

Consumer Protection Law: Our People's Shield

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Topic: ***"How does consumer protection law benefit me and my region"***

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Introduction

Since the mid-20th century, consumer protection law has expanded leaps and bounds beyond its previous legislative standards. Markets today, particularly those in developed nations, enjoy a continually expanding level of regulation to this effect.¹ However, this begs certain questions particular to our own region's development. What is consumer protection law? How does it benefit me? How does it benefit the Caribbean? What challenges do we face in the modern era? The research undertaken for this essay seeks to answer these questions.

To investigate any phenomenon, the first problem lies in interpretation and definition. The definition for "consumer" which will be used throughout this essay will be a condensed form of the formal definition laid out in the interpretation section of the 2015 Consumer Protection Act.² As such, a "consumer" will be considered as: a person who acquires any good or service under an agreement or transaction, and includes any other user of said good or service when such use is made with the consent of the person who acquired that good or service. "Consumer protection law," based on the introduction of the aforementioned Consumer Protection Bill, may be defined as legislation, "designed to ensure the life, health and safety of consumers."

Through research, I have come upon certain phenomena and trends which answer the questions I sought to investigate, and this essay will function as an exposition of my findings. Thus, this essay asserts the following: why consumer protection laws deserve protection and respect, how there exists a dual-nature unity and struggle which exists between the interests of the market and the interests of the consumer, particularities of our own region's development as it

¹ Pitofsky, Robert. "Beyond Nader, Consumer Protection and the Regulation of Advertising," *Harvard Law Review*, #90, 1977, p. 661 <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hlr90&div=40&id=&page=>.

² CARICOM. "Consumer Protection Act 2015." *CARREX*, 2016

relates to consumer protection, and why consumer protections must necessarily be continuously fought for.

Economic Assessment

Consumer protection laws deserve special protection and respect within society. After all, why wouldn't legislation designed primarily to safeguard the vulnerable strike one as anything but virtuous? In 1983, Consumers International issued a Charter of Consumer Rights, which encapsulated the right to basic needs, to safety, to information, to choose, to be heard, to redress, to education and to a healthy environment. The importance of enshrining such rights in law and seeing to their enforcement only grows with the increasing interconnectedness of world economies and the rise of e-commerce. This is especially true for CARICOM, where growing numbers of consumers make purchases online. Indeed, in light of this global trend, the UN revised their own guidelines of consumer rights in 2015, premising them on the objectives of promoting sustainable consumption, and further international cooperation in the field of consumer protection among others.³ It therefore behoves all of us citizens, and policymakers alike, to have a firm grasp on the function of consumer protection law in society, and the future possibilities which might logically follow.

Fundamentally, as far as the market goes, the benefits of robust consumer protections are straightforward. When the consumer is protected and has real confidence in their investments, this encourages a steady supply chain. In short, it ensures safety throughout all areas of an economy. This safety enables more purchasing to be done; more money to flow. Conversely, consumer

³ CARREX. "Consumer Protection in The Caribbean Community." *CARICOM*, <https://carrex.caricom.org/related/Consumer%20Portection%20in%20the%20Caribbean%20Community%20%20CARICOM.pdf>.

protection law creates a “parallel industry” of record-keeping, evaluation, and licensing, among other things. This speaks to a possible drawback of excessive regulation, which is often heralded by more libertarian-oriented thinkers.⁴ However, bureaucratization is quite capable of being fought, and is a small price to pay for the well-being of the people. Indeed, positions on this question hold significant weight when posed in Third World nations such as ours, something which will be elucidated in the next section of this essay. Additionally, if we may take the response of the American Federal Government to the 2008 Recession, The Dodd-Frank Act for example, it goes to show that consumer protection is especially necessary in times of economic disaster.⁵ At the time of writing this, the world is on the brink of another such recession, and more in the future are simply an inevitability. Based upon my findings, laying *some* foundation for less exploitation is not only morally virtuous, but is also economically rational.

However, it would be a mistake to make an economic assessment of these crucial questions while only viewing consumer protection law in isolation. This is where the concept of competition law comes into play. The Cambridge Dictionary defines competition law as, “the laws that are intended to make sure that there is fair competition between businesses, for example by making rules to control monopolies.” In essence, legislation designed to promote or seek to maintain market competition by regulating “anti-competitive” conduct by companies. The alternative topic given for this essay competition was, in fact, based on the topic of competition, but through my research I have found that there exists a unity and struggle between both concept options. That is, consumer protection law and competition law (henceforth to be generalized as just consumer

⁴ Klein, Daniel B. “Consumer Protection.” *The Library of Economics and Liberty*, <https://www.econlib.org/library/Enc/ConsumerProtection.html>.

⁵ LaBerge, David A. “Recession in Retrospect: Financial Regulation & Consumer Protection Ten Years Since the 2008 Financial Crisis.” *Minnesota Law Review*, #103, 2018, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/mnlr103&div=57&id=&page=>

protection and competition) have a dual-relationship with each other, being mutually beneficial and detrimental to varying extents. Consumer protection may, for example, serve competition through encouraging consumers to participate in the marketplace as previously stated. However, health, safety and environmental issues may result in the withdrawal of products, closing of firms, and other things of that nature which necessarily deter free competition.⁶ Thus, while competition and consumer protection are two parts of the effective functioning of the market, they approach this goal from opposing perspectives. Peak competitive efficiency spells out minimal protection for the average person.

The Caribbean

The situation regarding consumer protection law in the Caribbean, particularly the English speaking Caribbean, is quite a unique one. This is heavily due to the existence of the institution of CARICOM, which has proven to be capable of spearheading regional policy-making in this sphere, in tandem with our collective Third World status and the associated economic hurdles presented as such. These two factors are both integral to the understanding of the reasoning behind propositions of strong consumer protection law in our Caribbean Community.

As it stands, the existence of CARICOM enables us to address consumer protection law issues in an effective and collective manner. Prior to signing the Revised Treaty of Chaguaramas in 2001, few member states had enacted their own comprehensive consumer protection measures.

⁶ Cseres, Katalin J. "Competition Law and Consumer Protection." *Aspen Publishers Inc.* 2005, pp. 1-5, https://books.google.com.jm/books?hl=en&lr=&id=y3IOROCcVacC&oi=fnd&pg=PR13&dq=consumer+protection&ots=PHSPchXddr&sig=4yVyu4KL99fOTyUIyjatqN8Q0w&redir_esc=y#v=onepage&q=consumer%20protection&f=false.

The CARICOM Rapid Alert System for the Exchange of Information on Dangerous (non-food) Consumer Goods, CARREX, an online consumer-protection warning system launched in 2012 has advanced the capabilities of consumer protection measures laid forth in the RTC on both a national and regional level. It has proven to be an incredibly forward-thinking solution, even possessing the potential for integration with other similar regional databases such as the European Union's Rapid Alert Exchange, RAPEX.⁷ Furthermore, the aforementioned 2015 Consumer Protection Act also works to a similar end in enshrining the values of consumer protection through a tangible model of legislation for member states to follow the example of. Therefore, the capabilities of an institution like CARICOM in filling the gaps left by Caribbean states cannot be understated.

Perhaps more importantly, though, is our region's shared defining characteristic of belonging to the post-colonial Third World presents wholly unique questions as it regards consumer protection. Economically, Third World nations face the full brunt of modern economic imperialism at the hands of multinational corporate capitalism. That is, we are used as a veritable dumping ground for First World commodities and sought after as a cheap source of labour, among other things. This reality must inform our thinking through these questions. Past incidents include: an instance where 450,000 baby pacifiers deemed as choking hazards being were exported for sale overseas from the US; DowElanco selling its weed killer Galant in Costa Rica despite its sale being banned in the US because of evidence suggesting it may cause cancer; and the death of 400 Iraqi citizens after eating wheat and barley treated with a U.S. banned organic mercury fungicide, just to name a few.⁸ Incidents like these are not uncommon, and are motivated by corporations in developed nations seeking to profit off of products which, though unable to be legally sold in their

⁷ Reynolds-Baker, Athaliah. "Call for CARICOM to Implement Consumer Protection Model Law." *Jamaica Information Service*, 2014, <https://jis.gov.jm/call-caricom-implement-consumer-protection-model-law/>

⁸ Shaw, William H. "Case 1.1 - Made in The U.S.A. - Dumped in Brazil, Africa, Iraq..." *Business Ethics*, by William H. Shaw, Cengage Learning, 2017, pp. 32–34.

own nations due to robust domestic consumer protective legislation, can be quite easily dumped upon nations like our own which lack such measures. In a manner of speaking, acting decisively on the front of consumer protection law is quite literally a matter of life and death for our citizens, and must be treated as such.

Conclusion

In a rare instance of directly overlapping mutual benefit, consumer protection law is in the best interests of the economy and the people. The discussion on this issue has continued its rapid progression ever since John F. Kennedy first addressed Congress on protecting the consumer interest, and, understandably, takes on new forms as the fundamental nature of the market undergoes rapid change. Despite being at odds with competition in the broadest sense, both can work together harmoniously and achieving an acceptable balance. CARICOM, therefore, has a responsibility to continue working assiduously to promote this balance, set the tone of the discussion, and establish appropriate frameworks for member states. Lives hinge upon the decisions which we, as a regional community, make today, and I hope that this essay enables whoever reads it to make the right choices.

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