of consumers, the greater the demand for products thus implying that the increase or decrease of consumers can directly affect demand in a proportional way.

This situation clearly demonstrates that the viability of a certain market depends on the demand from those very consumers hereby entailing that not only does the consumer affect the demand but also has a great impact on the supply factor. In the instance of a shoe making factory, if the consumers, (here signifying demand), for the shoe industry fall in rate, then the supply for that particular good also suffers from this lack in demand rate.

In such a case, the consequent scenario would either be that the consumers increase demand at a certain point in time and the factory survives the test of time, or the consumers turn away from that particular good for a long period of time thus compelling the factory to shut down. As a result this example shows us the direct relationship between the demand and supply and the role of the consumer in determining the survival of a particular market.

Factors influencing demand However, we should consider the determining causes to fluctuating demand and the consequent supply before actually getting into the subject of what consumer law really is about. The particular factors influencing demand are as follows: (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) Fashion Advertising Age Quality Taste Income Size of the population Price of substitutes Price of complements These factors subsequently affect the judgment of the consumers and thus has a great impact on the supply and the market in general. What is Consumer Law? Consumer law is a particular fragment of law which is designed to protect consumers against abuse or any kind of unlawful transactions as well as providing them with the necessary legal means of obtaining reparations for damages caused by faulty products or inadequate services. However consumer law is a complex <https://assignbuster.com/consumer-law-in-mauritius/>

phenomenon, as it is never complete in itself and it is disseminated and scattered over various seemingly unrelated statutes which do not ensure a comprehensive and enhanced protection of the consumer.

Why the need for Consumer Laws? The primary goal of such laws is to ensure that consumers have their rights clearly spelled out and that companies which sell goods or provide services can make out the demarcation line between lawful and unlawful activities involved in their businesses while dealing with consumers and thus happen to clearly get to know their responsibilities and what consumers expect of them in terms of quality and pricing.

It is therefore obvious that the consumer and the suppliers or service providers are interrelated and interdependent, that is the supply or service providers rely on the demand of the consumer as much as the consumers rely on the supply of excellence in terms of goods and services. Thus this inter-reliant relationship makes it indispensable for the judiciary body and the government to ensure that both contracting bodies are in an equitable position, where there is no exploitation of the most influential party over the weaker one and this is where the consumer law comes into play.

The main branches of law concerned with the protection of the end users and the abuse of and the compliance of these guidelines are firstly the Civil Law and the Criminal Law. Consumer Vulnerability The question of the rights of consumers is growing considerably important worldwide as days go by. Governments have implemented numerous laws to assure that end users have the same rights as the manufacturers or service providers. Consumer

Protection Law or Consumer Law is considered as an area of public law that regulates private law relationships between individual consumers and the businesses that sell goods and services.

Consumer protection encompasses a wide range of different yet linked topics such as (i) Product Liability which implies that manufacturers, distributors, suppliers, retailers are liable for the damages or injuries their products cause in the eyes of the law. Privacy Rights pertaining to the rights of the consumer but more of a human rights issue about the right to privacy. For example, the right to keep a person's religious practices on a private level. Unfair Business Practices such as fraud, misrepresentation and other consumer and business interactions. ii) (iii) Therefore these laws generally deal with the aspects of credit repair, product safety, service contracts, bill collector regulation, pricing, utility turnoffs, consolidation and personal loans that may lead to bankruptcy. All of these arguments actually pointing out the urgent and impending need for government legislation to advocate the basic rights of the consumer to have access to the best service or goods available without being victims of any kind of unlawful activities. The Implications of Consumer Laws

Over the years, consumer laws have been growing in importance and have boosted in efficiency. These specific set of rules make it an obligation on businesses to respect the interest of consumers. In so doing, the consumer laws compel businesses to disclose detailed information about their products or services particularly in areas where the public, which in our case is referred to as consumer, is at risk, namely places where health, sanitary and

hygiene issues are frequent. For instance fast food outlets and hospitals are the most common locations related to such aspects. 7

Thus it goes without saying that the protection of the consumer depends wholly and solely on their basic rights and the laws that regulate the parties involved, that is the goods or service provider and the end user. The Socio-economic evolution of Mauritius Putting aside the general aspects and characteristics of consumer laws abroad we reach a point where we do ask ourselves what exactly is the state of affairs regarding consumers and if the laws regarding their protection and fundamental rights in purchasing and enjoying quality service are being respected and complied with or not.

Nevertheless, it is of utmost importance to turn back a little in time to properly assess the current situation and to be able to make a comparative study of the situation in the past and the situation today. A brief history of Mauritius' economy After Mauritius' independence in 1968, the country was in a situation of utter distress. Huge balances of payment defeat, soaring unemployment, a surging population and massive levels of debt are some of the major predicaments the state had to confront.

Fortunately, with the help of the Professor Meade and quite a few political leaders of that time, the country somehow managed to withstand the harsh conditions and defy most of the apocalyptic predictions made about the survival of the country as an autonomous body. Mauritius adhered to the advice of Meade in its diversification process but used its own state creativity and capacity to deal with the pressing affairs of the country.

The Mauritian State invested a lot of its intellectual and financial resources into hauling out the majority of its people from utmost poverty and sparked a revolution of aspirations nationwide. What made Mauritian success story include industrial policies based on an expert-led diversification strategy, dedicated and competent bureaucracy, the dearth of conflicting ideologies, a strong welfare state, human faced structural adjustment, successful demographic control, tapping of preferential arrangements, economics of ethnicity and cultures and a “habit” for institutional engineering.

Nevertheless it is an undeniable fact that with the beginning of this new technological, fast-tracked and globalization oriented era, new challenges are surfacing and along with them the uncertainties and queries regarding the shape and nature of democracy in the coming age. As such, in the Mauritian context, the consumer is protected under many legislative laws. Amongst other, the Consumer Protection Act 1998 and the Fair Trading Act 1988.

Below, here are some sections of the Consumer Protection Act of 1998 and the full version of the implemented Fair Trading Act 1988.

Consumer Protection Act 1998 (some sections)

3. Maximum price (1) The Minister may, by regulations, fix the price of any goods specified in the First Schedule. A trader who sells or supplies any controlled goods at a price higher than that which has been fixed shall commit an offence. (2) 4. (1) Maximum mark-up The Minister may, by regulations, determine the maximum markup of any goods specified in the Second Schedule.

A trader who sells or supplies any controlled goods at a price which includes a mark-up which exceeds the maximum mark-up shall commit an offence.

Maximum recommended retail price (1) The Minister may establish a Code of

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Practice to provide for the method to be adopted for the determination of the maximum recommended retail price of goods other than controlled goods and, where he intends to do so, he shall give notice of the Code of Practice by its publication in the Gazette. 9 (2) 5. (2) Where a Code of Practice has been established under subsection (1), no trader shall act in breach of the Code of Practice.

A trader who sells or supplies any goods for which there is a maximum recommended retail price shall affix a label in a conspicuous place on a specimen on any such goods indicating the maximum recommended retail price. A trader who affixes, in relation to goods referred to in subsection (1), a maximum recommended retail price provided for in the Code of Practice shall commit an offence. (3) (4) 6. Illegal charging of VAT A trader who, whilst selling or supplying any goods — (a) charges VAT where VAT is not chargeable by him; (b) (b) charges a higher rate or amount of VAT than is lawfully chargeable, shall commit an offence. . Price label (1) Where VAT is chargeable by a trader in respect of any goods, the trader shall affix a label in a conspicuous place on a specimen of the goods indicating the total selling price of the goods inclusive of VAT. (2) Where VAT is not chargeable by a trader on any goods, the trader shall affix a label in a conspicuous place on a specimen of the goods indicating— (a) the selling price; and (1,) that the amount of VAT is NIL. (3) (4) A trader who fails to comply with subsection (1) or (2) shall commit an offence.

For the purposes of this section, the Minister may prescribe the form or colour of a label or any distinctive mark which such label shall bear. 10 8.

Selling at a price higher than that displayed (1) No trader shall sell any goods

at a price which is higher than the price shown on a label affixed pursuant to section 7. A person who fails to comply with subsection (1) shall commit an offence. (2) 9. Misleading price indication A trader who gives (by any means whatever) to any consumer an indication which is misleading as to the price at which any goods are sold or supplied shall commit an offence.

Fair Trading Act 1988 1. Short title. This Act may be cited as the Fair Trading (Amendment) Act 1988. 2. Interpretation. In this Act“ principal Act” means the Fair Trading Act. 3. Section 6 of the principal Act amended. Section 6 of the principal Act is amended by adding immediately after the word “ competition” the words “ or of promoting, establishing or observing any exclusive sales agreement or monopoly in connection with the production and supply of goods, branded or otherwise, or of services. ” 4.

Section 13 of the principal Act amended. Section 13 of the principal Act is amended by deleting the words not exceeding 10, 000 rupees” and replacing them by the words not less than 10, 000 rupees and not exceeding 50, 000 rupees”. 11 5. Section 14 of the principal Act amended. Section 14 of the principal Act is amended by deleting the words and to imprisonment for a term “ and replacing them by the words together with a term of imprisonment”. These pieces of legislative law are here to protect consumers against abuse.

Being a mixed law, some of the laws have been translated into English as in many issues it is the “ Code Civil Mauricien” and the “ Code de Commerce” which is mainly used. At international level, particularly in England, protection in criminal law falls into three main categories: (i) (ii) (iii) Unsafe

goods- Consumer Protection Act 1987 Part II and the General Product Safety Regulations 1994 Trade Description Act 1968 Misleading price- Consumer Protection Act 1987 Part III Then again, the position of Mauritius concerning Consumer protection laws, its practice and enforcement are contemptible and our small budding island lags behind in the specific field as compared to countries such as France, the United Kingdom, and the United States. In this light, our current system lacks the administrative machinery for a strong consumer umbrella. Our fellow consumers are therefore not sufficiently sensitized about the existence and the recurrent themes of the consumer laws that shield them from eventual harm or abuse by traders, businesses and other groups which are usually better equipped and more resourceful than the general consummating public.

Consequently, the lack of knowledge about these laws creates a situation where the ignorant consumer has to face new sales techniques, ruthless publicity and marketing of a large variety of goods and services in the market, such that the latter is in no position to assess the defects and shortcomings that might be found therein. On the other hand, the suppliers are tempted to follow diverse unfair practices such as sub-standard quality, adulteration, incorrect quantity and excess pricing amongst others. 2

Breakthrough in the Consumer Protection Laws It would however be unjust to belittle the work of our Legislature who has made several provisions in accordance with the consumer welfare state and the demand and supply for consumer goods and services, as a result of the expansion in technological and industrial fields. The Legislature enacted laws intended to protect the

consumer against deceit, injury and exploitation, among which are: 1. The Civil Code 2. The Hire Purchase Act 1964 3.

The Supplies Control Act 1972 4. The Fair Trading Act 1979 5. The Trade Marks Act 6. The Consumer Protection Act 1991 7. The Consumer Protection (Price and Supplies Control) Act 1998 8. The Food Act 1998 The Consumer Protection Act of 15 June 1991 seeks to extend the reach of protection to the consumer and eventually develop into the proper safety of the consumer.

Regrettably, its aims are less achievable as the application is limited to certain products only. (Refer to S3 (2)). Sect. : Consumer Protection Act The General Safety Requirements: (1) No person shall apply any goods which suffer from any fault with regard to any prescribed quality, quantity, potency, priority or standard or in the case of any machinery or motor vehicle, with regard to the quality, nature or manner of its performance". (2)

This section shall not apply to (a) growing crops or things comprised in land by virtue of being attached to it (b) water, food, animal feed or chemical fertilizer (c) aircraft 13 (d) drugs or medicine (e) tobacco and (f) goods intended exclusively for export under the Export Processing Zone Certificate.

A more considerable addition to the existent consumer laws is found in section 5 of the Consumer Protection Act which endows the enforcement authority with a slightly additional power of control over the supply of goods which might not be safe for use or consumption. This Act has mainly repeated fundamental provisions of other laws without concretely solving new practical problems, for example, in the revision of standards in contract. Moreover, consumer movement is more accessible to the elitist community

and fails to mobilize the masses, who are the real victims of the system since they are confronted to financial constraint.

ACIM as an advocate of consumer rights Fortunately some particular consumer oriented private organisations have stepped forward for the rights of the end user but the most recognisable of these organisations is most probably “ l’Association des Consommateurs de l’Ile Maurice” (ACIM), who has made a laudable effort into making the most regarding the protection of the consumer, the needs of the Mauritian consumer and has aroused a lot of questions about certain government practices which could prove to be prejudicial to the consumer.

Thus ACIM has not only created a means of assistance to the public in matters dealing with the abuse and violation of consumer protection laws but has also proved to be the acting watchdog in hindering practices (again referring to the unfair business practices), that are detrimental to the consummating community, be it governmental decisions or supply and service provider faults. Also, this particular association has over the years stressed on a number of disturbing facts and alarming situations about the Mauritian consumer laws and their adherence.

One such troubling and at the same time unfortunate fact is that the laws concerning the rights and the protection of the consumer are too decentralized, that is the local authorities that include municipal or district councils each have their own respective ways of interpreting the laws in their areas of jurisdiction. In so doing, the consumer laws are in a certain sense baffled by territory issues, despite the fact that Mauritius is seen as a

considerably small island, making it not only difficult to understand exactly what laws are applied in the interest of the consumer in different regions but also to deal with the various implications the laws hold in their relevant territories. Below are a few of the major achievements and projects of ACIM in the past years: 1. In 1992, ACIM in alliance with other NGO's succeeded in holding the proposal for the construction of a nuclear power station by the Minister of Energy, on grounds that it would both be uneconomical and environmentally unsound. 2.

In 1990, ACIM won a major victory against the Central Electricity Board when this public enterprise was ordered by a Supreme Court judgment to reimburse 182, 777 electricity consumers for the unlawful double billing of electricity charged for the month of June 1986. The total amount reimbursed was 38 Million Rupees, interest inclusive. 3. In 1989, the Mauritius Broadcasting Corporation (MBC) increased the license fee of consumers by 400%. ACIM launched a national protest and managed to make the government back for 26% of the consumers.

In addition, ACIM entered a court case to contest the constitutionality of a regulation that was made by government threatening to cut electricity supply if people refused to pay the totality of their TV license fee. Judgment was delivered in January 1992 by the Supreme Court. ACIM won the case. When looking at these particular cases, we finally get to understand a little more of just how complex the consumer laws and their applications in terms on consumer protection are. The right to Safe Environment

One noteworthy fact, that should presently be a major concern to the world in general and specially to our small island, in terms of its geographical situation, is the right of consumers to enjoy a safe environment. Is it a sad truth that the private organizations here in Mauritius have limited resources and are incapable of really drawing the government's attention towards this phenomenon that is starting to affect not only us but the world as a whole.

15 The need for environmental conservation is seen as a necessary defense against deteriorating quality of life worldwide.

All consumers are victims of contaminated food and water supply, pesticide-ridden food, adulterated milk and choking exhaust fumes emitted from vehicles. According to a World Bank report, India is being pushed back due to its high environmental costs which implicates 24, 500 Million Indian Rupees each year in terms of air and water pollution alone. Valuable resources and man-days are lost due to polluted environment and living conditions.

Consumers need to understand that only a safe environment can ensure the fulfillment of their consumer rights.

Hopefully, " Consumers International", a nodal agency of consumer organizations worldwide, has set up a number of guidelines for ensuring the consumers' right to safe environment. A few of these major guidelines are; 1. Promoting the use of products which are environmentally sustainable. 2. Encouraging recycling. 3. Requiring environmentally dangerous products to carry appropriate warnings and instructions for safe use and disposal 4. Promoting the use of non-toxic products by : a. Raising consumer awareness of alternatives to toxic products. b.

Establishing procedures to ensure that products banned overseas do not enter national markets. c. Ensure that the social impacts of pollution are minimized. d. Promote ethical, socially and environmentally responsible practices by producers and suppliers of goods and services. These measures therefore ensure that the consumer is not abused of in terms of environment and that the latter enjoys the fundamental right of the human being to have access to a sound environment. The right to Safety Consumer right to safety is as vast in its purview as the market reach itself.

It applies to all possible consumption patterns and to all goods and services. In the context of the new market economy and rapid technological advances affecting the market, the right to safety has become a pre-requisite quality in all products and services. For instance, some Indian products carry the ISI mark, which is a symbol of satisfactory quality of a particular product. The market has for a long time made consumers believe that by consuming packaged food or mineral 16 water, consumers can protect their health but this notion has been proved wrong time and again due to rampant food adulteration in market products.

Right to the food safety is an important consumer right since it directly affects the quality of life of the consumers. The end note All of these measures therefore converge in the same global direction of safeguarding the basic rights of the consumer; that is for the consumer to enjoy the best quality and standards in all aspects of their lives, but the real question we are inclined to ask ourselves is whether the consumer of today is even aware of the benefits the consumer laws bestow on them or do they simply take pleasure in hiding under the shields of a panoply of invisible laws?

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The awareness of the existence of these laws is certainly of utmost importance; nevertheless the most vital interrogation in the communities worldwide should be about the survival of these laws and their enforcement over the test of time for the benefit of the consumer and consequently, the viability of all types of markets. 17