THE CONSUMER-BUYER AND HIS RIGHTS

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INTRODUCTION

The capitalist economy has given rise to diverse problems. One of them is the satisfaction of human wants and at the same time, the maximization of profits in the competitive economy. However, there are many great wants which remain unsatisfied because the means of satisfying them are limited. Thus, it has become the task of every economic order, through its machinery, the Government, to secure the best possible adjustment between the satisfaction of human wants and the means of supplying those wants.

Although our own economic order provides for the direction of production and consumption through the medium of prices, as in any competitive economy, without minimum direction from outside authority, like the Government, competition by itself fails to provide adequate protection in certain cases where the consumers are ignorant. Where the consumers cannot tell the quality of the goods, there is a constant temptation on the part of the manufacturer to adulterate or cut the quality. Indeed, competition may force him to do this very thing, lest he suffer by being outsold by his competitors.[1]

Furthermore, there are certain forms of activity that cannot be left to individual initiative, for the reason that while collectively important, there is no particular incentive for the individual to perform them, i.e. police protection and education for a great mass of citizens.[2] In addition, it has been found desirable to formulate certain rules of the game to which those who choose to engage in business activity must adhere.

The jurist, however, has a different *raison d'etre* for government intervention — the police power of the State. Attack on the constitutionality of consumer protection legislation was thwarted by invoking the State's prerogative of police power in the case of *Romely Thresher v. Jackson*,[3] where the United States Supreme Court ruled that:

> "The police power of the State may be lawfully invoked in many ways and in diverse transactions to regulate dealings in all sorts of

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1 WAITE & CASSADY, THE CONSUMER AND THE ECONOMIC ORDER 20 (1949).

2 DUE, GOVERNMENT FINANCE: ECONOMICS OF THE PUBLIC SECTOR 9 (1968).

3 287 U.S. 283, 77 L. Ed. 306 (1932).

personal property and intangibles. Such regulations usually partake of the nature of restrictions upon sales of different articles to protect public health, safety, morals, to prevent fraud and to promote general welfare."

The rationale for the Bench to invoke police power is made clearer in the case of *Swisher v. Brown*[4], in the following tenor:

"If the power to regulate activities which are affected with public interest is a legitimate function of police power, it follows that if particular business, commercial or trade practices affect public interest, they in turn may be subject to state control. Reasonable State restraints are part of the price they must pay for an ordered society. The corollary to this, is that the unrestricted privilege to engage in business or conduct it as one pleases is not guaranteed by the Constitution."

The International Labor Organization, in clear words, has this to say for the need of consumer protection:[5]

". . . the 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."

The Philippines, like any other developing country in the Third World, with the mass of the population in the rural areas, has not yet been plagued with the "consumer itch", as the United States is now.

The reason may be adduced from the study made by the International Labor Organization which reveals the following:[6]

"Lack of education and information make it difficult for the 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 the authorities to enforce and maintain such standards, particularly in rural areas, inadequate distribution system render (sic) the sale of manufactured consumer goods very expensive. Higher cost of 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."

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[4] 157 Colorado 378, 402 P. 2d 621 (1965).

[5] International Labor Organization, *Consumer Protection: A New Field of International Concern*, 2 ANG MAMIMILI, 8 (February, 1975).

[6] *Ibid.*, at 12.

The Philippines in transition from an agricultural economy to an industrial one, has yet to reckon with the awareness of the consumers from the rural areas. Philippine laws and jurisprudence on consumer protection exist — what the extent of such rights is, remains to be seen.

THE RIGHTS

Professor Henry Bailey III enumerated several theories where a consumer action may lie against a manufacturer or seller to recover for product-caused harm, they are: a) negligence; b) breach of warranty; c) tort; d) fraud; e) misrepresentation; f) defendant's violation of statute or ordinance designed to protect the injured person; g) nuisance; and h) defendant's wilful act.[7]

For our purposes, the bases of a consumer claim should be divided into three general categories: a) contractual liability, which may include breach of warranty, misrepresentation or fraud; b) tort, which may include the concept of strict liability in tort, negligence, and c) law, which may cover ordinances, statutes and administrative regulations violated by the defendant.

A) *Contractual Liability*

Article 1546 of the Civil Code provides that certain acts of the seller constitute warranty:

> "Any affirmation of fact or any promise by the seller relating to the thing is an express warranty, if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing or any statement purporting to be a statement of the seller's opinion only, shall be considered a warranty unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer."

While Article 1546 deals with express warranties, Article 1547 provides for implied warranties:

> "In every contract of sale, unless a contrary intention appears, there is:
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> (1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;
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> (2) An implied warranty that the thing shall be free from any hidden faults or defects or any charge or encumbrance not declared or known to the buyer.
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> This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by

[7] Bailey, *Products Liability*, 63 AM. JUR. 10 (1972).

> virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest."

The breach of warranty approach often has a preferred position as a basis for establishing liability for product-caused injury, yet it has its own limitation — the action based on breach of warranty may generally be availed of only by a privy to a contract against the other or his successors-in-interest.[8] A careful perusal of the Civil Code provisions no doubt conveys such implication.

In *Wise v. Hayes*,[9] however, the Court ruled that the absence of contractual relationship will not bar an action based on breach of warranty in certain cases:

> "The rule that, if there is no contractual privity, there can be no warranty, has three exceptions: 1) Where the article causing the injury is of noxious or dangerous nature; 2) Where fraud or deceit has been shown on the part of the offending party; or 3) Where the manufacturer has been negligent in some respect with reference to the sale or construction of an item not imminently dangerous."

Suffice it to say at this juncture, that a claim is made that action on breach of warranty is tortious in nature. The Ohio Supreme Court in the case of *Rogers v. Toni Home Permanent Co.*,[10] ruled that:

> "A prevalent but mistaken notion is extant that the term warranty has always carried the implication of a contractual relationship. From a historical standpoint such a notion is without foundation. Some of the cases, and well-known and respected writers on legal subjects point out that originally the consumer or user of an article, which was represented to be in good condition and fit for use and proved not to be, was accorded redress by an expansion of the action of trespass on the case to include deceit — a fraudulent misrepresentation — which sounds distinctly in tort. Undoubtedly, the recognition of such right of action rested on the public policy of protecting an innocent buyer from harm rather than to insure any contractual rights."

Whatever may be the nature of breach of warranty, whether it belongs to the field of contractual liability, as I classified it according to Philippine law, or to the realm of torts, as pronounced by American courts for the purpose of giving a stronger shield for the consumer-buyer, the fact is that liability of warranty arises where damage is caused by the failure of a product to measure up to express or implied representations on the part of the manufacturer or other supplier.[11]

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[8] *Ibid.*, at 97.
[9] 58 Wash. 2d 106, 361 P. 2d 171 (1961).
[10] 167 Ohio St. 244, 147 N.E. 2d 612 (1958).
[11] 2 FRUMER & FRIEDMAN, PRODUCTS LIABILITY 4 (1973)

Our own Supreme Court has had occasion to pass on an action premised on breach of warranty, but ruled in favor of the defendant:

> "A mere statement of a belief which is not a deliberate violation of the truth is not a warranty as to make the seller liable for a breach of warranty."[12]

Likewise, in the case of *Songco v. Sellner,*[13] the Philippine Supreme Court refused the buyer the right to rescind the contract of sale on the ground that the law allows a considerable latitude to seller's statements or dealer's talk. In addition, the Supreme Court adverted to the fact that assertions concerning property which is the subject of a contract of sale or in regard to its qualities and characteristics are the usual and ordinary means used by the sellers to obtain a high price and always understood as affording to buyers no ground for omitting to make inquiries.

To the same effect as the *Gochangco v. Dean* case is the ruling of the United States Supreme Court that implied warranties on the part of the seller/manufacturer are assertions that something is fine, valuable or better than products of rival manufacturers. These assertions are in their nature so dependent on individual opinion that no matter how positively such assertions are made by the seller, they do not create warranty.[14]

As to differentiates an affirmation of fact from an opinion, Williston has this to say:

> "It is not easy to draw a line accurately between affirmation of fact on the one hand and statements of opinion on the other. Several distinctions may be noticed. In the first place, it seems obvious that a statement may be put in form of a statement of opinion. If the seller says a horse is sound, he affirms a fact; but when he states that he believes him to be sound, the only fact which he asserts is his belief, and if he does not in fact believe the horse to be sound, he could only be liable if the horse were not sound. . . . .
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> "A further test has been suggested: namely that the statement is in regard to something of which the buyer is ignorant and relies upon the seller for information, a statement of the seller will be a warranty; but if the matter was one in regard to which the buyer had as good opportunity for forming an accurate judgment and was as competent to pass such a judgment as the seller, the statement will be a matter of opinion. This test does not seem conclusive, however, though a buyer has the opportunity and the skill to pass judgment upon the goods, he may be induced not to do so, by positive statements of the seller."[15]

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[12] Gochangco v. Dean, 47 Phil. 687 (1925).

[13] 37 Phil. 254 (1917).

[14] Shawen v. District Motor Co., 34 A. 2d, cited in Zafra, SALES 297 (Rev. ed.).

[15] 1 WILLISTON, THE LAW GOVERNING SALES OF GOODS AT COMMON LAW AND UNDER UNIFORM SALES ACT, Sec. 202 (Rev. ed., 1948).

The sheriff and other persons mentioned in the last paragraph of Article 1547 are exempted from liability on implied warranty. In the case of *Pabico v. Ong Pauco*,[16] our Supreme Court held that the sheriff does not warrant the title to real property sold by him as a sheriff, and it is not incumbent on him to place the purchaser in possession of such property, nor has he the power to do without the order of a court of competent jurisdiction.

B) *Tort*

In the United States, the bases of actions for products-liability where the statutes does not expressly provide for the cause of action specifically, are mainly on tort. Even principles like *res ipsa loquitur* and assumption of risk have been tempered with the underlying rationale — the protection of the buying public against the stronger class, the manufacturers and their privies, the dealer and the seller.

As was stated, where there is no privity between the plaintiff and the defendant, the courts in their effort to favor the plaintiff-consumer-buyer invoke the principles in tort and even go to the extent of creating concepts like the concept of strict liability in tort for products-liability cases.

The principle of strict liability in tort for products-liability cases was enunciated in the case of *Greenman v. Yuba Power Products, Inc.*[17] where the plaintiff was injured by defective power tool. Action was brought on the theory of implied warranty and was met by the defendant's contention that the plaintiff failed to give notice of breach of warranty under the applicable California law. The contention was most ably disposed of by the former California Court Chief Justice Traynor as follows:

> "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to human beings.
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> "Although in these cases strict liability has usually been based on the theory of an express or implied warranty running from the manufacturer to the plaintiff, the abandonment of the requirement of a contract between them, the recognition that the liability is not assumed by agreement but imposed by law and the refusal to permit the manufacturer to define the scope of its own responsibility for defective products make clear that the liability is not one governed by the law of contract warranties, but by law of strict liability in tort.
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> "The purpose of such liability is to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market rather than the injured persons who are powerless to protect themselves."

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[16] 43 Phil. 472 (1922).
[17] 59 Cal. 2d 57, 27 Cal. Rptr. 697, 377 P. 2d 897, 13 A.L.R. 3d 1049 (1962).

There are, however, requirements to be complied with before the plaintiff may sue on strict liability in tort. Firstly, the plaintiff must establish the defendant's relationship to the product in question; secondly, the plaintiff must show the defective and unreasonably dangerous condition of the product; and thirdly, there must be proof of the existence of proximate causal connection between such condition and the plaintiff's injury.[18]

The rationale for the evolution of strict liability in tort for products liability has been aptly stated by William Crowe:[19]

> "Theoretically, at least, strict tort liability is a no-fault doctrine: the enterprise is not only in a better position to distribute the risks of the costs of harm that are almost certain to follow in any given enterprise. Of course, the costs ultimately will be borne by the consuming public in that the enterprise will protect itself through liability insurance, the source of premium payment being obtained by charging the consumer a slightly higher price on each product sold. However, is the individual consumer not better off by paying a higher price for any given product that running the risk of having to bear the loss for a single catastrophic harm that may occur to him and which he (the average consumer) would simply be unable to bear? Is society in general not better off because if this average consumer is unable to bear any single harm, will he not be society's burden?

The provision in the Civil Code for manufacturer's liability for loss or injury caused by a defective product was derived from common law and American jurisprudence. Thus, Article 2187 provides:

> "Manufacturers and processors of foodstuffs, drinks, toilet articles and similar goods shall be liable for death or injuries caused by any noxious or harmful substances used, although no contractual relation exists between them and the consumers."

Surprisingly, up to now there is no Supreme Court decision based on the cited article. Resort, therefore, to American jurisprudence is necessary to supplement Article 2187.

The pattern of distribution of products makes it imperative for the American courts to distinguish between the liability of the manufacturer and the seller. In *Ratliff v. Porter Cable Co.*,[20] the United States Supreme Court said:

> "The law governing the obligations of the manufacturer and the dealer or seller is not the same. The relation of vendor-vendee is governed by different legal principles from those applicable to manufacturer and the person who purchases his products, relying im-

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[18] Bailey, *op. cit.*, note 7 at 134.

[19] Crowe, *Torts: Products Liability: The Evolution A Comin' On Strong* 18 LOYOLA L. REV. 651 (1971-72).

[20] 210 F. Supp. 957 (1962).

> plicitly upon its representation to the public as to the high character of material and workmanship employed in the construction of such product. The manufacturer is subject to rules more strict than the seller.
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> "A sale of personal property only superinduces a right in the buyer to recover damages caused by vices in the thing sold when such vices are known to the seller and he omits to declare them. Knowledge of the existence of hidden defects is not imputed to the seller as it is to the manufacturer."

American courts, in cases where consumers are affected would extend liability to component-part manufacturers, distributors, wholesalers, retailers, lessors, certifiers, labelers, endorsers or essentially anyone constituting a substantial element in the enterprise which play a role in getting the defective and/or dangerous product to the consuming public.

Thus, according to Frumer and Friedman:[21]

> "The manufacturer of a component — part is ordinarily not liable for negligence in assembly into a finished product by another. But he is not relieved of liability to a third person for his own negligence merely because the assembler is required to inspect and test the part; failure of the assembler to inspect and test is within the foreseeable risk. Since neither the part manufacturer nor assembler can rely on inspections and tests made by the other, both may be liable jointly and severally."

Moyer v. Martin Marietta Corp.[22] illustrates the extent of liability of component manufacturers.

Moyer, the plaintiff, was a test pilot, employed by American Automotive Inc. A contractor was doing certain repair and modification work on a jet airplane owned by the United States Armed Forces (USAF). Included in the work to be done was the installation of a new type of trigger guard and the airmotive mechanic found it necessary to remove the roll pin installed by Martin Marietta Corp. (Marietta) during the original construction. This pin was an integral part of the safety which had been installed by Marietta to prevent the pilot's premature ejection.

It was found by the Fifth Circuit Court that in order to remove the roll pin, it was necessary for the mechanic to use considerable force. In reassembling the safety mechanism, the airmotive neglected to replace the roll pin, and shortly, thereafter, Moyer entered the plane for the purpose of making a test flight. While situating himself in the cock, he jerked the armrest, and because the roll pin was missing, the ejection mechanism engaged, throwing the plaintiff one hundred feet into the air and to his death.

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[21] *Op. Cit., supra,* note 11 at 190.
[22] 481 F. 2d 585 (1973).

Defendants in the suit filed were Marietta as the manufacturer of the plane, Aircraft Mechanics as the manufacturer of the ejection seat and the United States as the owner of the plane. While the court found that the series of intervening acts was such that the accident simply could not have been foreseen by the manufacturers, it remanded the case for further proof, relying on the maxim that the intervening act of a third person, negligent as he is, does not necessarily relieve the defendants from liability for their own negligent acts.

In products-liability cases, one of the theories on which to hold the manufacturer or seller of a defective product liable for the product-caused injury is that such manufacturer or seller was negligent or failed to exercise due care in manufacturing or handling of the product. It is necessary in cases grounded on negligence to establish the elements of actionable negligence, namely, a breach of duty on the part of the seller or manufacturer toward the person complaining of the defect and an injury to the person to whom the duty is owed proximately resulting from breach of duty on the seller's or manufacturer's part. The burden of proving negligence is on the plaintiff.[23]

The Illinois State Court in the case of *Faulkner v. Birch*[24] ruled that:

> "It is but a reiteration of the rule of reasonable care to describe the duty of care as a duty to use care, skill and diligence in and about the process of manufacturing and preparing for the market that a reasonably skillful and diligent person or a reasonably prudent man would use under the same or parallel circumstances. Thus in the selection for food for his restaurant and in cooking for his customers, a restaurateur must exercise the same degree of care which a reasonably prudent man skilled in the art of selecting and preparing food for human consumption, would be expected to exercise in the selection and preparation of food for his own private table and it is said to be a duty of the druggist to exercise said care as is ordinarily possessed and exercised by members of his profession."

Ross v. John's Bargain Stores Corporation,[25] declared the seller liable on the basis of negligence, without distinguishing whether the seller should have knowledge of the defect of the product.

MacPherson v. Buick Motors[26] illustrates the duty to exercise reasonable care on the part of the manufacturer. The plaintiff in this case was hurt when an automobile which he had bought from a retail dealer collapsed as a result of a defective wheel. It was shown that had the defendant exercised due care in inspecting the parts before assembling the vehicle,

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[23] Bailey, *op. cit., supra,* note 7 at 35.
[24] 120 Ill. App. 281, cited in Bailey, *op. cit , supra,* note 7 at 37.
[25] 464 F. 2d 111 (1972).
[26] 217 N.Y. 382, 111 N.E. 1050 (1916).

the defect would have been discovered. Plaintiff was allowed to recover damages, premised on the decision penned by Justice Cardozo:

> ". . . If the nature of the thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives a warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then irrespective of contract, the manufacturer of this thing of danger is under duty to make it carefully."

Schneider v. Chrysler Motors Co.[27] poses a limitation on the liability of the manufacturer, that is, neither the manufacturer nor the seller has the status of an insurer. To illustrate, there is no duty to produce an accident-proof product. A manufacturer who makes properly and free of defects an ax, or a buzz saw or an airplane with an exposed propeller, is not liable to one injured when he was using the ax, buzz saw or if someone working around the airplane comes into contact with the propeller.

Assumption of risk principle in tort was a defense of the supposed negligent or erring party. In products-liability cases, American courts have found it necessary to restructure the principle in favor of the injured consumer. In *Messick v. General Motors,*[28] plaintiff sued in negligence and under strict liability in tort for injuries sustained when his four-month Oldsmobile ran off the road. In the four months that the plaintiff had owned the car before the accident, he had used the car for business and had run the odometer to a reading of over 15,000 miles. From the outset, plaintiff experienced acute front-end vibration problems which were also exacerbated by driving at speeds in excess of 50 mi/hr. Messick had also trouble keeping the car on the road surface when driving over a hump or encountering rough roads. Although the car was brought for repair and replacement for defective parts at least eight times, the problem continued unabated. Messick took the car to a private mechanic who, though unable to explain the origin of the problem or repair, did not inform the plaintiff that if he continued to drive the car, it would kill him. Messick made a demand upon General Motors to replace the car, but had received no reply at the time of the accident.

The Fifth Circuit Court ruled that:

> "In connection with determining whether plaintiff's exposure was voluntary, you are instructed that a person is not at fault in voluntarily exposing himself to a known and appreciated danger, if under the same or similar circumstances, an ordinarily prudent man would have incurred the risk which such conduct involved. Thus if there was some reasonable necessity or propriety which justified plaintiff in

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[27] 401 F. 2d 549 (1968).

[28] Cited in Twerski, *Old Wine in a New Flask: The Restructuring Assumption of Risk in the Products Liability Area* 60 IOWA L. REV. 1 (1974).

> exposing himself to the known risks involved or if by exercise of care proportionate to the danger, plaintiff might have reasonably expected to have avoided the danger or if there was no reasonable course open to him but to make the continued use of this automobile, then the plaintiff cannot be found to have voluntarily exposed himself to the risk."

Professor James gives the reason for tempering the principle of assumption of risk of the consumer, in the following tenor:

> ". . . If now the law should relieve the defendant from breach of that duty because plaintiff encountered the unreasonable danger voluntarily but carefully, then indeed the law will defeat itself."[29]

C) *Law*

Laws for consumer protection as stated do exist in the Philippines covering different goods and commodities. The consumer-buyer may recover from the manufacturer or dealer damages for violation of such laws, even to the extent of penalizing the manufacturer *et. al.* with imprisonment as may be provided by law.

The legislators had recognized the need of protection of the consumers who are parties to a contract of sale payable by installments by enacting the Recto Law (Act No. 4122). Said law is now embodied in the Civil Code as Article 1484, thus:

> "In a contract of sale of personal property, the price of which is payable in installments, the vendor may exercise the following remedies:
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> (1) Exact fulfillment of the obligation, should the vendee fail to pay;
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> (2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
>
> (3) Foreclose the chattel mortgage or the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no more further action against the purchaser to recover any unpaid balance of the price."

Manila Trading & Supply Co. v. Reyes,[30] explains the reason for the law:

> "Act No. 4122 aims to correct a social and economic evil, the inordinate love for luxury of those who, without sufficient means purchase personal effects, and ruinous practice of commercial houses of purchasing back the goods sold for a nominal price besides keeping a part of the price already paid and collecting the balance, with stipulated interest, costs, and attorney's fees."

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[29] James, *Assumption of Risks: Unhappy Reincarnation* 78 YALE L.J. 185 (1968).
[30] 62 Phil. 461 (1935).

Not very long after the enactment of the Recto Law, its validity was vehemently attacked in the case of *Macondray & Co. v. Eustaquio,*[31] but was upheld by the Court in the following words:

> "The legislature may change judicial methods and remedies for the enforcement of contracts, as it has done by the enactment of Act No. 4122, without duly interfering with the obligation of the contract, without sanctioning class legislation and without denial of the equal protection of the laws."

To safeguard the rights of the consumer-buyer, the Supreme Court ruled in the case of *Pacific Commercial Co. v. de la Rama*[32] that the remedies of the seller as provided for in Article 1484 are available in the alternative, not cumulative, and the election of one is a waiver of the right to resort to the others.

Also protected is a guarantor or surety for the consumer-buyer in case the latter defaults in the payment of the installment price. *Cruz v. Filipinas Investment & Finance Corp.*[33] has set the precedent. It held that:

> ". . . If the guarantor should be compelled to pay the balance of the purchase price, the guarantor will in turn be entitled to recover what he has paid from the debtor-vendee (Article 2066, Civil Code); so that ultimately, it will be the vendee who will be made to bear the payment of the balance of the price despite the earlier foreclose of the chattel mortgage given by him. Thus the protection given by Article 1484 would be indirectly subverted, and public policy overturned."

There are, however, exceptions to the applicability of the provisions of Article 1484.

It is not applicable to a sale of personal property on straight term, where the balance, after the payment of the initial sum should be paid in its totality at the time specified in the promissory note.[34] It is also not applicable to sales of realty by installment,[35] (a specific law applies to sales of real property by installment, namely Republic Act No. 6552). Likewise, it does not apply to a holder of a promissory note with recourse basis, as ruled in the case of *Filipinas Investment & Finance Corp. v. Vitug, Jr.*[36] where the buyer executed a promissory note which provided that in case of failure to pay, the financing company, the plaintiff in this case, shall have the right to recourse to the seller, the Supreme Sales. The Court ruled in favor of the financing company as follows:

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[31] 64 Phil. 446 (1937).
[32] 72 Phil. 380 (1941).
[33] G.R. No. L-24772, May 27, 1968, 23 SCRA 791 (1968).
[34] Levy Hermanos v. Gervacio, G.R. No. L-46306 40 O.G. Supp. No. 7, 85 (1933).
[35] Macondray & Co., v. De Santos, 61 Phil. 370 (1935).
[36] G.R. No. L-25951, June 30, 1969, 28 SCRA 658 (1969).

"What Congress seeks to protect under the Recto law are only the buyers on installment who more often than not have been victimized by sellers who, before the enactment of the Recto law succeeded in unjustly enriching themselves at the expense of the buyers in the payment of two installments, still retained for themselves the amount already paid, in addition furthermore, to other damages . . . Surely Congress could not have intended to impair and much less do away with the right of the seller to make commercial use of his credit against the buyer provided said buyer is not burdened beyond what Recto law allows."

The Revised Penal Code[37] provides for the protection of the consumer-buyer by guaranteeing him the quality of particular goods, as provided for by Article 187:

"The penalty of *prision correccional* or a fine ranging from 200 to 1,000 pesos or both, shall be imposed upon any person who shall knowingly import or sell or dispose of any article or merchandise made of gold, silver or other precious metals, or their alloys.

"Any stamp, brand, label or mark shall be deemed to fail to indicate the actual fineness of the article on which it is engraved, printed, stamped, labeled, attached, when the test of the article shows that the quality or fineness thereof is less by more than one-half karat, if made of gold, and less by more four-one-thousandths, if made of silver than what is known by said stamp, brand, label or mark. But in case of watch cases, and flatware made of gold, the actual fineness of such gold shall not be less by more than one-thousandth than the fineness indicated by said stamp, brand, label or mark."

Geared to afford more protection to the buyer is Article 188 of the same law which provides:

"The penalty of *prision correccional* in its minimum period or a fine ranging from 500 to 2,000 pesos or both, shall be imposed upon:

1. Any person who shall substitute the trade name or trademark of some other manufacturer or dealer, or a colorable imitation thereof, for the trade name or trademark of the real manufacturer or dealer upon any article of commerce and shall sell the same;
2. Any person who shall sell such article of commerce or offer the same for sale, knowing that the trade name or trade mark has been fraudulently used in such goods as described in the preceding subdivision;
3. Any person who, in the sale or advertising of his services shall use or substitute the service mark of some other persons, or colorable imitation of such mark;
4. Any person who, knowing the purposes for which the trade name, trade mark or service mark of a person is to be used, prints, lithographs, or in any way reproduces such trade name,

[37] Public Act No. 3815 (1930).

> trade mark or service mark or a colorable imitation thereof, for another person, to enable that other person to fraudulently use such trade name, trade mark or service mark on his goods or in connection with the sale or advertising of his services.
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> A trade name or trade mark as herein used is a word or words, name, title, symbol, emblem, sign, device or any combination thereof used as an advertisement, sign, label, poster or otherwise for the purpose of enabling the public to distinguish the business of the person who owns and used said trade name or trade mark.
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> A service mark as herein used is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising."

Infringement of trade mark is illustrated in the case of *E. Spinner & Co. v. Hesslein,*[38] wherein the plaintiff-corporation, a manufacturer and seller of khaki, used the word "Wigan" to indicate the particular quality of its khaki. The word was contained in its trade mark and stenciled upon its bolt of khaki. Defendant, using a different trade mark, stamped the same word on the bolts of khaki of inferior quality grade sold by it. The Supreme Court ruled that such use of the word "Wigan" by the defendant was an infringement of the other manufacturer's registered trade mark in which the word was incorporated.

To fall within the statute, the infringement should be that of a registered trade mark. In the case of *People v. Go Yee Bio,*[39] the accused who infringed the trademark of Cebu Portland Cement Co. was acquitted as it was not shown that the latter's trademark was registered.

The law safeguards the trade mark and/or trade name of a firm, corporation and other business entities to indicate the source or origin or ownership of the goods and to distinguish the goods of one person from those of another, and further, to prevent the person from passing off his goods or his business as the goods or business of another.[40]

Unfair competition, fraudulent registration of trade name, trade mark or service mark, fraudulent designation of origin and false description are penalized under Article 189 of the Revised Penal Code, which provides:

> "The penalty provided in the next preceding article shall be imposed upon:
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> 1. Any person who, in unfair competition and for the purpose of deceiving or defrauding another of his legitimate trade or the public in general shall sell his goods giving them the general appearance of the goods of another manufacturer or dealer, either as to the goods themselves, or in the wrapping of the

[38] 54 Phil. 224 (1930).

[39] C.A. 36 O.G. 1082, cited in 2 REYES, THE REVISED PENAL CODE 253 (9th ed., 1971).

[40] 63 C.J. sec. 4 (1933).

packages in which they were contained, or in the device or words therein, or in any other feature of their appearance which would likely induce the public to believe that the goods offered are those of a manufacturer or dealer, or shall give other persons a chance or opportunity to do the same with a like purpose.

2. Any person who shall affix, apply, annex, or use in connection with any goods or services, or in any container or containers for goods, a false designation of origin or any false description or representation and shall sell such goods and services.
3. Any person, who by means of false or fraudulent representatations or declarations, orally or in writing, or by other fraudulent means shall procure from the patent office or from any other office which may hereafter be established by law for the purpose of registration of a trade name, trade mark or service mark or an entry respecting a trade name, trade mark or service mark."

U.S. v. Kyburz,[41] gives the purpose for punishing unfair competition:

> "The basis of the provision penalizing unfair competition is that no one shall, by imitation or any unfair device, induce the public to believe that the goods he offers for sale are the goods of another and thereby appropriate to himself the value of the reputation which the other has acquired for the products or merchandise manufactured or sold by him."

The test of unfair competition according to *U.S. v. Manuel*,[42] is whether certain goods have been clothed with an appearance which is likely to deceive the ordinary purchaser exercising ordinary care, and not whether a certain limited class of purchasers with special knowledge not possessed by the ordinary purchaser could avoid mistake by the exercise of this special knowledge.

In determining whether two trade marks are confusingly similar, the two trade marks in their entirety as they appear in their respective labels must be considered in relation to the goods to which they are attached. The discerning eye of the observer must focus not only on the predominant, but also other features appearing on both labels.[43]

Confusion is likely to result between the trade marks, so as to perplex the consumer, only if the over-all presentations in any of the particulars of sound, appearance or meaning are such as would lead the purchasing public into believing that the product to which the marks are applied emanated from the same source.[44]

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[41] 28 Phil. 475 (1914).
[42] 7 Phil. 221 (1906).
[43] Mead Johnson & Co. v. N.V.J. Van Dorp, Ltd., G.R. No. L-17501, April 27, 1963, 7 SCRA 768 (1963).
[44] Etepha v. Director of Patents, G.R. No. L-20635, March 31, 1966, 16 SCRA 495 (1966).

Act No. 3740 was enacted to prevent misrepresentations through advertising or misbranding of certain goods.[45] Acts prohibited are the displaying, selling, barter or exchange, or to offer or expose for display, sale, barter or exchange, or to possess with intent to sell or to cause to be sent, carried to brought for display, sale, barter or exchange from any foreign country to the Philippines, or from the Philippines to a foreign country, any article which is falsely packed, labeled, marked or branded in such a way as to misrepresent the character, amount, value, contents, properties or condition of the article, or of the materials of which it is composed or any article accompanied by advertising matter which misrepresents the character, amount, value, contents, properties or condition of the articles advertised or of materials of which it is composed, whether or not the article or the container thereof is mislabeled, misrepresented, or misbranded.[46] Likewise, any natural or juridical entity and their agents are prohibited to insert or cause to be inserted in any newspaper, book, or periodical printed in the country, any advertising which misrepresents the character, value, properties, or condition of the article advertised or of materials of which it is composed.[47] The use of any handbill, billboard, signs, pamphlet, circulars, projected lantern slides or in any other form whatsoever printed, displayed or circulated in the Philippines to misrepresent the value of any article offered for sale and of any stocks, bonds or shares of any firm or corporation required[48] as well as the use of the mails for the circulation of any advertising matter prohibited by Act No. 3740 is penalized.[49] Violation of any of the foregoing acts renders the offender liable to a fine of not less than ₱200 and not more than ₱5,000, or by imprisonment for not less than a month nor in excess of six months, or both, in the discretion of the court.[50]

Retailers are required by the law to have all articles offered for sale publicly displayed with appropriate tags or labels to indicate the price of each article, which articles are to be sold uniformly and without discrimination at the stated price.[51] Any retailer violating the Price Tag law shall be punished by imprisonment of not more than six months or a fine of not more than two hundred pesos, or both in the discretion of the court.

To minimize confusion on the part of the consumers as well as sellers and waste of time in computation, Presidential Decree No. 187 provides for the use of the metric system. Section 1 of said decree provides:

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[45] Approved November 22, 1930.
[46] Act No. 3740, sec 1 (1930).
[47] Act No. 3740, sec. 2 (1930).
[48] Act No. 3740, secs. 3 and 4 (1930)
[49] Act No. 3740, sec. 5 (1930).
[50] Act No. 3740, sec. 6 (1930).
[51] Rep. Act No. 71 (1946), sec. 1.

> "The system of weights and measures to be used in the Philippines for all products, commodities, materials, utilities, services and commercial transactions in all contracts, deeds and other legal instruments publicly and officially attested; and in all official documents shall be the metric system, in accordance with the provisions of this decree and its implementing rules and regulations."

The law on the use of marked containers was enacted to identify the containers used in manufacturing, packing or selling one's product, to protect the right to the exclusive use of the same and to protect the public from confusion or deception.[52]

Section 2 of Republic Act No. 623 provides that:

> "It shall be unlawful for any person, without written consent of the manufacturer, bottler, or seller who has registered the marks of ownership in accordance with the provisions of the next preceding section to fill such bottles, boxes, kegs, barrels, steel cylinders, tanks, flasks, accumulators of other similar containers so marked or stamped for the purpose of sale or to sell, dispose of, buy or traffic or wantonly destroy the same, whether filled or not, to use the same for drinking vessels, or glasses or drain pipes, for any other purpose than that registered. Any violation of his section shall be punished by a fine of not more than ₱1,000 or imprisonment of not more than one year or both."

Republic Act No. 1556 seeks to give protection to the consumer by requiring the registration of any person, partnership, firm or corporation, or associations engaged in the manufacture, importation, sale or distribution of feeds or feeding stuffs. Furthermore, the law contains specifications as to the contents of the labels in the packages containing the feeds and goods covered by the said law.[53]

One of the acts considered unlawful is the manufacture, importation, sale or distribution of the feeds or feeding stuff, without procuring its registration.[54] Other acts considered unlawful are provided in Sec. 10 (b):

> "Any person, partnership, corporation or association which will unlawfully use a registration number, fraudulently lease or adulterate the feeding value of any feed or feeding stuff, or tamper with packaged feeds with fraudulent purposes, wilfully remove, or alter or efface the prescribed tags, labels, markings or other information placed on the packages of feeds or feeding stuffs, fraudulently alter or use certificate of analysis of any official analyst, wilfully obstruct, hinder resist or in any other way, oppose an inspection in the examination of his duties under this Act, make an unauthorized disposition of feeds, or offer for sale or possess for sale any feed which does not

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[52] Rep. Act No. 623 (1951).
[53] Approved in June 16, 1956.
[54] Rep. Act No. 1556 (1956), sec. 10(a).

> conform with or contravenes the provisions of this Act or otherwise violate any provision of this Act, and the rules and regulations issued thereunder shall be punished by a fine of not less than ₱1,000 and not more than ₱5,000 or by an imprisonment of not more than one year and one day or both in the discretion of the court."

Republic Act No. 3452, entitled "An Act to Adopt a Program to Stabilize the Price of Palay, Rice and Corn, To Provide Incentives for Production and To Create Rice and Corn Administration to Implement the Same and To Provide Funds Therefore" was aimed to place the prices of rice within the means of the great masses from the lowest income bracket.[55] Section 1 of said law enunciates the policy of the legislature:

> "It is hereby declared to be the policy of the Government that in order to stabilize the price of palay, rice and corn, it shall engage in the purchase of basic foods, through a system of payment against receipts or *quedans* from those tenants, farmers, growers, producers, landowners in the Philippines who wish to dispose of their produce at a price that will afford them a fair and just return for their labor and capital investment and whenever circumstances brought about by any cause, natural or artificial should so require, shall sell and dispose of these commodities to the consumers at areas at a price that is within their reach".

To realize such a policy, Section 9 as amended provides:

> "In order to afford consumers adequate supply of rice and corn at minimum prices, the Administration is directed to sell the rice recovered from the palay purchased by it and corn grits through its retailers or dealers duly licensed by the Rice and Corn Administration (now National Grains Authority), thru barrio councils and in chartered cities or other places where there are neither RICOB registered retailers nor barrio councils, thru retailers appointed by the Rice and Corn Administration upon the recommendation of the municipal treasurer at retail price to be determined by the Board of Administrators which shall not be less than ₱1.00 nor more than ₱1.40 per ganta . . . Provided that the Administration shall sell rice and/or corn grit in regions, areas, or provinces affected by government purchase of such commodities at the time it is buying same prices stated heretofore."

Commonwealth Act No. 617 requires that all tradings in rice, palay, not including the bearded and unthreshed palay in straw and in bundles, shall be conducted on the basis of the liter, the kilogram, the sack or the ganta.[56] It further provides that exclusive of the weight of the containers, each sack of rice shall weigh at least 56 kg. and each sack of palay at least 44 kg. and that the ganta shall contain 3 liters. The person or any en-

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[55] Approved June 14, 1962. This was amended by Rep. Act No. 1643 (1966). sec. 4.

[56] Approved September 4, 1941.

tity engaged in the milling, selling, buying or bartering rice or palay shall use containers clearly marked with the volume or weight as well as the kind or variety of the rice or palay milled, sold or bartered, preferably in print. Violation of this duty shall render liable the offender to a fine of not less than ₱100 and not more than ₱500 and/or imprisonment from 15 days to 3 months.[57]

Republic Act No. 4729 aims to regulate the sale, dispensation and/or distribution of contraceptives, drugs, and devices. Section 1 of said law pronounces as unlawful the sale or distribution or dispensation, whether with or without consideration, of any contraceptive, drug or device, unless the sale, dispensation or distribution is made by a duly licensed drugstore or pharmaceutical company according to a prescription of a qualified medical practitioner. Any person violating the mandate of the law shall be punished by a fine of not more than ₱500 or an imprisonment of not less than six months or more than one year, or both, in the discretion of the court.[58]

Presidential Decree No. 280 gives the Food and Drug Administrator the power to mete penalty to an erring drug establishment, thus:

> "Any provision of law to the contrary notwithstanding, the Food and Drug Administrator is hereby authorized to order the closure or suspend or revoke the license of any drug establishment which after administrative investigation is found guilty of selling or dispensing drugs, medicines and other similar substances in violation of the Food, Drug and Cosmetic Act and Dangerous Drugs Act of 1972, or other laws regulating the sale or dispensation of drugs or rules and regulations issued pursuant thereto."[59]

Section 29 of Republic Act No. 5921[60] provides for the liability of the manufacturer, importer or distributor of drugs:

> "In cases of drugs, pharmaceuticals or poisons sold in original packings, the seal of which has not been broken or tampered with, the liability that may arise because of their quality and purity, rests upon the manufacturer or in his absence, upon the importer and the distributor, the representaive or dealer who was responsible for their distribution or sale.
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> "It shall be unlawful for any person whosoever, to manufacture, prepare, sell or administer any prescription, drug, pharmaceutical or poison under any fraudulent name, direction, or pretence to adulterate any drug, pharmaceutical, medicine . . . ."

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[57] Com. Act No. 671 (1941), sec. 3.

[58] Rep. Act No. 4729 (1960), sec. 3. EDITOR'S NOTE: Recently, the Secretary of Justice rendered Opinion No. 82 dated June 6, 1975 which states that since Republic Act No. 4729 is a prior special statute which deals with the distribution of contraceptive drugs and devices it is impliedly repealed by the enactment of a latter statute, Presidential Decree No. 79 which covers the general subject of a national population program, the distribution of contraceptives bearing one of the matters embraced therein.

[59] Approved August 27, 1973.

[60] Approved June 21, 1969.

Republic Act No. 3720 was enacted to insure safe and good quality supply of food, drug and cosmetics and to regulate the production, sale and traffic of the same to protect the health of the people.[61] Acts prohibited are those which directly or indirectly jeopardize the interests of the consumer-buyers. Thus Section 11 of said Act provides:

> "Sec. 11. The following acts and the causing thereof are hereby prohibited:
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> a) The manufacture, sale, offering for sale or transfer of any food, drug, device or cosmetic that is adulterated or misbranded.
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> b) The adulteration or misbranding of any food, drug, device or cosmetic.
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> c) The refusal to permit entry or inspection as authorized by Sec. 27 hereof or to allow samples to be collected.
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> d) The giving of a guaranty or undertaking referred to in Sec. 12 (b) hereof which guaranty or undertaking is false except a person who relied upon a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the Philippines from whom he received in good faith the food, device or cosmetic, or the giving of a guaranty or undertaking referred to in Sec. 12 (b) which guaranty or undertaking is false.
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> e) Forging, counterfeiting, simulating or falsely representing or without proper authority, using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this Act.
>
> f) The using by any person to his own advantage, or revealing other than to the Secretary or other officers or employees of the Department, or to the Courts when relevant in any judicial proceeding under this Act, information acquired under Sec. 9 or concerning any method or process which is a trade secret entitled to protection
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> g) The alteration, mutilation, destruction, obliteration or removal of any part of the labeling of, or the doing of any other act with respect to a food, drug or device or cosmetic if such act is done while such article is held for sale (whether or not the first sale) and results in such article being adulterated or misbranded.
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> h) The use on the labeling of any drug or in any advertising relating to such drug of any representation or suggestion that an application with respect to such drug is effective under Sec. 21 hereof, or such that drug complies with the provisions of such section.
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> i) The use, labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sec. 26 hereof.

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[61] Rep. Act No. 3720 (1963), sec. 2.

Act No. 3595 requires that every person who manufactures, sells, imports, or offers for sale any galvanized iron, should mark indelibly, conspicuously and plainly the gauge according to the schedule fixed by the statute, the amount of zinc coating, the name and address of the manufacturer, and the brand registered with the Bureau of Commerce and Industry.[62] Likewise, the importer manufacturer, seller or person offering for sale any reel of barbed wire or nails, in a closed package, is required to place a mark or tag so as to show the weight and length of the barbed wire or nails, the name of the manufacturer and the brand registered with the Bureau of Commerce and Industry.[63]

Act No. 3073 aims to regulate the sale of viruses, serums, toxins and analogous products. Section 1 of Act No. 3073 requires that the virus, serums, toxins and other analogous products be sold, bartered, exchanged or offered for sale only when it has been prepared by a person or any entity holding an unsuspended license issued by the Secretary of Health, and that on the container shall be stated the proper name of the article contained, the name and address of the manufacturer, the license number of the same and date beyond which the contents cannot be expected beyond reasonable doubt to yield specific results.[64] Moreover, Section 2 of the same law provides that no person shall falsify, relabel, or remark any package or container of any virus, toxin, etc. or alter or mark on any package or container as to falsify the label or mark. Failute to comply with the provisions cited will render the person liable to a fine of not more than ₱1,000 or by imprisonment of not more than one year or both in the discretion of the court.[65]

As to the sale of paints, the law protects the consumer-buyer by requiring the manufacturer, importer, seller or the person offering the paints for sale to place a conspicuous label stating the name and residence of the manufacturer and/or distributor thereof, the brand registered with the Bureau of Commerce and Industry, and if registered, the label should show the net weight of ready-mixed paint oils, the true percentage by each ingredient, whether solid or liquid.[66]

Act No. 3091 penalizes any person, association or corporation importing, manufacturing, selling or offering for sale within the country, any insecticide or fungicide which is adulterated or misbranded within the meaning of the Act and a person or corporation misrepresenting the value, quality or composition of any treatment applied to trees, shrubs, or other plants or to any animal for preventing, repelling or mitigating any insect fungus, or bacterial disease or for accelerating its growth or productive

[62] Act No. 3595 (1929), sec. 2.
[63] Act No. 3595 (1929), sec. 3.
[64] Act No. 3073 (1933), sec. 1.
[65] Act No. 3073 (1933), sec. 6.
[66] Act No. 3596 (1929), sec. 2.

power,[67] by a fine not exceeding ₱1,000 or imprisonment not to exceed one year or both in the discretion of the court.[68]

Republic Act No. 1929 provides that the sale of acetic acid in any form, in groceries and retail stores selling foodstuffs is prohibited and violation of this provision will render liable the offender to a fine not exceeding ₱1,000 or imprisonment of more than one year or both in the discretion of the court.[69]

Commonwealth Act No. 560 provides for security against fraud in case of sawn lumber offered for sale as mandated in Section 1 of the same law.[70] Section 1 provides:

> "All sawmills are under obligation to issue an invoice for every transaction of sale of lumber. There shall be printed at the foot of every page of the invoice a certificate stating that the lumber or lumbers sold to the purchasers are exactly the same kind or kinds described in the invoice. This invoice may be couched in the following similar terms:
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> > "We certify that the kind or kinds of lumber listed on the invoice are exactly the same as those sold and delivered (to be delivered) to the purchaser."

Republic Act No. 428 penalizes any person knowingly possessing, selling or distributing in any place and manner fish and other aquatic animals, stupefied, disabled or killed by means of dynamite, or other explosives or toxic substances.[71]

The penalty imposed on the transgressor depends on the value of the fish in possession to be sold or distributed. Section 2 of the same law provides:

> "a) If the total value of all the fish or other aquatic animals in possession, sale or distribution does not exceed ₱100, by a fine of not less than ₱100 nor more than ₱500, or imprisonment of not less than one month nor more than six months or both in the discretion of the court.
>
> b) If the total value of all the fish or other aquatic animals in possession, sale or distribution exceeds ₱100, by a fine of not less than ₱200 nor more than ₱1,000 or by imprisonment of not less than two months nor more than one year, or both in the discretion of the court."

Also under pain of penalty under Section 3 of Republic Act No. 428 is any person who receives fish or other aquatic animals knowing

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[67] Act No. 3091 (1923), secs. 1 and 2.
[68] Act No. 3091 (1923), sec. 11.
[69] Rep. Act No. 1929 (1957), sec. 1.
[70] Approved June 7, 1940.
[71] Rep. Act No. 428 (1950), sec. 1.

the same to have been stupefied, disabled or killed in violation of the said law, but if before apprehension, he denounces the vendor, he may be exonerated from liability.

Republic Act No. 1071 provides that it shall be unlawful for any agency or store to sell to the public, veterinary biologics and medical preparations other than registered pharmacies or drugstores, biological laboratories, veterinary clinics and government veterinary agencies. Offenders of said law are deemed guilty of misdemeanor, subject to a fine from ₱100 to ₱200 or by an imprisonment from 30 days to six months, or both in the discretion of the court.[72]

Republic Act No. 1517 was enacted to regulate the collection, processing of human blood and the establishment and operation of blood banks and blood processing laboratories. Section 3, the core of the law, provides:

> "It shall be unlawful for any person to establish or operate a blood bank or blood processing laboratory or to collect or process blood if he is not a licensed physician, or to sell blood collected from another person, even if authorized by the latter, without first securing a license from the Department of Health; provided, that in cases of emergency, blood transfusion shall be allowed under the responsibility of the attending physician without such license . . ."

CONCLUSION

Philippine law and jurisprudence, as supplemented by American jurisprudence, are zealous in protecting the rights of the buying public. We have thus seen the American courts, in their drive to protect the consumers, adopting concepts in tort law with some modifications so as to favor the consumers.

Laws for consumer protection do exist, but why the lack of dynamism of the courts on this point? Is it because the manufacturers and dealers fulfill the requirements of the law? Is it because the administrative agencies having the duty of enforcing the rights of the consumers have acted expeditiously and satisfactorily in executing the mandate of the law? Or is it because the core of the consumers from the lower income bracket of the society are uninformed of their rights?

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[72] Rep. Act No. 1071 (1954), sec. 3.