Explicating Critical Terminologies in Consumer Protection

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Abstract
Consumer protection is a paramount concern in today's complex marketplace, where consumers encounter a wide array of products and services with varying degrees of information and quality. This article aims to provide a comprehensive analytical framework for clarifying critical terminologies central to the domain of consumer protection. Recognizing the significance of clear definitions in promoting effective regulatory measures, the study undertakes a systematic analysis of key terms, concepts, and their interconnections. The paper offers a nuanced perspective on critical terminologies in consumer protection, emphasizing the necessity of precise definitions for the development of effective policies and regulations. By shedding light on the evolving nature of these terms and their relevance in modern consumption scenarios, the study contributes to the ongoing discourse on safeguarding consumer rights and enhancing market integrity.

Keywords: *Consumer; Consumerism; Contract; Essence of Contract; Sanctity of Contract*

Introduction

In the rapidly evolving landscape of consumerism, ensuring the well-being and rights of consumers has become an essential concern for policymakers, scholars, and practitioners alike. The complex interplay between markets, products, services, and consumers necessitates a clear and coherent understanding of the terminologies that underpin the domain of consumer protection. In recent years, discussions surrounding such terms have gained prominence, reflecting the growing need to elucidate these critical concepts to foster effective consumer protection measures. Consumer protection, rooted in the principles of fairness, transparency, and empowerment, seeks to mitigate information asymmetry and power imbalances between producers and consumers. To achieve this, an accurate and shared understanding of pivotal terminologies is crucial. Yet, the intricacies of these terms often lead to interpretations that vary across legal, economic, and social contexts, thus potentially hindering consistent enforcement and regulatory efforts.

The aim of this article is to unravel the complexities surrounding these critical terminologies in consumer protection. By providing an analytical framework, we endeavor to explicate the underlying meanings, contextual nuances, and interconnections that shape these terms' definitions and applications. Through this exploration, we aim to facilitate more informed discourses and

decision-making in consumer protection policy, regulation, and scholarly research. The consumer landscape has undergone profound transformations, driven by technological advancements, globalization, and changing societal dynamics. Consequently, established terminologies must adapt to encompass novel consumption practices and emerging challenges. The expansion of e-commerce, the rise of digital platforms, and the advent of the sharing economy have introduced unique dimensions to consumer interactions, warranting a contemporary assessment of foundational terminologies.

Furthermore, the global nature of trade and commerce demands an examination of how these terminologies are understood and employed across diverse jurisdictions. Comparative analysis can uncover commonalities and disparities in legal frameworks, offering insights into the potential for harmonization and the complexities of cross-border consumer protection. In the subsequent sections, we delve into each critical terminology, as we aim to contribute to a more coherent and inclusive conversation surrounding consumer protection, fostering an environment where the rights and well-being of consumers are upheld with precision and consistency.

Consumer

A person who buys goods or services for personal, family or household use with no intention of resale is a consumer. A consumer also means a natural person who uses products for personal rather than business purposes.(1) Consumer is buyer of any consumer product; any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.(2) In Nigeria, section 32 of the Consumer Protection Council Act defines a consumer as: "…an individual, who purchases, uses, maintains or disposes of product or services". Ajai (3) criticizes the use of the words maintains and disposes contending that their use is an aberration, as one can neither maintain nor dispose, in terms of discarding or getting rid of goods he does not own and concludes that the definition is rather broad. With utmost respect the learned author glosses over the relevance of the definition from the point of view of provision of services. A person who subscribes to a mobile network must maintain his line by recharging the line constantly and must maintain the handset to enable him to receive or make calls. Thus this is not sufficient to ignite legal controversy.

Monye contends that the term consumer is not confined to purchasers. According to this scholar, "it extends to contractual consumers; ultimate users as well as any person who comes into contact with a product or service in any way whatsoever". Amadi compartmentalizes consumers into positive consumers and negative consumers. He explains that: Positive consumers are normally on their guard to see that their rights vis-à-vis the producers' profit-and-loss instinct is protected. This is not so with negative consumers whose pathological propensity for goods may be capitalized upon by producers to produce substandard products.(4)

Thus in the event of any possibility of confronting the network providers in matters relating to the transaction between them and consumers it is the positive consumers that may take up the gauntlet. They are the people that are likely to institute court actions to get legal redress exclusion clauses or not. Unfortunately, it appears that most of the users of the network providers' services are negative consumers. They care less about their rights particularly where such rights will affect their acquisitive disposition (5) while they compete in acquiring more and more lines from the network providers.

The law primarily uses the notion of the consumer in relation to consumer protection laws and the definition of consumer is often restricted to living persons and excludes commercial

users.(6) A typical legal rationale for protecting the consumer is based on the notion of policing market failures and inefficiencies, such as inequalities of bargaining power between a consumer and a business.(7) In India, the Consumer Protection Act 1986 clearly differentiates a consumer as consuming a commodity or service either for his personal domestic use or to earn his livelihood. Only consumers are protected as per this Act and any person, entity or organization purchasing a commodity for commercial reasons are exempted from any benefit of this Act.(8) Furthermore, the Indian case law has quite a few references on how to distinguish a consumer from a customer.

Consumerism

The term consumerism is of doubtful relevance within the confines of law. Amadi maintains that: "Consumerism is not a legal term … However, the law protects all manner of consumers from becoming victims of harmful products".(9) Thus consumerism is a movement towards increased consumer protection.(10) Monye notes that the movement could be championed by an individual, a group of individuals, business concerns or by the government.(11)

The ideology of consumerism came into spotlight in the 1960s after the United States President; John F. Kennedy introduced the Consumer Bill of Rights, which stated that the consuming public has a right to be safe, to be informed, to choose and to be heard.(12) The bill ignited a lot of concern and consciousness on consumer activism. With renewed consciousness in the face of the attendant side effects of industrialization, consumers freely expressed their dissatisfaction over defective products and shoddy services churned out by producers whose major interest was profit maximization.

Amadi identifies two types of consumerism viz negative consumerism and positive consumerism. According to the writer, positive consumerism is evident from the fact that consumers are concerned with their rights in relation to the producer. In negative consumerism, on the other hand, consumers are characteristically engrossed in the acquisition of goods.(13)

Since consumerism began, various individuals and groups have consciously sought an alternative lifestyle. These movements range from moderate simple living,(14) eco-conscious shopping,(15) and *localvore or buying local*,(16) to *Freeganism* on the extreme end.

In many critical contexts, consumerism is used to describe the tendency of people to identify strongly with products or services they consume, especially those with commercial brand names and perceived status-symbolism appeal.(17) Consumerism can take extreme forms such that consumers sacrifice significant time and income not only to purchase but also to actively support a certain firm or brand.(18)

Opponents of consumerism argue that many luxuries and unnecessary consumer products may act as social mechanism allowing people to identify like-minded individuals through the display of similar products, again utilizing aspects of status-symbolism to judge socio-economic status and social stratification. Some people believe relationships with a product or brand name are substitutes for healthy human relationships lacking in societies and along with consumerism, create a cultural hegemony and are part of a general process of social control (19) in modern societies. Critics of consumerism often point out that consumerist societies are more prone to damage the environment, contribute to global warming and use up resources at a higher rate than other societies.

Majfud says that: "Trying to reduce environmental pollution without reducing consumerism is like combating drug trafficking without reducing the drug addiction".(20) In 1955, Lebow, an economist, states that:

> Our enormously productive economy demands that we make consumption our way of life, that we convert the buying and use of goods into rituals, that we seek our spiritual satisfaction and our ego satisfaction in consumption. We need things consumed, burned up, worn out, replaced and discarded at an ever-increasing rate.(21)

Critics of consumerism include Pope Emeritus Benedict XVI, German historian Oswald Spengler and George Duhamel. Spengler argues that: "Life in America is exclusively economic in structure and lacks depth".(22) Georges Duhamel held American materialism up as a beacon of mediocrity that threatened to eclipse French civilization.(23)

In an opinion segment of *New Scientist* a magazine published in August 2009, reporter Andy Coghlan cited William Rees of the University of British Columbia and Warren Hern of the University of Colorado at Boulder saying that human beings, despite considering themselves civilized thinkers, are

Subconsciously still driven by an impulse for survival, domination and expansion... an impulse which now finds expression in the idea that inexorable economic growth is the answer to everything, and, given time, will redress all the world's existing inequalities.(24)

According to figures presented by Rees at the annual meeting of the Ecological Society of America, human society is in a global overshoot, consuming 30% more material than is sustainable from the world's resources. Rees went on to state that at present, 85 countries are exceeding their domestic "bio-capacities", and compensate for their lack of local material by depleting the stocks of other countries, which have a material surplus due to their lower consumption.(25) Not all anti-consumerists oppose consumption in itself, but they argue against increasing the consumption of resources beyond what is environmentally sustainable.

In encapsulation, consumerism is a concept that is capable of two meanings. In the first sense, it refers to the protection and advancement of consumer interests; and in the second sense, it refers to the economic theory which postulates that a steady growth in consumption of goods and services leads to a sound economy.

Contract

The term contract has been used differently to refer to three different things: the series of operative acts by the parties resulting in new legal relations; the physical document executed by the parties as the lasting evidence of their having performed the necessary operative acts by the parties and also as an operative fact itself and finally the legal relationship resulting from the operative acts, consisting of a right or rights *in personam* and their corresponding duties, accompanied by certain powers, privileges and immunities.(26) Basically, a contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.(27)

In *Bilante International Ltd. v. NDIC*(28) the Supreme Court defined contract as an agreement between two or more persons which creates an obligation to do or not to do a particular thing.(29) The Court of Appeal has adumbrated the term contract in the case of *Emori v.* Esuku(30) thus: "A contract may be defined as a legally binding agreement between two or more persons by which, rights are acquired by one party in return for acts or forbearances on the part of the other".(31) An agreement or contract is a bilateral affair which needs the *ad idem* of the parties.(32) In the case of *Olowofoyeku v. Attorney General of Oyo State* (33) it was held that: There are five important factors that must be present in a valid contract. These are offer, acceptance, consideration, intention to create legal relationship and capacity to contract. All the five ingredients

must be present before a valid contract can exist in law. A contract cannot be formed if any of the ingredients is absent.(34)

Thus it is a firmly established law that before any contract or agreement can be said to have come into existence, in law, there must be an unmistaken and precise offer and an unconditional acceptance of the terms mutually agreed upon by the parties thereto. Put differently, the parties to an agreement must be in *consensus ad idem* as regards the terms and conditions freely and voluntarily agreed upon by them. If the terms and conditions of the agreement are uncertain or vague as to defy ascertainment with reasonable degree of certainty, there can never be a valid agreement known to law which can be said to offer itself for enforceability.(35)

Consequently, it should be reiterated that in order to establish that parties have formed a contract, there must be evidence of *consensus ad idem* between them. Then if there is a stipulated mode of acceptance of the offer, the offeree has a duty to comply with same.(36) The acceptance must correspond with the terms of the offer. If it purports to qualify the offer, it may amount to a counter-offer and not an acceptance. It may amount to a rejection of the offer. It also destroys that offer so that it cannot subsequently be accepted. This position is in line with section 102 of the Contract Law (37) which stipulates that for acceptance to be valid, it shall be:

a. Absolute and unqualified;
b. In the terms of the final offer and without any modifications or qualifications of such terms; and,
c. In the manner prescribed by the offeror or if no manner of acceptance is prescribed, in a reasonable and usual manner.

Thus there are two obligations imposed on contracting parties. The first is to disclose all known material facts to the other contracting party. The second is a duty to refrain from making an active misrepresentation (38). In the case of *Mohammed v. Mohammed*(39) it was stated that the law has always been that a misrepresentation must be an ambiguous false statement of an existing fact. A statement of intention is not a statement of fact nor is a promise a statement of fact. A person who fails to carry out his stated intention does not thereby make a misrepresentation.(40)

Essence of Contract

The essence of contract is the key condition on which a contract is based. Violation of this condition is a ground for rescission of the contract. It is also possible to sue for damages when the essence of a contract is not respected. This differs from a warranty; a clause in a contract that does not change the material meaning so substantially that the other party can withdraw if it is broken.(41)

Conditions in a contract can be express, specifically spelled out in the terms, or implied, generally accepted under the law. In an insurance agreement for a vehicle, for example, the insurer expressly agrees to cover the vehicle for a specific amount of money. The agreement may imply that the contract holder has an insurable interest in the vehicle. If there's an accident that results in a claim and the person who owns the policy doesn't actually own all or part of the car, the insurance company does not have to pay out, because the policyholder violated the essence of contract.(42)

Contract law can get extremely complex. Basic contracts with reusable boilerplate are available for many activities, like renting houses and buying real estate. Both parties should read the contract carefully to make sure they understand it. Even in a routine transaction, it is critical to know which conditions are parts of the essence of contract. Failing to comprehend these could mean that a party breaches the contract without being aware, or does not understand the ramifications of violating the agreement.(43)

For more complex and delicate transactions, a legal practitioner may draft a contract in which both parties have the right to review the document and make sure the essence of the contract is clearly understood, along with penalties for any breaches. If there are problems or questions, they are typically addressed before the contract is signed. Once a legal agreement is created with signatures on a valid contract, both parties are responsible for upholding their part of the essence of contract.(44)

Doctrine of Sanctity of Contract

Contract is based on the principle expressed in the latin phrase *pacta sunt servanda* (45) which is usually translated "agreements must be kept". This pact must be respected by the parties to the agreement. It has been shown that where parties enter into an agreement, they are bound by its terms.

The justification for adhering tenaciously to the terms of a valid contract is illustrated by the Supreme Court in *Attorney General of Rivers State v. Attorney General of Akwa Ibom State* (46) that the elementary principle of law envisages that where parties have entered into a contract or an agreement, they are bound by the provisions of the contract or agreement. This is attributed to the fact that a party cannot ordinarily resile from a contract or agreement just because he later discovers that the conditions of the contract or agreement are not favourable to him. This is the whole essence of the doctrine of sanctity of contract or agreement. Thus in *Emori v. Esuku* (47) it was stated that the courts always respect the sanctity of mutually agreed terms reached by parties.(48)

In *Nigerian National Petroleum Corporation v. Isaiah Jacobs & Anor.*(49) the Court of Appeal maintained that in considering the liability or otherwise of the parties under contract, a court of law will not venture beyond the confines of the contract in search of greener conditions to favour one of the parties. The court must instead construe the terms to bring out the clear intention of the parties and nothing more, since by entering into the contract the parties are taken to have agreed to be bound by its terms.(50) The Supreme Court in the case of *Ogundepo v. Olumesan* (51) held that the duty of the court is to interpret the contract as contained in the instrument made by the parties on their own free volition. A court of record should never accede to the importation of unrelated grey areas of the law by a party to prop what is not contained in the instrument made by the parties.(52)

Consequently, parties are bound by the contract they voluntarily enter into and cannot act outside the terms and conditions contained in the said contract.(53) The parties are bound by the clear provisions of the contract and the court is bound to enforce same.(54) Emphatically, in *Odutola v. Papersack Nig. Ltd.(*55*)* the parties to the agreement must be in *consensus ad idem* as regards the terms and considerations freely and voluntarily agreed upon by them. It must be categorically stated that the position of the law is to the effect that parties are bound by the terms agreed to in the contract. If the conditions for the formation of a contract are fulfilled by the parties thereto, they will be bound. It is not the function of a court to make a contract for the parties or to re-write the one which they have made.(56) The court must therefore respect the sanctity of the agreement reached by the parties **(57).**

Conclusion

In the dynamic realm of consumer protection, the significance of precise terminologies cannot be overstated. This article has embarked on a journey to explicate critical terminologies that underpin discourses on consumer rights, market integrity, and regulatory frameworks. The complexity inherent in these terms necessitates a nuanced understanding that transcends disciplinary

boundaries. The rapid technological advancements shaping contemporary consumption patterns have added layers of complexity to these terminologies. The digital age brings forth novel challenges and opportunities, necessitating continual adaptation and refinement of consumer protection concepts to address issues such as data privacy, online transactions, and algorithmic decision-making. To maintain the relevance and effectiveness of consumer protection measures, continuous dialogue and adaptation are imperative.

Our endeavor to explicate critical terminologies in consumer protection has been driven by the aspiration to promote clarity, coherence, and consistency in discussions, policies, and regulations. By enhancing our collective understanding of these terminologies, we contribute to the broader objective of fostering an environment where consumer rights are respected, market dynamics are equitable, and consumer well-being is upheld with diligence. Our exploration has illuminated the intricate tapestry of consumer protection terminology, reflecting its ever-evolving nature. We invite scholars, policymakers, practitioners, and stakeholders to continue engaging in a collaborative discourse that transcends disciplinary silos and considers the holistic implications of consumer protection. By striving for a shared understanding of these terminologies, we pave the way for a more just and harmonious consumer landscape that safeguards the interests of all participants.

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