

The Consumer Protection Act

A law which leaves very few areas of your business unaffected.

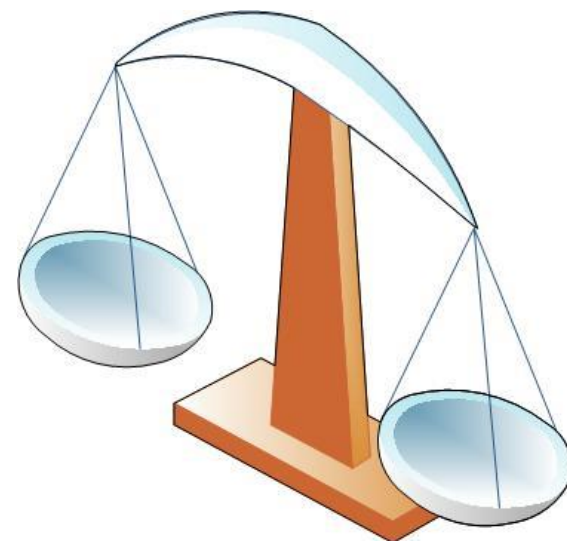
Something more than legal advice is required.

10 November 2010



Intention behind the legislation:

- Promote a culture of –
 - ❖ consumer rights and responsibilities
 - ❖ business innovation and enhanced performance
- To, *inter alia* –
 - improve access to, and the quality of, information to enable consumers to make informed choices;
 - protect consumers from hazards



Important Dates:

- The Consumer Protection Act 68 of 2008 was adopted on 24 April 2009
- Certain provisions applicable from 24 April 2010
- The Act was due to come into effect on 24 October 2010
- On 23 September 2010, the DTI postponed the effective date of the CPA to 1 April 2011



Important Defintions

Every transaction in the RSA

Means an agreement, the supply of a good or the provision of a service

The promotion

Means advertisement, display, offer, inducement or other conduct

The supply

Includes sell, rent , exchange, hire or provide services

Of goods and services

Includes anything for human consumption, includes gas, water, electricity, interest in land

To a consumer

Includes the purchaser, the user and franchisees

Important Definitions

So a Consumer is –

a natural person

unincorporated juristic persons

companies under the threshold

franchisees

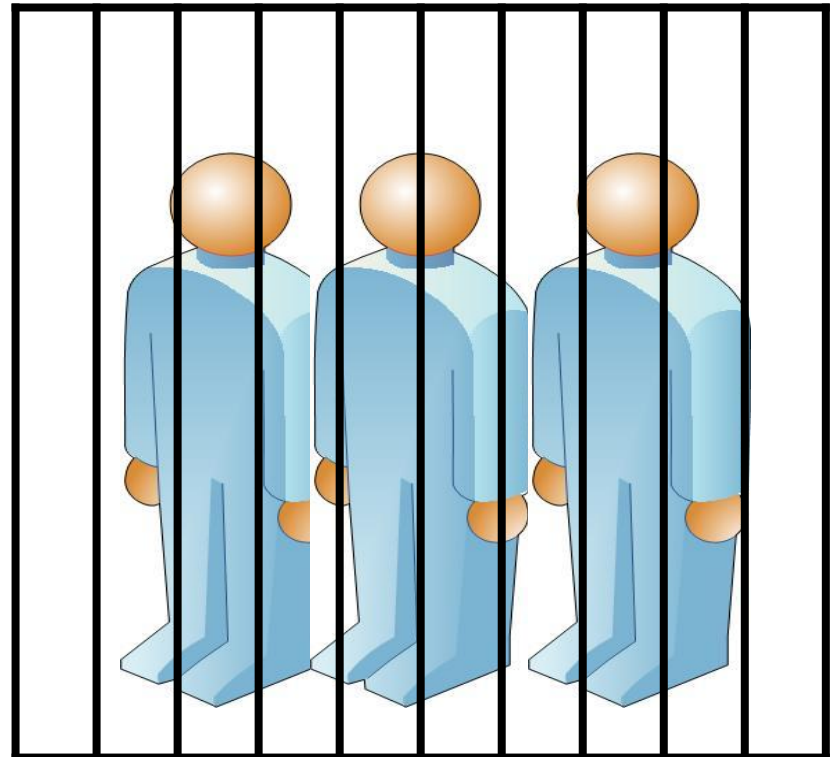
Exceptions to the scope of application

- Businesses above the threshold
- Excluded from the provisions of the CPA are:
 - ✓ Goods or services supplied to the State
 - ✓ Credit agreements under the NCA
 - ✓ Services under an employment contracts
 - ✓ Collective bargaining agreements
 - ✓ Financial services governed by FAIS
 - ✓ Insurance services
- Provisions regarding safety monitoring, recall (section 60) and liability for damages caused by goods (section 61) also apply to *excluded transactions*



Penalties

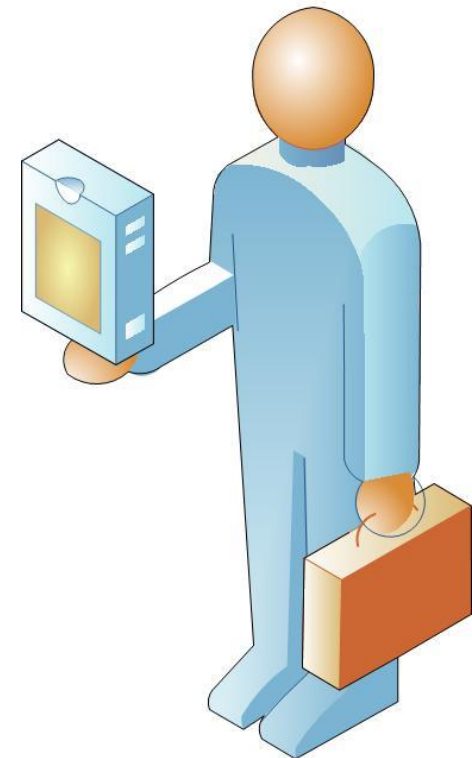
- Up to R1 000 000 for each infringement.
- Fines and a prison sentence of up to 10 years where an order is not complied with



Excludes “ECTA”
transactions

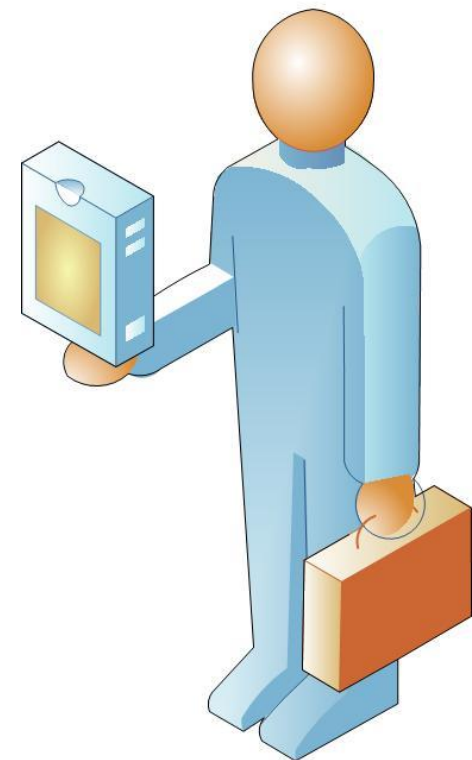
Direct marketing

- Defined as any approach in person or by electronic means
- Have the right to discontinuation or block
- Cannot charge for “opt out”
- Obligations to ensure an outsourced service provider complies
- 5 day cooling off period
- Advise client of cooling off period
- 15 day refund period once good is returned



What can you charge for returned goods?

- Where the goods are **unopened and in the original packaging**, no charge allowed
- Where the goods are in the **original condition and repackaged** in their original packaging –
 - ❖ for “non consumed” goods: use during possession by consumer
 - ❖ for “consumed” goods: consumption or depletion of the goods (except as needed to assess if goods meet specs)
 - ❖ in any other circumstances, a reasonable amount

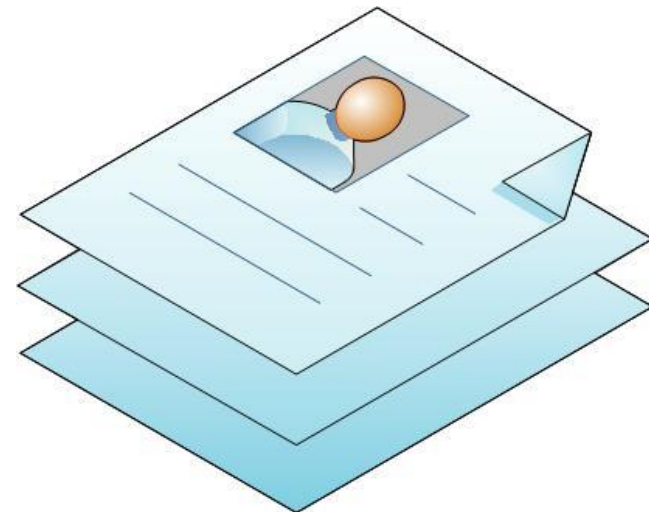


Excludes transactions
between legal entities
irrespective of threshold

Fixed Term Contracts

- Minister may prescribe maximum durations
- Liable for amounts due up to date of termination and reasonable cancellation charge
- 40 to 80 day notice to expiry
- Month to month automatic renewal
- 20 day cancellation notice

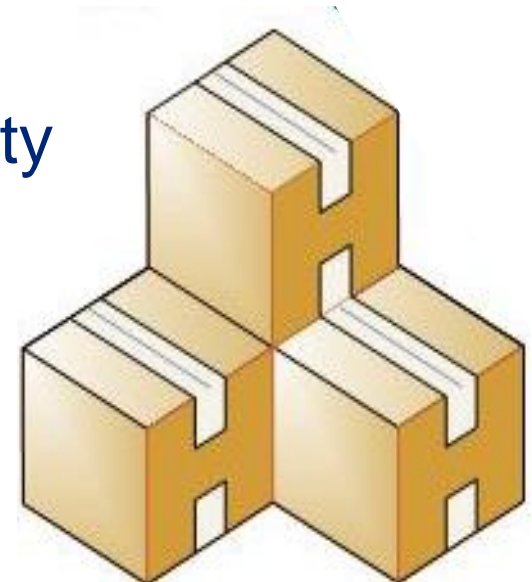
Reference – section 14



Bundled Goods

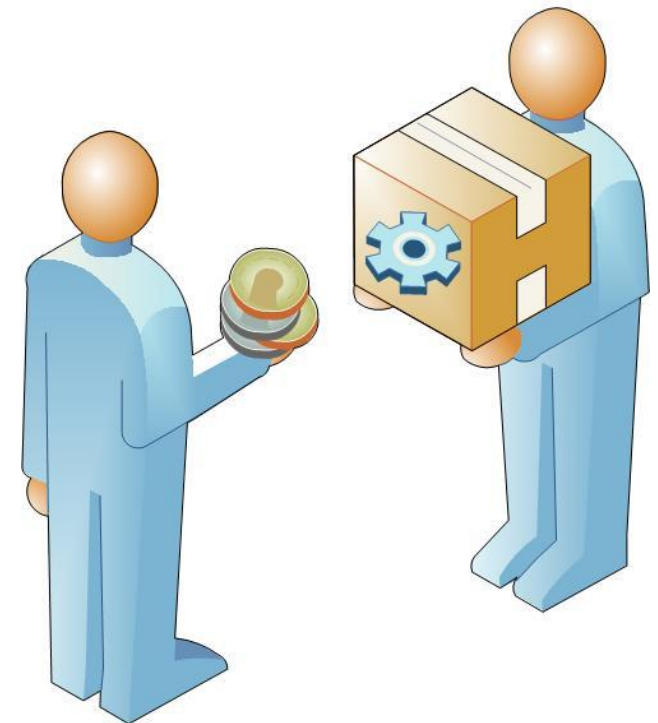
- Cannot as a condition of a transaction –
 - ❖ require the purchase of any other particular goods or services
 - ❖ require the consumer to enter into an additional agreement with the same supplier
 - ❖ agree to purchase any particular good or services from a designated third party
- A justificatory provision does exist, it requires an internal company policy to implement it

Reference – section 13



Customer Loyalty Programmes

- Information disclosure
- Reward must be cash equivalent
- Restricted availability – 90 day maximum
- Sections also apply to people who participate in such programmes



Reference – section 35

Advanced Bookings

- Right to cancel any advance bookings
- Reasonable deposit and cancellation fee may be charged
- Charge is unreasonable if it exceeds a fair amount taking into account –
 - ❖ length of the cancellation notice given
 - ❖ reasonability of reselling
 - ❖ nature of the goods/services
- Exclusion if cancellation is for death/hospitalisation

Reference – section 17



Bait Marketing

- Cannot misleads the consumer about actual availability of goods at the advertised price
- Must honour all goods expressed at a specific price to the expressed limits
- It is a defence to the above if the supplier offered an equivalent good within a reasonable time at the advertised price during the promotion



Reference – section 30

Implied warranty of quality

- Warranty is in respect of goods being –
 - ✓ reasonably suitable for purpose intended
 - ✓ good quality, in good working order and free of any defects
 - ❖ useable and durable for a reasonable period
 - ❖ Standards Act compliant
 - ❖ goods will meet a purpose specifically stated by consumer
- “Ticks” DON’T APPLY where can prove the consumer was expressly advised of the particular condition of the goods and accepted this

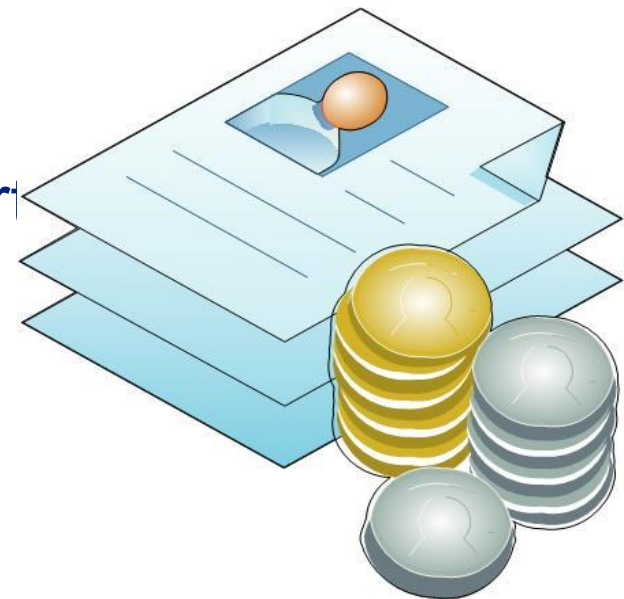


Periods of the Implied Warranty of quality

- Goods sold – 6 months
- Parts and Repairs – 3 months
 - ❖ Consumer may choose: “refund/repair/replace”
- Failed Repairs on goods supplied – 3 months
 - ❖ Consumer may choose: “refund/replace”
- Services – indefinite warranty
 - ❖ Consumer may choose: “discount/re-performance”

Product Liability

- Joint and several liability – producer, importer, distributor, retailer
- In respect of defective, failed, hazardous or unsafe goods or good in respect of which insufficient instructions or warnings were given
- At the time that the good was supplied
- Strict liability
- Certain exceptions do exist, are cold comfort

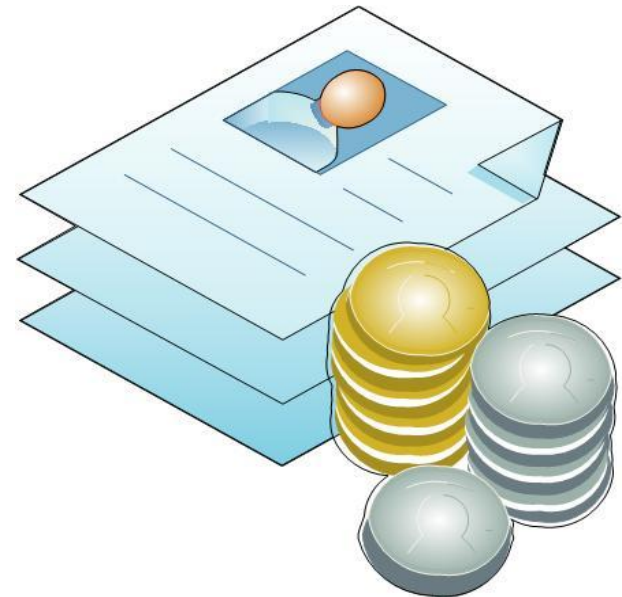


What are you liable for?

Damages resulting from –

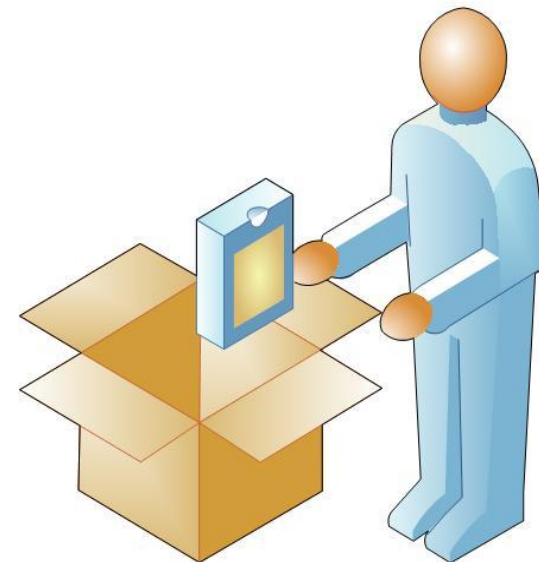
- Death or injury to a natural person
- Illness of any natural person
- Loss of, or physical damage to movable and immovable property
- Economic loss resulting from the above three

Reference – section 61



Product Labelling and Trade Description

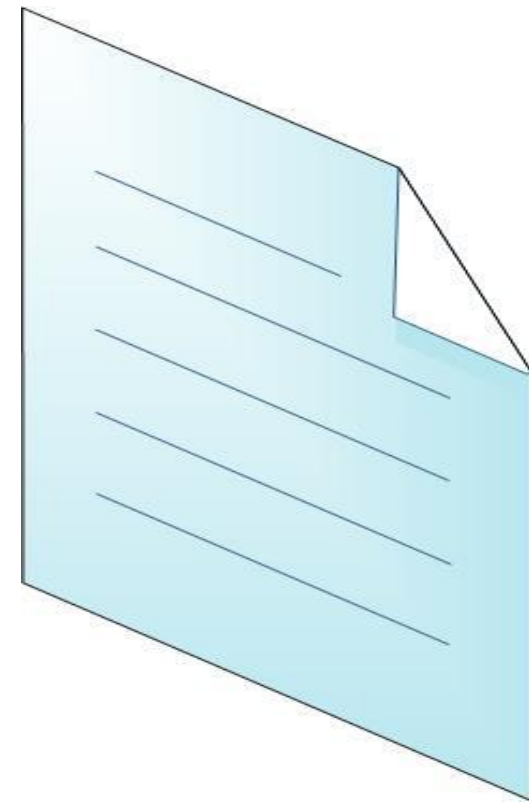
- Means any description of goods and services, includes labels, signs, packaging, brochure, proposals, adverts
- Must be accurate and not misleading in any manner
- Must not knowingly display a misleading or incorrect label/ description
- Producer and importer must ensure that the country of origin appears on the goods
- Genetic modification of prescribed goods must be indicated by any of packager, importer, supplier or producer



Disclosure of Information

- Grey goods must be conspicuously indicated as such
- Signs must be in the form to be prescribed
- Information must be in plain language
- Must be suitable for the consumer who –
 - ❖ is of the target consumer
 - ❖ of average literacy skills
 - ❖ has minimal experience as a consumer
- The Commission may publish guidelines

Reference – sections 22, 25 and 28



Price Disclosure

- All goods must have a price displayed except for advertising
- If the price is for a specific period, this must be stated in any printed display of the price
- If a supplier advertises a sale of any sorts (like a 30% discount, etc), the display price is assumed as the full price unless otherwise stated
- The lower of any prices displayed for the sale applies – cant charge the consumer the high



Repairs and Maintenance

- Automatic 3 month warranty on workmanship
- If repair fails within 3 months, must replace or refund the good
- Minister may prescribed a “quote amount”
- Must prove quote given or consumer declined quote or pre-authorized the work to a specific amount
- Before doing a “diagnostic” to enable the preparation a quote, must provide an estimate to the consumer of what the “diagnostic” will cost otherwise cannot charge for the “diagnostic”

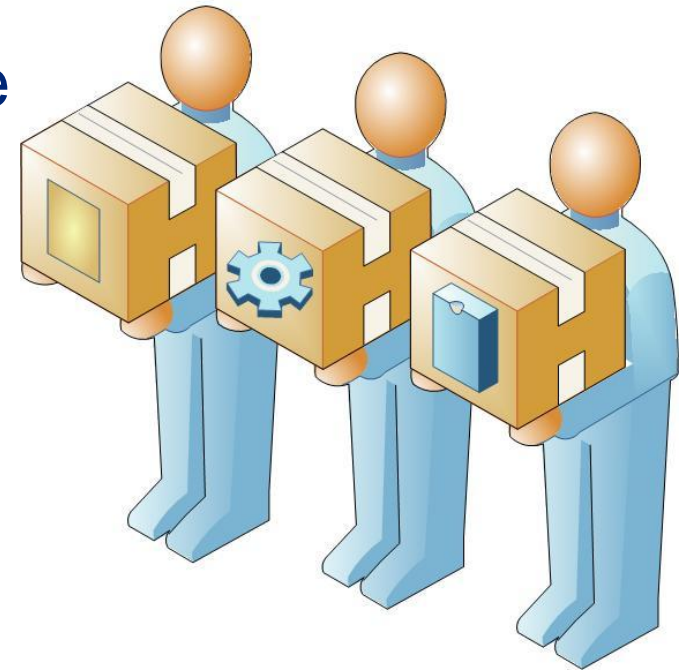
Reference – section 15



Unsolicited Goods

TYPES:

- Direct marketing activities
- Periodically delivered and materially or excess quantity
- After the expiry of a periodic delivery agreement
- Outside of the agreed time, date or place
- Without express or implicit consent
- Erroneously delivered



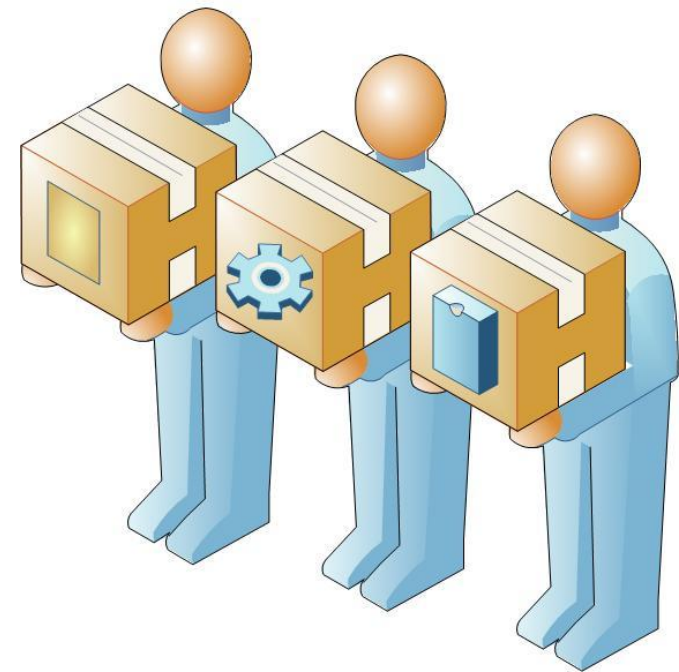
Unsolicited Goods

Consequences –

- entitled to retain or return (return at cost and risk of supplier)
- If lawfully retain, ownership passes unconditionally to the person (subject only to any right or valid claims that an uninvolved 3rd party may have with respect to those goods)
- supplier is liable to any such 3rd party

Exception: consumer frustrates or impedes any reasonable action to recover

Reference – section 21



Delivery of Goods

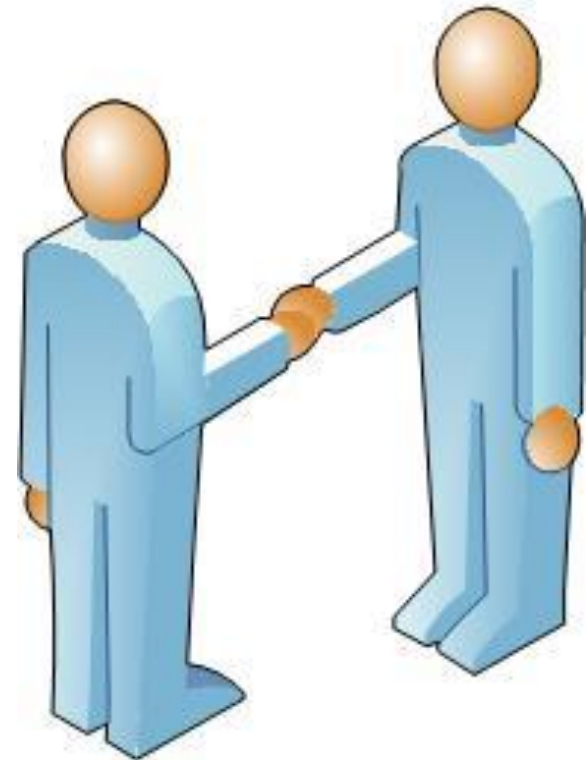
- It is implied in every transaction that, unless expressly agreed otherwise –
 - ❖ supplier pays for delivery
 - ❖ must be on the agreed time and date
 - ❖ must be at the agreed place
- Assumption that place of deliver is the supplier’s place of business
- Goods being delivered remain at the suppliers’ risk until the consumer has accepted delivery

Reference – section 19



Franchises

- Franchisees are considered consumers irrespective
- Agreements must be in writing
- 10 day cooling off period to cancel without penalty
- Certain sections of the CPA don't apply:
 - ❖ bundled goods
 - ❖ advance bookings
 - ❖ delivery of goods
 - ❖ catalogue marketing
 - ❖ referral selling
 - ❖ over booking



Where to lay a compliant

Tribunal

Any Ombud Created

Applicable Industry Ombud

Provincial Consumer Court

Alternative Dispute Resolution Agent

Consumer Commission

High Court