

NOTE:

CONSUMER RIGHTS: FAIR DEALING IN EVERYDAY TRANSACTIONS

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Since a product's performance forms the fundamental basis for a sales contract, it is patently unreasonable to assume that a buyer would purchase a standardized mass-produced product from an industry seller without any enforceable performance standards.

— A & M Produce Co. v. FMC Corp.¹

I. INTRODUCTION: WHY CONSUMER PROTECTION JUST ISN'T SEXY

As early as March 1971, President Marcos issued Proclamation No. 822 that declared every last week in October as Consumers' Protection Week.² The whole week was allocated to the planning and enforcement of government action geared towards controlling fraudulent trade practices and unreasonable price increases. Yet twenty-eight years later, the concept of consumer protection still seems almost alien to the average Filipino.

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¹ A & M Produce Co. v. FMC Corp., 186 Cal. Rptr. 114, 125 (Cal. Ct. App. 1982).

² Proc. No. 822 (1971), Declaring The Last Week Of October Of Every Year As Consumers' Protection Week.

Proc. No. 882 set aside the week during which "concerted efforts for the assertion of consumers' rights may be thoroughly discussed, planned, and carried out."

In spite of Department of Trade and Industry (DTI) efforts to publicize its *ConsumerNet*³ campaign, not many consumers have availed of the remedies and protection available to them under the Consumer Act of 1992, Republic Act No. 7394.⁴ It appears that the recent consumer protection legislation has generated little interest among the general public. Only one lawsuit to date has invoked a cause of action premised upon the warranties provisions of Republic Act No. 7394.⁵ This failure to avail of consumer remedies may be due to a lack of awareness of substantive rights as well as ignorance of available procedural mechanisms.

Most consumers still view "*caveat emptor*"⁶ as the controlling rule in consumer transactions. This perception persists in spite of recent consumer-oriented legislation that effectively shifts the burden from the buyer to the seller. Under Republic Act No. 7394, the cost of defective products⁷ is passed on from the buyer to the merchant-producer. Through warranties, the Consumer Act grants consumers protection against substandard products without requiring extensive documentation or lengthy proceedings.⁸

The problem of low consumer awareness is compounded by the fact that consumers are accustomed to being disappointed by local products and hold low expectations of local manufacturers.⁹ The merchants who provide

³ *ConsumerNet* is a combined effort of DTI and various government bureaus and agencies to process consumer complaints. Cinemas in Metro Manila regularly air the *ConsumerNet* advertisements.

⁴ Rep. Act No. 7394 (1992), *The Consumer Act of the Philippines* sponsored by Senator Orlando Mercado and Representative Tanjuatco. Rep. Act No. 7394 was enacted on 13 April 1992 by the 5th Cong., Regular Sess. The law took effect on 12 May 1992.

⁵ *Del Rosario v. Court of Appeals*, G.R. No. 11832, 29 January 1997, 267 SCRA 158 (1997).

⁶ Latin for "Buyer beware!" In the past, the consumer was expected to have adequately inspected the goods. He bore the loss resulting from any failure to identify flaws or defects. The complexity of transactions and merchandise sold today makes this practice unreasonable. To apply *caveat emptor* strictly would wreak considerable injustice.

⁷ If a particular item is defective, then the appropriate remedy is to avail of the express warranty. However, if the item appears defective due to the design the remedy is judicial.

⁸ This paper limits its scope to sales contracts of consumer goods and their corresponding warranties.

⁹ Under the Parity Rights Agreement and the Bell Trade Act of 1946, Philippine independence was granted on the condition that U.S. goods would be allowed free access to Philippine markets. It has been argued that the low tariffs on U.S. goods provided stiff competition for Philippine manufacturers. In an

meticulous service and comprehensive product warranties distinguish themselves as exceptions to the general rule and capitalize on the difference: customers pay a premium for the better service. The result is that most people do not just equate consumer protection with better service, but they also associate consumer rights with higher prices; consumer protection seems a luxury unaffordable to the average consumer.

To some shoppers, consumer protection means a choice between two products substantially similar: a more expensive product equipped with a guarantee, versus a cheaper item sold "as is." While the consumer can easily calculate the difference in price, it is not as easy to discern how much the warranty is worth. When the product does not inspire confidence, the warranty also becomes of dubious reliability. Faced with this choice, most Filipino buyers opt to pay less.

So consumers frequently pay the lower price, forgo customer service, and purchase a no-name product. Having chosen to frequent the "cheaper" dealers or manufacturers, they are less likely to return to the seller to demand the repair or replacement of an item that turns out to be shoddy or inferior. Having "taken the risk," they feel obliged to absorb the loss. The usual recourse of dissatisfied consumers is simple: "We take our business elsewhere."

Another possible reason behind the lack of interest in consumer advocacy lies in the Filipino psyche. Filipino culture is characterized by avoidance of confrontation. Filipinos value *pakikisama* or "the ability to get along."¹⁰ For a person to be considered as one who "knows how to get along" or *marunong makisama*, she must be able to articulate demands and resolve conflict without being pushy or resorting to anger, threats, or confrontation. Psychologists have described different levels and modes of interaction of

effort to protect the weak manufacturing sector, benefits and protectionist laws were granted to local manufacturers. As a result of the coddling of Philippine industries and easily available American products, Filipino consumers developed a preference for "stateside" goods and poor impressions of local products. The low expectations from locally produced goods and their manufacturers did not help develop local business, but instead resulted in greater disappointment for consumers.

¹⁰ FRANK LYNCH, *Social Acceptance Reconsidered* FOUR READINGS ON PHILIPPINE VALUES 10 (Frank Lynch ed. 1962). Lynch describes *pakikisama* as "a Tagalog word derived from the root *sama*, accompany, go along with. . . . In this more restricted sense it means giving in, following the lead or suggestion of another; in a word, *concession*" (emphasis supplied).

varying degrees of intimacy and familiarity among principles.¹¹ "When a person fails to act according to the behaviors and values expected by the social network, he is labeled as *walang kapwa-tao* (not one of us)."¹² "Presumably, each person's assessment of how well the other actor behaves according to cultural expectations determines the decisions taken."¹³ Arguably, it is only when the relationship is not worth salvaging that a person is likely to confront the other party.¹⁴ Since lawsuits have the effect of making genuine conciliation unlikely, legal action is resorted to as the last recourse such as when the merchant is perceived as unreasonable and possibly, *walang kapwa-tao*, evinced by fraudulent behavior or failure to honor an express warranty or after having inflicted injury upon the consumer through gross negligence.

The absence of consumer suits is striking when one considers the sheer number of consumer contracts and transactions. Acting upon the assumption that the various metalegal reasons described earlier deter consumers from filing actions against merchants and manufacturers, legislators resorted to special interest legislation in order to facilitate the enforcement of merchant

¹¹ Amaryllis T. Torres, *A Portrait of Filipino Culture* MODULE NO. 1 3-4 (1989). Torres enumerates these as different levels and modes of interaction: (a) "civility" or *pakikitungo*; (b) "interacting with. . ." or *pakikisalamuha*; (c) "participating with. . ." or *pakikilahok*; (d) "in conformity with" or *pakikibagay*; (e) "getting-along with. . ." or *pakikisama*; (f) "being in rapport with. . ." or *pakikipagpalagayang-loob*; (g) "getting involved. . ." or *pakikisangkot*; (h) "being one with. . ." or *pakikiisa*.

¹² *Id.* at 4. Torres points out the idea of *kapwa*, a relationship of shared identity with another. *Pakikipagkapwa* incorporates these prescribed rules of reciprocal privileges and obligations between kindred members. *Kapwa* is the cognitive image of these relationships, and becomes generalized in experience to include all acceptable forms of social relationships. When a person fails to act according to the behaviors and values expected by the social network he is labelled as "*walang kapwa-tao*" ("not one of us"). Such person may be kin or non-kin who fail to live up to the cultural expectations of the social group.

Using the notion of *walang kapwa-tao* as a springboard, the author posits that in those instances when the merchant (whether seller or manufacturer) exhibits bad faith whether through unfair, deceptive, fraudulent behavior or not, the merchant may be regarded as *walang kapwa-tao*. Once the person or company is perceived to be removed from the social and cultural group, then the aggrieved party may consider them outsiders and outside the protection of *pakikisama*. Once categorized as *walang kapwa-tao* a person or group may be subjected to legal action.

¹³ Torres, *supra* note 12, at 4.

¹⁴ As explained in note 7, the author believes that when the consumer or buyer resorts to litigation, he has already reached the conclusion that the conflict cannot be resolved through concessions reached through *pakikisama* or *pakikipagkapwa*.

obligations, or, to put it simply, they have made the laws user friendly, so enforcement is easier for the individual consumer. The cost of merchant-consumer litigation to enforce straightforward contractual rights or warranties has been greatly reduced with the enactment of Republic Act No. 7394. This streamlined the procedure of seeking consumer redress through quicker and inexpensive ways to enforce manufacturers' and sellers' warranties. Republic Act No. 7394 also imposes stricter warranties while reducing the quantum of proof required to hold the manufacturer or seller liable for loss. Arguably, the new consumer protection legislation benefits the public generally as well as the individual consumer by regulating merchant behavior to reduce fraud and to set minimum product standards.

This paper seeks to examine the current state of protection available to Filipino consumers in the purchase of non-food and non-drug items, by delving into the nature of the contract of sale between the merchant-manufacturer and the individual consumer. It examines the mechanisms that the Consumer Act inserts into the contract of sale to assist the individual consumer in filing and pursuing a claim against the manufacturer.¹⁵ Finally, the author offers ways of maximizing the effectivity of consumer protection measures.

II. CONSUMER CONTRACTS

When two parties bargain on an equal basis and the buyer is willing to buy a pig in the poke there is no policy of the law to prevent such a transaction.
— *Klein v. Asgrow Seed Co.*¹⁶

A. Freedom of contract as fundamental

Contracts are a fundamental institution in private law protected under the non-impairment clause¹⁷ of the Bill of Rights. Contracts operate as the law

¹⁵ The essay concentrates on protection through warranties. In the area of warranties and the manner of their enforcement, the CIVIL CODE is supplementary to Rep. Act No. 7394 (1992). The new law streamlines the procedure by reducing the "red tape" in warranty transactions.

¹⁶ *Klein v. Asgrow Seed Co.*, 54 Cal. Rptr. 609, 617 (Cal. Ct. App. 1966).

¹⁷ CONST. art. III, sec. 10.

between parties: Parties use contracts to bind each other and to rely upon promises made.¹⁸ In his 1943 article "Contracts of Adhesion — Some Thoughts About Freedom of Contract," Friedrich Kessler described the important historical role contracts have played in promoting economic development:

With the development of a free enterprise system based on an unheard of division of labor, capitalistic society needed a highly elastic legal institution to safeguard the exchange of goods and services on the market. Common law lawyers, responding to this social need, transformed the "contract" from the clumsy institution that it was in the sixteenth century into a tool of almost unlimited usefulness and pliability. Contract thus became the indispensable instrument of the enterpriser, enabling him to go about his affairs in a rational way. Rational behavior within the context of our culture is only possible if agreements will be respected. It requires that reasonable expectations created by promises receive the protection of our law or else we will suffer the fate of Montesquieu's Troglodytes, who perished because they did not fulfill their promises.¹⁹

When courts rule a contract to be valid in purpose and in its execution, then parties to the contract must perform their obligations or pay for the breach. "There is no contract without assent, but once the objective manifestations of assent are present, their author is bound. A person is supposed to know the contract that he makes."²⁰ Each party is expected to look out for his own interests and avoid oppressive bargains through careful shopping around.²¹ The basic assumption behind this is that the parties stand on equal footing and only reach the agreement after free bargaining. Traditionally, courts refrain from declaring contracts void as against public

¹⁸ CIVIL CODE, art. 1159. "Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

¹⁹ Friedrich Kessler, *Contracts of Adhesion — Some Thoughts About Freedom of Contract*, 43 COLUM. L. REV. 629 (1943).

²⁰ *Id.* at 630. He cites *L'Estrange v. F. Graucob Ltd.*, 2 K.B. 394 (1934). "In the absence of fraud or misrepresentation parties who have put their contract in writing and signed it will not be heard to say that they have not read it or did not know, understand or assent to its contents provided the document is legible however small the print."

²¹ Kessler, *supra* note 19, at 630.

policy "because if there is one thing which more than another public policy requires is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by the Courts of justice."²²

The binding power of the contract comes from its basic fairness. Every contract is premised upon the capacity of the parties to contract and the assumption that the obligations were entered into freely. "To enter contracts freely and without restraints, is one of the liberties guaranteed to the people of the state."²³ The right to choose with whom to contract and under what terms is a fundamental principle in the law of contracts. This even includes the prerogative to make a lousy deal. So even consumer contracts — bad deals or good — are binding upon the parties.

In the 1933 article "The Basis of Contract," Morris Cohen summed up the justification for autonomy of will:

Contractualism in the law, that is the view that in an ideally desirable system of law all obligation would arise only out of the will of the individual contracting freely, rests not only on the will theory of contract but also on the political doctrine that all restraint is evil and that the government in turn is best which governs the least. This in turn is connected with the classical economic optimism that there is a sort of pre-established harmony between the good of all and the pursuit by each of his own selfish economic gain.²⁴

Autonomy of will, otherwise referred to as the freedom of contract, is a general principle of law protected by article 1159 of the Civil Code.²⁵ Simply stated, a contract validly entered into constitutes the law between the parties and must be upheld, as long as the contract does not violate the law, morals, good customs, public policy, or public order.²⁶ In applying these provisions, the

²² *Id.* at 631. He cites Sir G. Jessel, M.R., in *Printing and Numerical Registering Co. v. Sampson* L.R. 19 Eq. 462, 465 (1875).

²³ *People v. Pomar*, 46 Phil. 440 (1924).

²⁴ Morris Cohen, *The Basis of Contract*, 46 HARV. L. REV. 553, 558 (1933).

²⁵ CIVIL CODE art. 1159.

²⁶ 4 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE

Supreme Court has consistently upheld the valid exercise of the right to contract, even if the result may have caused a degree of injustice to the parties involved.²⁷

**B. When yes is not enough:
Limitations to the freedom of contract**

There are instances where, although the purpose of the contract is lawful, the State will deny the contract protection because of defects in the consent of either contracting party. For defects of consent to affect the binding force of the agreement, the imperfect consent must have led the weaker contracting party to agree to terms that ordinarily would not have been acceptable to him. Title II (Contracts) of Book IV of the Civil Code enumerates four kinds of defective contracts. These defective contracts are characterized as either void or inexistent (article 1409), unenforceable (article 1403), voidable (article 1390), or rescissible (article 1381).

In his annotation on Book IV of the Civil Code, Arturo Tolentino differentiates the four defective contracts:

- a) rescissible contract — contract has caused a particular damage to one of the parties or to a third person, and for equitable reasons may be set aside, even if it is valid.
- b) voidable or annulable — contract wherein the consent of one party is defective, either because of a defect in capacity/lack of capacity or because consent is vitiated. But until the contract is set aside by a competent court, the contract is regarded as valid.

PHILIPPINES 65 (1991).

²⁷ *Id.* TOLENTINO enumerates cases where CIVIL CODE, art. 1159 was applied: *De la Rama v. Inventor*, 12 Phil. 44 (1908); *Co-Tiangco v. To-Jamco*, 3 Phil. 210 (1904); *Salonga v. Concepcion*, 3 Phil. 563 (1904); *Borromeo v. Franco*, 5 Phil. 49 (1905); *Alcantara v. Alinea*, 8 Phil. 111 (1907); *Compania de Tabacos v. Obed*, 13 Phil. 391 (1909); *Ollendorff v. Abrahamson*, 38 Phil. 585 (1918); *Hanlon v. Haussermann*, 41 Phil. 276 (1920); *Government v. Conde*, 61 Phil. 714 (1935); *Government v. Lim*, 61 Phil. 737 (1935); *Government v. Vaca*, 64 Phil. 6 (1937); *Villonco Realty Co v. Bormaheco Inc.*, G.R. No. 26872, 25 July 1975, 65 SCRA 352; *Cortes v. Venturanza* G.R. No. L-26058, 28 October 1977, 79 SCRA 709.

- c) unenforceable — contract which cannot be enforced unless it is ratified in the manner provided by law.
- d) void or inexistent contract — contract which is an absolute nullity & produces no effect, as if it had never been executed.²⁸

In general, contracts are presumed to have been validly entered into by the parties,²⁹ except that once the consent is judicially proven to be defective, the contract may be annulled, rescinded or declared void. The State steps in because the agreement was not knowingly consented to by the “weaker party.”

Aside from these types of defective contracts, Congress also recognizes instances when the inequality between the contracting parties results in unconscionable agreements. Unconscionability is understood to include an absence of meaningful choice on the part of one of the parties accompanied by contract terms that are unreasonably favorable to the other party.³⁰ Certain contracts are void under Philippine law because of their unconscionability.³¹ Congress determines that each party is entitled to certain minimum rights and enacts special legislation that forbid any waiver of these rights. Any such waiver is deemed without legal effect.

C. Consumer Contracts — Contracts of adhesion

While it hardly seems necessary to explain the reasons why the State upholds and protects private contracts,³² the strict adherence to contracts has

²⁸ TOLENTINO, *supra* note 26, at 569.

²⁹ See REV. RULES OF COURT, Rule 131, sec. 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: (p) That private transactions have been fair and regular; (q) That the ordinary course of business has been followed; (r) That there was sufficient consideration for a contract

³⁰ ROBIN PAUL MALLOY, LAW AND ECONOMICS: A COMPARATIVE APPROACH TO THEORY AND PRACTICE 105 (1990).

³¹ Examples of unconscionable contracts are the yellow dog labor contracts (LABOR CODE, art. 248 par.[b]), sale of an expectancy (CIVIL CODE, art. 1461) or waivers of actions arising from future fraud (CIVIL CODE, art. 1171). See also CIVIL CODE, arts. 1439, 1330, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1343, 1344, 1352, 1354, 1355.

³² Note the non-impairment clause of the 1987 Constitution: “No law impairing the obligation of

resulted in "a tendency to include within the categories of contract transactions in which there is no negotiation, bargain, or genuinely voluntary agreement."³³ This creates the danger that freedom of contract may enable enterprisers to legislate by contract and, what is even more important, to legislate in a substantially authoritarian manner without using the appearance of authoritarian forms.³⁴ Thus, consumer contracts, while not necessarily defective, may be seen as contracts in which the consent of the consumer is not completely free.

1. Merchant-consumer interactions

The very structure of consumer transactions works against the consumer. Consumers are typically in a weak bargaining position because of the disparity in knowledge and resources between the parties.³⁵ Consider that the consumer only purchases items needed for her personal use. Each item bought is just one of many purchased for everyday use. When one item proves to be substandard,³⁶ the violation is rarely of a tangible, provable nature so the amount of damages available under compensatory remedies is usually insufficient motivation to render it economical for a consumer to sue for a purely compensatory remedy.³⁷ Moreover, the typical consumer is unaware of her legal rights and remedies, consequently and is unlikely to take the steps to initiate legal action to enforce the existing legal obligation of the business.³⁸

contracts shall be passed." CONST. art. III, sec.10

³³ Cohen, *supra* note 24, at 568.

³⁴ Kessler, *supra* note 19, at 640.

³⁵ ROSS CRANSTON, *CONSUMERS AND THE LAW* 3 (2d ed. 1984).

³⁶ Note that there is a difference between falling below the consumer's expectations and being substandard. The first is subjective, so the merchant can not be held accountable for the disappointment. However, the latter gives rise to a cause of action.

³⁷ William C. Whitford, *Structuring Consumer Protection Legislation to Maximum Effectiveness*, 1981 WIS. L. REV. 1018, 1027 n.29 (1981). Whitford cites Pettit, *Representing Consumer Defendants in Debt Collection Actions: The Disclosure Defense Game*, 59 TEX. L. REV. 225, 280-81 (1981); and Note, *Private Enforcement Under the Fair Debt Collection Practices Act*, 28 CASE W. RES. L. REV. 710, 716-20 (1978).

³⁸ William C. Whitford, *Structuring Consumer Protection Legislation to Maximum Effectiveness*, 1981 WIS. L. REV. 1018, 1026-27 (1981). Whitford also states that the literature on consumerism commonly indicates two reasons for the low level of consumer utilization of private compensatory remedies: lack of awareness of legal rights and remedies and that the costs of initiating legal action are prohibitive since it

Also, few consumers know whom to contact and whom to sue.³⁹ The costs of initiating legal action are significant because it is a practical necessity for consumers to hire a lawyer to claim a compensatory remedy.⁴⁰ Most would be willing to "let go on a raw deal [rather] than engage in expensive court battles against a powerful adversary — the manufacturer."⁴¹

In contrast, basic consumer transactions are skewed in favor of the merchant. The force and power of industry is often behind him. The merchant is engaged in the business of manufacturing and/or selling the item. The same item, through millions of nearly identical transactions, is the source of the merchant's income. In the course of producing the item, the rational merchant would be more likely to rely upon standardized sales and warranty contracts to reduce the "unforeseeable risk."⁴² The rational merchant would have consulted with legal counsel to prepare for possible hazards or consumer claims. If confronted with a law suit, merchants are able to justify greater expenditures on litigation than the consumers, particularly since the legal fees may be deducted as valid corporate expenses.⁴³ Having invested considerable resources into the product,

[Merchants] can generally justify greater expenditures on the litigation than consumers, therefore, which probably causes decisions to be more favorable to merchant interests than they would be if each side invested equally in the litigation. For the same reason a merchant can more easily

requires the consumer to hire a lawyer. Whitford cites Stigler, *The Optimal Enforcement of Law*, 78 J. POL. ECON. 526 (1970). Whitford stresses that the low level of utilization of private remedies by consumers means that exclusive reliance on private compensatory remedies cannot be viewed as an ideal sanctioning scheme. So many of the injuries caused by non-compliance go uncompensated, because unclaimed, that such sanctioning schemes provide excessive incentives for non-compliance.

³⁹ CRANSTON, *supra* note 35, at 26.

⁴⁰ Whitford, *supra* note 38, at 1020-21.

⁴¹ Louise Y. Gochan, *The Consumer's Alternative: A Study on Consumer Grievance Mechanism*, 56 PHIL. L.J., 407, 412 (1981).

⁴² For additional readings on foreseeable risk, see generally Kessler, *supra* note 19. Kessler cites PATTERSON, *ESSENTIALS OF INSURANCE LAW* 282 *et seq.* (1935).

⁴³ TAX CODE, sec. 34, par. (1)(a) includes among the deductions of gross income "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to, the development, management, operation and/or conduct of the trade, business or exercise of a profession."

justify the expense of circumventing any undesirable precedent that is established by attempting to distinguish it in future cases.⁴⁴

So, merchants generally exert greater effort to maintain the status quo than consumers would willingly expend on a civil action impugning the product's quality or safety. Consider that since the manufacturer suffers a significant setback if there is a determination of hazardous flaws or defects in the product, the seller has much more to gain by delaying, refusing to pay, and preventing a precedent from being established. The manufacturer has far more resources to expend in litigation and is better positioned to absorb the losses. The willingness to spend and their "deep pockets" must be factored in when viewing most consumer lawsuits. The disparity in the investment in the litigation probably causes decisions to be more favorable to merchant interests than they would be if each side invested equally in the litigation.⁴⁵

2. Careful shopping around is not enough *or*
Even the "smart consumer" sometimes can't cut a good deal *or*
Not a monopoly but not a free market either

Unlike ordinary contracts, consumers contracts are standardized with the terms dictated by the stronger party. Although in theory each person holds the power to choose with whom to contract and how to dictate the terms of the transaction, everyday transactions demonstrate otherwise. Businesses have grown larger and the bulk of everyday transactions involve powerful chains, franchises, multinationals or conglomerates. Under these conditions, the individual consumer has little bargaining power. It is no longer true that the consumer can avoid an oppressive bargain by careful shopping around. As Kessler explains:

⁴⁴ Whitford, *supra* note 38, at 1020 n.8. See Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95 (1974).

⁴⁵ Whitford, *supra* note 38, at 1020.

The weaker party, in need of goods or services, is frequently not in a position to shop around for better terms, either because the author of the standard contract has a monopoly (natural or artificial) or because all competitors use the same clauses. His [the consumer's] contractual intention is but a subjection more or less voluntary to terms dictated by the stronger party, terms whose consequences are often understood only in a vague way, if at all.⁴⁶

Since the manufacturer and his competitors may have a monopoly over the product and offer essentially the same terms,⁴⁷ the free enterprise system no longer ensures freedom of contract. "The standardized contract, one whose contents had been formulated by a business firm, is used in every bargain dealing with the same product or service."⁴⁸

The manufacturer-merchant specifies the terms in a standardized contract (whether a contract of sale or of warranty) to which the individual consumer needs only to agree. The consumer does not have the power to amend or alter the terms. Often the person that he deals with directly, whether a salesperson or dealer, does not have the authority or discretion to adjust the contract to the consumer's needs. In brief, the consumer knows full well that she must either "take it or leave it." This type of contract has been described as a contract of adhesion — the consumer adheres to the terms set by the more powerful party.⁴⁹ While contracts of adhesion are not unreasonable enough to be considered as unconscionable under the law, they may still treat the weaker party unfairly. Particularly in situations where the consumer is ignorant, contracts of adhesion between the parties may lead the consumer to waive rights and remedies without fully comprehending or intending to do so. Minimum standards of protection are essential. When the consumer purchases

⁴⁶ Kessler, *supra* note 19, at 632.

⁴⁷ *Id.* at *supra* note 19, at 632. See also William C. Whitford, Comments, *Comment on A Theory of the Consumer Product Warranty*, 91 YALE L.J. 1371-85 (1982).

⁴⁸ Kessler, *supra* note 19, at 631.

⁴⁹ See Kessler, *supra* note 19, at 632. The original term was *à prendre ou à laisser*. Kessler explains that the word "contract of adhesion" has been introduced into the legal vocabulary by Patterson, *The Delivery of a Life Insurance Policy*, 33 HARV. L. REV. 198, 222 (1919). See also Karl N. Llewellyn, *What Price Contracts?—An Essay in Perspective*, 40 YALE L.J. 704 (1931); Morris Cohen, *The Basis of Contract*, 46 HARV. L. REV. 553 (1933); John Murray, *Basis of the Bargain: Transcending Classical Concepts*, 66 MINN. L. REV. 283 (1982); Todd D. Rahoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1174 (1983). (for further readings on consent and contracts of adhesion).

an item, it is sufficient that she believes that the item is reasonably fit for its intended purpose. She pays the price agreed upon and expects that the item will be safe and effective when used under ordinary conditions. As manufactured goods increase in complexity, it is no longer reasonable to expect consumers to be able to identify its flaws through inspection prior to purchase.⁵⁰ The Civil Code and Republic Act No. 7394 provide for implied warranties to protect the consumer. Even if the purchase is at a discount or done during a sale, the manufacturer or merchant must continue to comply with the minimum safety standards and the implied warranty of fitness.

D. Arguments for vendor emptor

There are several strong policy arguments in favor of holding the manufacturer liable for product defects, even absent a showing of negligence. Professor Arthur R. Miller⁵¹ explained the reasons behind the more progressive views on product liability:

When it finally became clear that the profusion of new and complex products on the market had the unfortunate consequence of increasing the accident toll, the policy of promoting industrial expansion had to give way to the policy of promoting human life and limb. The law responded by slowly chipping away at the old precedents; more and more exceptions were carved out from the basic rule, and an increasing number of cases were found to fall within the exceptions. The result has been a shift in the law of 180 degrees away from caveat emptor: The seller now has a duty to watch out for and guard against potential hazards associated with the use of his product. And sometimes the seller will be held liable to a person injured by his product, even though the seller's behavior was entirely reasonable.⁵²

⁵⁰Arthur R. Miller, *Products Liability: Must the Buyer Beware?* in READINGS IN PHILOSOPHY OF LAW: PHILOSOPHICAL ISSUES IN CIVIL LAW 428-42 (Arthur and Shaw eds. 1993).

⁵¹Arthur R. Miller is the Bruce Bromley Professor of Law at Harvard University.

⁵²Arthur R. Miller, *supra* note 50, at 429.

Even in the absence of negligence, it has been argued that the manufacturer should bear the cost as an *enterprise liability*.⁵³ In brief, since the manufacturer has entered the business of creating and selling the product, he should be aware that his activity may harm others, and should treat this harm or damage as a cost of the activity. When the activity is a business, then this cost will be incorporated in the pricing and passed on to consumers. The producer can control the cost of these "injuries" by obtaining liability insurance. Not only is the manufacturer better situated to absorb the risk, but since he also profits from the transaction, the manufacturer must be viewed as the superior risk bearer.⁵⁴ Another justification for the manufacturer's liability focuses on control over the product. It has been suggested that when defective products cause damage, the manufacturer should absorb the burden of the corresponding cost since it was he who put them up for sale; and the injured persons who are ordinarily powerless to protect themselves should not be made to bear the economic loss.⁵⁵

Economic competition and free market forces do not sufficiently regulate the price of goods when the consumer is ignorant.⁵⁶ Consumer education and advocacy are critical to fair commercial transactions and effective consumer protection. Consumer power is a key factor in ensuring fair market transactions. This is especially evident in a situation where the population remains uncritical such as in the Philippines. Where consumers are unable to discern the differences in quality of the goods, the manufacturer may be tempted or pressured to adulterate the quality of the goods to retain a certain profit margin.⁵⁷ True freedom of choice may not be operating in such an environment.

Ill-informed and uninitiated consumers are even more likely to make poor choices that they can ill afford when the Philippines liberalizes trade borders. As a signatory to the General Agreement on Tariffs and Trade

⁵³ Eulogia M. Cueva, *Philippine Law on Product Liability*, 55 PHIL. L.J. 205, 206 (1980). Cueva, in n.5, cites Morris, *Hazardous Enterprise and Risk Bearing Capacity*, 61 YALE L.J. 1172 (1952).

⁵⁴ *Id.* at 206. The concept of the superior risk bearer is attributed to Morris, 61 YALE L.J. 1172.

⁵⁵ *Id.* at 206. Citing Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363 (1965).

⁵⁶ Eulogia M. Cueva, *The Consumer Buyer and His Rights*, 49 PHIL. L.J. 529 (1974).

⁵⁷ *Id.* at 529. Citing WAITE & CASSADY, *THE CONSUMER AND THE ECONOMIC ORDER* 20 (1949).

(GATT) and World Trade Organization (WTO), the Philippine market is expected to be inundated with imported consumer goods.⁵⁸ The range and complexity of the goods on the market may leave the average and less savvy Filipino consumer particularly vulnerable to aggressive and misleading advertising, purchase inducement, and consumption pressures.⁵⁹

When the consumer is poor, the lack of financial resources or storage facilities may also necessitate the constant purchase of small quantities from a local store, even at higher prices.⁶⁰ Many of the poorer consumers are not well-informed about price differences and the cost of credit. Poor consumers do not just lack knowledge, they often lack the confidence and resources to exercise their legal rights.⁶¹ Studies of consumer activism conducted in developed countries have shown that consumer activists tend to be younger, better educated, and more affluent.⁶² This is also likely to hold true in the Philippines.

Another reason why free market and economic competition must be aided by government regulation is that there are types of activities that cannot reasonably be left to individual incentive because there is no particular

⁵⁸ See generally *Tañada v. Angara*, G.R. No. 118295, 2 May 1997, 272 SCRA 18. The case challenges the constitutionality of the ratification of WTO. Decided by the Supreme Court en banc, the *ponente*, Justice Kapunan, also describes benefits that may accrue to consumers with the liberalization of trade barriers: "Liberalization, globalization, deregulation and privatization, the third-millennium buzz words, are ushering in a new borderless world of business by sweeping away as mere historical relics the heretofore traditional modes of promoting and protecting national economies like tariffs, export subsidies, import quotas, quantitative restrictions, tax exemptions and currency controls. Finding market niches and becoming the best in specific industries in a market-driven and export-oriented global scenario are replacing age-old "beggar-thy-neighbor" policies that unilaterally protect weak and inefficient domestic producers of goods and services. In the words of Peter Drucker, the well-known management guru, 'Increased participation in the world economy has become the key to domestic economic growth and prosperity.'" "The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition. On the other hand, respondents claim that WTO/GATT aims to make available to the Filipino consumer the best goods and services obtainable anywhere in the world at the most reasonable prices. Consequently, the question boils down to whether WTO/GATT will favor the general welfare of the public at large."

⁵⁹ See generally Gochan, *supra* note 41, at 408.

⁶⁰ CRANSTON, *supra* note 35, at 4.

⁶¹ *Id.*

⁶² CRANSTON, *supra* note 35, at 6. Cites Barry Elliot, *Consumer Activism in Australia*, 10 *POLITICS* 188, 191-92 (1975).

incentive for an individual to act. It has been necessary to regulate business activity directly instead of relying on the free market.⁶³ It has also been argued that since everyone is a consumer, consumer interest is so diffused and all-encompassing that people lack identification and self-awareness as consumers. Rational and self-interested individuals are not likely to join a group purporting to represent consumer interest because of the free-rider tendency — a common perception that the contribution of any one individual will probably be greater than the benefits to be received and that it is unlikely that any individual contribution will make a difference,⁶⁴ meaning, let the other fellow do the job.

III. CONSUMER PROTECTION AND SPECIAL INTEREST LEGISLATION: THE NEED FOR MINIMUM STANDARDS OF PROTECTION UNDER THE LAW

A. Characteristics of consumer contracts

It will be observed that the need for additional protection in consumer transactions is recognized in many countries. Furthermore, merchant-consumer transactions throughout the world share certain universality of characteristics. This speech advocating consumer protection was given by President John F. Kennedy in 1962,⁶⁵ but it could have been written for Filipinos in 1998:

Consumers by definition include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. They are the only important group in the

⁶³ Cueva, *supra* note 56, at 529.

⁶⁴ CRANSTON, *supra* note 35, at 11-12.

⁶⁵ ROBERT J. LAMPMAN, *JFK's Four Consumer Rights: A Retrospective View*, in *THE FRONTIER OF RESEARCH IN THE CONSUMER INTEREST: PROCEEDINGS OF THE INTERNATIONAL CONFERENCE ON RESEARCH ON CONSUMER INTEREST*, 25-26 (E. Scott Maynes and ACCI Research Committee eds., 1986).

economy who are not effectively organized, whose views are often not heard. . .

If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interests suffers.⁶⁶

Kennedy points out that whatever pecuniary loss or injury the consumer suffers as a result of a substandard product, indirectly impacts on the domestic economy. This justifies governmental concern and involvement in the area of consumer protection.

The Constitution recognizes that consumers need special protection. Article XV, section 9 of the 1987 Constitution provides that "[t]he State shall protect consumers from trade malpractices and from substandard or hazardous products." According to Constitutional Convention member Joaquin Bernas, the framers of the Constitution intended the consumer to have recourse against manufacturers as well as the sellers of the defective and hazardous products.⁶⁷

In the area of consumer contracts, the use of special interest legislation guarantees certain minimum rights and helps reduce fraudulent trade. However, since special interest legislation clearly limits the freedom to contract, these laws must comply with the fundamental tests of due process⁶⁸ and equal protection. Since the effect of protecting consumers is to grant particular privileges to the entire group, the legislation must adhere to the constitutional requirements for equal protection: a valid public purpose, reasonable classification and a uniform application among the members of the class. In effect, Congress uses special interest legislation to promote an important State interest through protecting or favoring a sector of society.

⁶⁶ 108 Cong. Rec. 4167, 4263 (1962) (message from Pres. Kennedy to Congress concerning strength programs to protect consumer interests).

⁶⁷ JOAQUIN G. BERNAS, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* 1161 (1995).

⁶⁸ Due process requires that special interest legislation be resorted to in exceptional circumstances only, such as when the parties are on such unequal footing that the weaker party is unable to stipulate terms for his own protection.

Through the passage of Republic Act No. 7394, Congress specified effective means for the individual consumer to enforce warranties and protect her rights.

Republic Act No. 7394 defines "consumer transaction" broadly to cover a wide range of everyday contracts. As long as the transaction is undertaken for personal, family, household or agricultural purposes, the sale, lease or delivery of the products, service or credit is considered "consumer" and consequently regulated under Republic Act No. 7394.⁶⁹ "Consumer law is the law of everyday contracts and transactions involving individual consumers. By individual consumers, we mean real people acting in their own behalf, as opposed to the same real people when they are working for a business or a company."⁷⁰ Notice that it is only when one purchases items for personal or household use that one is granted special protection. It is the absence of bargaining power in the transaction that justifies additional protection from the State.

Consider that millions of citizens purchase items for personal use. These purchases can be characterized by the absence of effective bargaining by the buyer.⁷¹ Through consumer protection legislation, Congress provides a minimum standard of protection to the individual. Since the consumer buyer is unable to bargain or alter the terms of the sales contract, then Republic Act No. 7394 facilitates the enforcement of the sales contract and its accompanying product warranty. The fact that the individual consumer has little bargaining

⁶⁹ Rep. Act No. 7394 (1992), art. 4.

⁷⁰ AMERICAN BAR ASSOCIATION, *THE AMERICAN BAR ASSOCIATION GUIDE TO CONSUMER LAW* 3 (1997).

⁷¹ For a discussion on the absence of effective bargaining power of the buyer, see generally ROMAN P. MOSQUEDA, *PHILIPPINE LAW AND JURISPRUDENCE ON PRODUCTS LIABILITY: A COMPARATIVE STUDY* (1982); AMERICAN BAR ASSOCIATION, *GUIDE TO CONSUMER LAW* (1997); William C. Whitford, *Structuring Consumer Protection Legislation to Maximum Effectiveness*, 1981 WIS. L. REV. 1018-43 (1981); William C. Whitford, *Comment on a Theory of the Consumer Product Warranty*, 91 YALE L.J. 1371 (1982); Friedrich Kessler, *Contracts of Adhesion — Some Thoughts About Freedom of Contract* 43 COLUM. L. REV. 629-42 (1943); Todd D. Rahoff, *Contracts of Adhesion: An Essay in Reconstruction* 96 HARV. L. REV. 1174 (1983).

power and leverage when dealing with merchants and manufacturers justifies special interest legislation to protect certain consumer rights.

B. Hidden costs to the general welfare

Consumer protection measures have been criticized as costly. Critics argue that Filipino manufacturers cannot afford to comply with the strict product standards of developed nations. But the "recession" cannot justify a relaxing of strict product standards since it is precisely during these hard economic times, when businesses are closer to the margin, that merchants are tempted to engage in unconscionable business practices to make sales.⁷² To survive, businesses might fail to implement regulatory standards. Competitive pressures oblige them to adopt production or marketing schemes in which legal obligations are secondary.⁷³ It is during these times that strict product standards should be enforced and consumer rights should be protected. Even if consumer protection law involves net costs, consumers might be prepared to incur and pay for these costs if this will bring them closer to reliable products and fair trade practices.

In a study performed in 1975, nearly twenty-five years ago, the International Labor Organization (ILO) argued for consumer protection measures:

[T]he concept of simple justice demands that consumers should not be exposed to safety and health risks or unfair commercial practices which they have no defense. . .

Lack of education and information make it difficult for rural masses to understand the importance of adequate standards of product safety and quality, and to defend themselves against adulteration of goods, lack of infrastructure and of resources, and of fragmentation of production makes it difficult for authorities to enforce and maintain such standards, particularly in rural areas, inadequate distribution system render [sic] the sale of manufactured consumer goods very expensive. The high cost of

⁷² CRANSTON, *supra* note 41, at xxxvii.

⁷³ CRANSTON, *supra* note 41, at xxxix.

consumer goods can also be an important factor and element in the spread of credit sales and in the vicious circle of farmer indebtedness.

In urban areas, the consumer-oriented environment is often geared to the needs of higher income groups. Urban workers with their limited income, face purchase inducement far beyond their means and are more subject to consumption pressures than the rural population.⁷⁴

Today Philippine corporations are able to manufacture most household appliances. But because of the cost of production, most household appliances and electronics are produced by large-scale enterprises engaged in mass production and mass distribution. Within each particular industry, large firms use standardized contracts to reduce their exposure to juridical risk. Through standardized contracts, the companies are able to maintain a uniformity of terms which aids in the exact calculation of risks. The unforeseeable contingencies affecting performance can be taken care of.⁷⁵ These manufacturers and distributors rely upon standard sales and warranty contracts to ensure a predictable level of risk. The consumer purchasing the item is forced to accept the terms of the contract of adhesion. The implied warranties provided for in the Civil Code and in the Consumer Act have been written to ensure the consumer a minimum degree of protection in spite of the use of standardized consumer contracts and contracts of adhesion.

Individual consumers regularly enter into sales contracts with large corporations. When one needs a telephone, the choices are limited to those companies which operate within the area. Upon selecting, the consumer accepts without reservation the terms of service. Free bargaining through the play of market forces will not allow him to wrangle better terms. The terms of the lease and the warranty are set by the company's legal department and take into account the terms offered by competitors. As Kessler explains, "Standard contracts are typically used by enterprises with strong bargaining power. The weaker party, in need of the goods or either because the author of the standard

⁷⁴ Cueva, *supra* note 56, at 530, citing International Labor Organization, *Consumer Protection: A New Field of International Concern*, 2 ANG MAMIMILI, 8 (February 1975).

⁷⁵ Kessler, *supra* note 18, at 631.

contract has a monopoly (natural or artificial) or because all competitors use the same clauses.”

Most manufacturers employ standardized terms in their warranty clauses. In 1943, American manufacturers used warranty clauses to limit the remedies of a buyer to breach of implied warranty of quality and to exclude his right to claim damages.⁷⁶ Recent legislation has granted buyers a minimum of warranties. In examining and evaluating warranties, courts may also apply a test used to assess standardized contracts. “In dealing with standardized contracts, courts have to determine whether the weaker contracting party could legitimately expect by way of services according to the enterpriser’s ‘calling,’ and to what extent the stronger party disappointed reasonable expectations based on the typical life situation.”⁷⁷

On the one hand, consumer protection legislation grants to the individual consumer minimum rights that cannot be waived or bargained away through an agreement between the parties. By operation of law, minimum safeguards are automatically incorporated in to consumer contracts. This has the effect of equalizing the playing field by elevating the position of the consumer, and forcing the merchant to comply with fair trade practices. Consumer protection serves larger state interests when it allows each of us to trust in what we buy, thus encouraging greater commerce and stimulating the economy. Indeed, consumers share several identifiable interests: economic efficiency, diversity of purchasing choice, avoidance of monopoly profits and consumer fraud, optimal purchasing information, and good quality products and services in relation to price.⁷⁸

Freedom of contract enables enterprisers to legislate by contract and, what is even more important, to legislate in a substantially authoritarian

⁷⁶ *Id.* at 632 & n.10.

⁷⁷ *Id.* at 637, Llewellyn, *Review* 52 HARV. L. REV. 700, citing 704 (1939). Llewellyn calls our attention to the case law on oral contracts to insure which indeed shows the ingenuity of common law courts in making contracts for the parties on the basis of the typical life situations.

⁷⁸ CRANSTON, *supra* note 35, at 12.

manner without using the appearance of authoritarian forms.⁷⁹ The meaning of freedom to contract "must change with the social importance of the type of contract and with the degree of monopoly enjoyed by the author of the standardized contract."⁸⁰

V. SPECIFIC PROVISIONS IN THE CONSUMER ACT

The Constitution recognizes consumers as a special sector entitled to protection and singled out deceptive trade and substandard products as dangers to be avoided. The Constitutional provision acknowledged the disadvantaged position of the consumer vis-à-vis the manufacturer and the retailer of everyday products. Passed on 13 April 1992 and effective as of 12 May 1992, the Consumer Act, Republic Act No. 7394, provides for specific measures to assist consumers in holding liable the makers and sellers of faulty products and in enforcing warranties on shoddy or defective products.

When Republic Act No. 7394 and other consumer protection legislation proclaimed as a goal the reduction and punishment of deceptive trade practices, Congress added another way for the State to reduce a public ill of fraud and deception. Aside from the possibility of filing criminal cases under the Revised Penal Code⁸¹ or civil actions, consumers or the Department of Trade and Industry (DTI) may now file administrative cases against merchant-manufacturers. All three types of cases may be filed separately, each with different burdens of proof. Considerable advantages come with permitting consumers to seek redress through administrative suits: Lower costs to consumer-plaintiff, the less stringent procedures, and the burden of proof required is reduced from guilt beyond reasonable doubt to substantial evidence.

⁷⁹ Kessler, *supra* note 19, at 640.

⁸⁰ *Id.* at 642.

⁸¹ See generally REV. PEN. CODE, arts. 186, 187, 188, 189, 315. See also Pres. Decree No. 1689, Increasing The Penalty For Certain Forms Of Swindling Or Estafa (6 April 1980).

Chapter III of Republic Act No. 7394 amends the Civil Code in the area of warranties under consumer transactions.⁸² Express warranties are made automatically operative from moment of sale.⁸³ They include all written warranties or guarantees issued by the manufacturer, producer, or importer.⁸⁴ The new law lists the requirements with which express warranties must comply:

- (a) To express terms of the warranty in clear and readily understandable language and clearly identifying the warrantor;
- (b) To identify the party to whom the warranty is given;
- (c) To state the products or parts covered by the warranty;
- (d) To state what warrantor will do in the event of a defect, malfunction or failure to conform to the written warranty and at whose expense;
- (e) To state the actions the consumer must do to avail of the rights under the warranty;
- (f) To stipulate the period within which, after notice of defect, malfunction, or failure to conform to the warranty, the warrantor will perform any obligation under the warranty.⁸⁵

To ensure that protection under an express warranty is available to the consumer, Republic Act No. 7394 requires that distributors of products complete sales reports within thirty days from date of sale. Sales reports should state the date of purchase, model of product bought, serial number, name and address of buyer. Filing of this report has the same effect as warranty registration with the manufacturer and is sufficient to hold him liable under the

⁸² Rep. Act No. 7394 (1992), art. 67.

⁸³ Rep. Act No. 7394 (1992), art. 68, par.(b).

⁸⁴ Rep. Act No. 7394 (1992), art 68, par.(b). The statute provides for instances when manufacturers, producers, and importers may be held liable. The term manufacturer will be used loosely to refer to all three, when applicable.

⁸⁵ Rep. Act No. 7394 (1992), art. 68, par.(a).

warranty.⁸⁶ If the distributor fails to file the sales report, then the manufacturer is relieved of liability under the warranty. While the manufacturer is obligated to make good the warranty, the distributor becomes personally liable for expenses incurred.⁸⁷ Under Republic Act No. 7394, retailers have subsidiary liability for the fulfillment of the express warranty. When both manufacturer and distributor fail to honor the warranty, the retailer shall shoulder the expenses and costs necessary to honor the warranty. This does not preclude the right of the retailer to proceed against the manufacturer or the distributor.⁸⁸ By holding manufacturers, distributors and retailers responsible, a system of checks and balances have been built into the system. To the consumer, strict privity of contract is no longer a requisite for the institution of legal action.

Republic Act No. 7394 does another service to consumers by reducing the requirements and steps needed to enforce a warranty. Under the law, warranty rights can be enforced upon the mere presentation of a claim. A purchaser may present either the official receipt or the warranty card along with the product to be serviced. She shall not be required to present other documents.⁸⁹ If the item was purchased from a distributor or directly from the manufacturer, whether from the showroom or factory, the warranty must be immediately honored. Otherwise, the consumer may hold the retailer responsible and require him to present the warranty claim to the distributor on his behalf. This has the effect of aligning the retailers' interest with those of the consumer. In such case, the buyer shall not be responsible for the cost of presenting the claim.⁹⁰ The law requires distributors and retailers to keep a record of all purchases covered by warranty or guarantee for the period covered.

All agreements or stipulations contrary to article 68 of Republic Act No. 7394 shall be without legal effect.⁹¹

⁸⁶ Rep. Act No. 7394 (1992), art. 68, par.(b)(1).

⁸⁷ Rep. Act No. 7394(1992), art. 68, par.(2).

⁸⁸ Rep. Act No. 7394 (1992), art. 68, par. (3).

⁸⁹ Rep. Act No. 7394 (1992), art. 68, par. (4).

⁹⁰ Rep. Act No. 7394 (1992), art. 68, par. (4).

⁹¹ Rep. Act No. 7394 (1992), art. 68.

In spite of strong legislative support for consumer protection, not many people see or identify themselves as consumers. Even consumer rights advocates acknowledge the lack of awareness and participation by the general population in consumer affairs. "Progress through appliances" was the tongue-in-cheek description given by the American Bar Association.⁹² The battle cry of the Filipino consumer advocate does not result in a similar outpouring of support.

Consumer protection is intended as a means, a guarantee to different end-users that the items they spend their hard-earned money on are safe and functioning. Consumer protection means that if an item is inherently defective in material or workmanship or else fails to operate under normal circumstances and with proper usage during the specified warranty period, then one has a right to demand that it be fixed. If after repeated tries, it still cannot be fixed, then one can demand its replacement or a return of the purchase price. Although under Obligations and Contracts, Book IV of the Civil Code, these rights are already available to the consumer, the Consumer Act strongly enforces the recognition and the enforcement of these rights.

Consumer contracts, consumer transactions and in some cases even consumer expectations are granted protection under the Consumer Act of the Philippines. Republic Act No. 7394 incorporates mechanisms that enable parties to seek redress in case of a breach of the agreement. Consumer contracts receive specific protection under the law. Republic Act No. 7394 provides ways of protecting the consumer, facilitating fair and efficient consumer transactions. By operation of law, these different safeguards are deemed a part of consumer contracts.

Article 2 of the Republic Act No. 7394 states that the policy of the law is to protect the interests of the consumer, to promote her general welfare and to establish standards of conduct for business and industry. To attain the broad goals set forth, the Consumer Act specifically provides for five objectives:

⁹² AMERICAN BAR ASSOCIATION, *supra* note 69, at 3.

- (a) protection against hazards to health and safety;
- (b) protection against deceptive, unfair, and unconscionable sales acts and practices;
- (c) provision of information and education to facilitate sound choice and the proper exercise of rights by the consumer;
- (d) provision of adequate rights and means of redress; and
- (e) involvement of consumer representatives in the formulation of social and educational policies.⁹³

When a product is inadequate, the consumer may feel she did not receive full value for her money. She has three options: to resolve not to patronize that particular business or brand again, to make a formal complaint, either directly to the establishment, or to seek redress through official channels. When she chooses not to complain to the store directly, she is, in effect, waiving her rights as a consumer and reinforcing the merchant's bad behavior.

The Consumer Act recognizes that ordinary citizens entering into transactions in good faith can expect to face difficulties and frustrations. Despite best efforts of the most scrupulous and quality-oriented manufacturer, a defective product will crop up every so often. The Consumer Act gives the buyer, the seller, the manufacturer or importer or distributor a way of resolving the problem.

Consumer Protection and Consumer Rights impacts on a host of competing interests. Critics of the Consumer Rights movement claim that local manufacturers are not sufficiently stable. Manufacturers cannot afford to compete or face the stringent quality control standards set by First World counterparts. The effect of strict enforcement of product standards may be to force struggling Philippine entrepreneurs out of business. The other side has argued that Philippine businesses have been protected for a sufficient period and should now be prepared to stand on their own. With the globalization of the different markets and recent international obligations expected to force

⁹³ Rep. Act No. 7394 (1992), art. 2.

lower tariffs on imported items, Philippine products will be measured against more stringent product standards by virtue of competition from imports in the domestic market and through increased Philippine participation in regional and international markets.⁹⁴ Furthermore, as described earlier, there is the argument of equity vis-à-vis the role of the Filipino manufacturer and the average citizen purchasing the product: 1) it is the manufacturer that caused the defect in the product, not the consumer; 2) often at the time of purchase, the consumer does not have the opportunity nor the means to evaluate the product and make an informed decision; 3) the manufacturer is better able to absorb the economic loss. The economic burden is shifted to the entity able to control product quality, best able to afford the cost, and who stands to benefit from improving the product.⁹⁵

In effect, government regulation regarding the quality of products sold should benefit manufacturers in the long run. When a Philippine export is of poor quality, there exists the danger that a buyer/importer may, acting hastily, associate this "inferior product" with the entire class of Philippine exporters, and categorically dismiss all Philippine-made products as "not making the cut." Surely, the imposition and enforcement of stringent quality control standards redound to the benefit of Philippine society as a whole.

V. CONCLUSIONS AND RECOMMENDATIONS

Since present-day merchant-consumer transactions will always be skewed in favor of the merchant, special interest legislation has established

⁹⁴ See generally *Tañada v. Angara*, G.R. No. 118295, 2 May 1997, 272 SCRA 18. The decision delivered by the court *en banc* discusses how liberalization may redound to the benefit of Filipino consumers. "The Constitution has not really shown any unbalanced bias in favor of any business or enterprise, nor does it contain any specific pronouncement that Filipino companies should be pampered with a total proscription of foreign competition. On the other hand, respondents claim that WTO/GATT aims to make available to the Filipino consumer the best goods and services obtainable anywhere in the world at the most reasonable prices. Consequently, the question boils down to whether WTO/GATT will favor the general welfare of the public at large."

⁹⁵ Arguably, the merchant-manufacturer may expect to be rewarded through goodwill and an increase in sales.

certain minimum rights for consumers. Though individual consumers can not be reasonably expected to negotiate with merchants in the area of consumer contracts, Republic Act No. 7394 enables consumers to seek fast and inexpensive relief in instances when the products prove substandard or inferior.

To prevent unduly penalizing manufacturers and merchants, the law encourages settlement or arbitration of the dispute. The consumer may file an administrative suit with the DTI⁹⁶ to compel the seller or manufacturer of the product to live up to the warranty or to advertising claims about the quality and performance of the item. The option of an administrative proceeding substantially lowers the cost of the suit. The consumer may act on her own behalf, suing without counsel, since the Rules of Court are merely directory in nature where administrative proceedings are concerned. Furthermore, the burden of proof needed in administrative proceedings is reduced to substantial evidence.

The regional bureaus of the DTI document the consumer complaint at the early stages.⁹⁷ However, they have to go beyond that. If a merchant engages in fraudulent trade practice, the DTI officials must, however, compile and consolidate this data, making it accessible to the public who can then make use of the information therein.⁹⁸ It may even be possible that substandard or hazardous products are present in clusters, especially if the defect arises from faulty factory machinery or poor inspection standards.⁹⁹ Local DTI offices monitor the complaints and injuries arising from these products. Publicizing this information through the local government units or the local DTI offices

⁹⁶ Complaints are first filed with DTI-NCR or the appropriate regional office. *See* E.O. 913, Strengthening the Rule-Making Powers of the Minister of Trade and Industry in Order to Further Protect Consumers, (7 October 1983); Ministry Order No. 69, series of 1983, Rules and Regulations Governing Administrative Actions for Violations of Trade and Industry Laws (25 November 1983).

⁹⁷ Interview with Ms. Nelly Guinid, Senior Trade and Industry Development Specialist at the Consumer Welfare Division of the Bureau of Trade Regulation and Consumer Protection of Department of Trade and Industry, in Makati, Metro Manila (27 May 1998).

⁹⁸ According to Atty. Rodolfo B. Gilbang, at present the data is not consolidated in this manner. The funding for the Consumer Affairs cannot support the paperwork. Interview with Atty. Rodolfo B. Gilbang, Chief Adjudication Officer of Administrative Adjudication and Investigation Division of DTI Office of Legal Affairs (DTI-OLA), Makati, Metro Manila. (15 June 1998)

⁹⁹ Clustering may occur because of low quality control at a manufacturing plant, the items shipped from the plant are may be specific to a geographical area or industry. The defective products it may be possible to identify a "cluster."

would provide invaluable assistance to consumers. Since the DTI maintains an e-mail address for the *ConsumerNet* campaign, it may be possible to maintain an informational website to notify consumers of recalled products or items that have had an unusual number of complaints. Similarly, DTI could collect information through the website using online surveys that sort information to differentiate products, geographic area, nature of complaint, the place of purchase, and the adequacy of the response of the manufacturer-merchant.

Manufacturers and merchants should be encouraged to establish Filipino equivalents of the Better Business Bureaus (BBB)¹⁰⁰ in order to regulate businesses within their area. Better Business Bureaus record and regulate compliance of industry standards, ethical advertising, and fair trade practices of different manufacturers and merchants in a location.¹⁰¹ Through effective data gathering and record keeping on the volume of complaints and reasons for customer dissatisfaction, the BBB monitors different businesses and identifies possible design or manufacturing defects in particular products. The BBB has various trademarks, such as the Reliability Seal, and zealously publish lists of "companies that do not have permission to use them." A similar nationwide organization in the Philippines could perform this valuable preventive step. Members businesses would have given access to the information and be able to change their behavior or products accordingly. Publication or making the information on businesses available would be a significant public service: It would enable consumers to make informed choices *before* entering into contracts. These records of noncompliance with fair trade laws, warranty agreements, and product safety standards would perform an important public function. Aside from assisting consumers to make informed choices, an effective monitoring organization may pressure companies to comply with existing government regulations. Even without acting as watchdogs of

¹⁰⁰ Better Business Bureaus are private organizations that keep track of complaints about merchants and their products within a particular locality. Although Better Business Bureaus are American, the Filipino consumer would benefit from a local counterpart. See generally American Bar Association, *supra* note 35. Also visit The Better Business Bureau website at <<http://www.bbb.org>>.

¹⁰¹ According to Mrs. Nelly Guinid (*supra* note 97) the DTI developed a program of setting up Consumer Welfare Desks (CWDs) inside shopping malls, palengkes, and within stores. These businesses voluntarily fund and maintain the CWDs. The CWDs function as comprehensive complaints-handling desks. The DTI coordinates with business establishments interested in creating and running the CWDs.

industry, local Better Business Bureaus may even allow businesses to police themselves — with the effect of decreasing government interference and rewarding deserving merchants and manufacturers.

Another measure that private citizens may undertake is the publication of consumer ratings similar to the Ralph Nader reports and the Consumer Report magazines in the United States. The publishers of these magazines heavily engage in product research through comparison testing: the result is credible ratings of the different products on the market. Since these publications are sustained by subscription readership and sales, not advertisements, they are less vulnerable to pressures from businesses. Reports are substantiated with statistics and accurate tests. Consumer Reports have maintained a reputation for accuracy, reliability, and fairness. In the United States, consumers tend to examine these publications before making large consumer purchases.¹⁰²

This multi-pronged approach would serve to monitor merchant behavior and their compliance with quality control and product safety standards, with the end-result of reducing the cost of identifying materially defective products.

There exist at present adequate measures, guarantees and options protecting and serving consumer rights. What seems to be inadequate is consumer avilment of these rights. In-depth research on why consumers do not make use of them seems to be a necessary first step towards addressing the problem. Is it due to lack of information: in which case more effort and funds need to be focused in this direction. Is it because individual consumers feel powerless to effect any change? Sharing of information and developing linkages may be all that is necessary.

The movement towards consumer education, protection and activism in the Philippines is in its infancy stage. Like other grassroots causes, leaders

¹⁰² The "Blue Book" gives an estimated valuation of the different cars according to the model, the year of production, and its condition. Most persons intending to purchase or sell their cars rely upon the Kelley Blue Book for a reliable valuation of the car. See <<http://www.kbb.com>>. Other "blue books" offer similar information. See also <<http://www.amazon.com>> for more information on the different blue books on cars.

working for this cause must identify the areas of particular concern to consumers. Only through knowing and meeting these needs will the cause of consumer protection become relevant to the individual Filipino. Careful study of the hows and whys of the different success stories in consumer protection may help the Philippines adapt and transport experiences of nations who successfully “empowered the consumer” without unduly burdening industry. A careful balance must be maintained in order to ensure that consumers are able to find the best products available and that deserving manufacturers are rightfully recognized and rewarded.

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