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A Critical Analysis of the Efficacy of Criminal Law in Product Liability in Nigeria

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Abstract
The aim of this paper is to critically examine how criminal law has helped to protect the Nigerian Consumer under product liability. But before treating this topic, I will briefly trace the origin and development of product liability in Nigeria, define what a product is, what product liability law is, what crime is, the essence of criminal law and make an analysis of the various Criminal Laws put in place to protect consumers in the Nigerian society, examine the various problems associated with the enforcement of these Laws, showing how effective the Laws have been with useful recommendations.

Keywords: Efficacy, criminal law, product and liability

1.0 Introduction

Before the development of industrialised commerce in Nigeria, the market economy was understood to involve free trade and competition with little or no regulation of trading activity. There arose the conception therefore that there was equal bargaining power in the market contract.

But with the advent of industrialised commerce, it has been found that economic equality often does not exist in any real, and that individual interests have to be balanced and made to serve those of the Community. The experience over the years have shown that while the bargaining process can he left to a large extent unregulated, details of pricing, quantity, quality and the competitiveness of the products or services have not been adequately handled on the basis of simple contract of sale. Thus there grew the concept of product liability in the contract of sale of goods and services and eventually Laws were made to regulate the sale of goods and services to the public.

In other to achieve this aim, some legislative policies were made and also some criminal offences were created and regulatory bodies set up to preserve the civil and criminal right of action of the Consumer. Thus by reaction to the deceptive and unfair trade practices, criminal law indirectly found expression in various provisions of our Criminal and Penal Codes.[512]

2.0 What is a Product?

Simply put, a product is a produced good or the goods which a Country produces[513]. Product Liability Law therefore is the law promulgated to ensure that products are safe for the use of the Consumer. In other therefore to ensure that the goods found in the market is safe for consumption, the Government has put in place various criminal laws or sanctions to safeguard the Consumers of such goods and to penalise the de faulting manufacturers.

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[512] See Sections 343 and 346 and related Sections of the Criminal Code, Cap 77 E.FN, 1999 dealing with offences endangering health and Section 449 of the penal Code, cap 345 LFN, 1990.

[513] See Chambers English Dictionary (ed.) by E. M. Kirkpatrick— Spectrum Books Limited, Ibadan, 1985.

3.0 What then is a Crime?

Ordinarily, the word crime means an act or omission which under any written law is deemed to be a crime thus attracting punishment. Therefore it is an act or omission complained of or alleged and being designated as such in a Statute, be it that of a Federation, a law of a State or Bye-Law of a Local Government. But Blacks Law Dictionary defines a crime to mean 'any act done in violation of a penal law or an offence against the State; an act done in violation of those duties which an individual owes to the community and for which the law has provided that the offenders shall make satisfaction to the public; and lastly as an act committed or omitted in violation of a law forbidding or commanding it, and which attracts upon conviction, either or, a combination of the following punishment: death; imprisonment; disqualification to hold and enjoy any office of honour or trust or profit'[514].

From the above given definitions of crime, it is clear that the primary aim of fighting crimes and criminals is the interest of the public or the community at large. The question that follows therefore is how can criminalizing consumer protection laws will bring succour to the Nigerian consumer who has lost his money or suffered injury to his life or property or what would victims of crime benefits from the punishment of offenders?. The Nigerian Criminal justice system has always recognized the silent third party, the victim in criminal cases, but the problem is that the interest of the victim is always subsumed by that of the society whose social norms and values have been said to have been desecrated.[515]

Prior to 1970, the Nigerian Consumer did not have adequate protection under the Statute as there was no conscious effort by the Federal Government to identify such rights and protect them. Regulatory Agencies were therefore non-existent. In other to achieve this aim, some legislative policies were created. We shall treat them individually. Thus in 1971, the Federal Military Government promulgated the STANDARDS ORGANISATION OF NIGERIA (SON) DECREE NO. 56 OF 1990[5] which conferred on the Standard Organisation Council of Nigeria, the following functions among others:

(a) to organise tests and do everything necessary to ensure compliance with standard designated and approved by the Council,

(b) to undertake investigations as necessary into the quality of facilities, materials and products in Nigeria, and establish a quality assurance system including certification of factories, products and laboratories,

(c) to ensure reference standards for calibration and verification of measures and measuring instruments,

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[514] Black 14. C.- Black's Law Dictionary, 6th Edition, page 379.

[515] See the Dictum of OPUTA J. S. C. in JOSAIH v. THE STATE (1985) 1 N. W. L. R PART 1, PAGE 125 [5] See Cap 412 LFN, 1990.

(d) to develop methods for testing of materials, supplies and equipment including items purchased for use of departments of the Government of the Federation or a State and Private establishments,

(e) to undertake preparation and distribution of standards samples and;

(f) to establish and maintain such number of laboratories or other institutions as may be necessary for the performance of its functions under the Act.

By S.12 of this decree, the Minister may from time to time on the recommendation of the Council declare a mandatory industrial standard, which shall be binding. Therefore, it will be the duty of every manufacturer of any Item of manufacture in respect of which a mandatory industrial standard has been declared to ensure that the item complies with (or was manufactured in accordance with) such standard which is for the time being in force. Any manufacturer who contravenes any provisions of the above section is guilty of an offence and shall be liable to a fine not exceeding N1,000.00[516] or a term of imprisonment not exceeding one year or to both fine, and imprisonment. Furthermore, the Court may make such order as to forfeiture or destruction of the item of manufacture in question as it may think appropriate in the circumstances.

4.0 The Food and Drugs Decree No. 35 of 1974[7]:

This Law came into effect on the 10th February, 1976. It repealed the existing State Laws on the sale of food and made provisions for the regulation of manufacture, sale and advertisement of food, drugs, cosmetics and devices. It prohibits the sale of food article, item which was manufactured, prepared, preserved, packaged or stored under unsanitary conditions.[8]

The Act also makes it an offence to adulterate food or drugs. This offence consists of adding any substance as an ingredient in the preparation of food which renders it injurious to health.

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The advertisement to the general public of any food, drug, cosmetics or device as a treatment, preventive or cure for any of the diseases, disorders or abnormal physical states specified in the first schedule to the Food and Drugs Act is also prohibited[518]. However it should be noted that the provision in the section is not absolute since such advertisement is permitted where allowed by regulations made under the Act.

[516] See S. 12(4) of the Act. [7] See Cap 150 LFN, 1990 [8] See S. 1(3) of the Act.
[517] See S. 1(2) of the Act.
[518] See S. 2(1) (b) of the Act.

The Act prohibits except as authorised by regulations, the importation into Nigeria or exportation there from, manufacture, sell, distribution or caused to be distributed (whether as samples or otherwise) any drugs specified in the second schedule to the Act[519].

The Act further prohibits various misleading practices and provides that no person shall label, package, treat, process, sell or advertise any food, drug, cosmetics or device in a manner that is false or misleading or is likely to create a wrong impression as to its quality, character, value, composition, merit or safety. However, it should be noted that there is no such requirement or provision in the Act that the article of food, drug etc. should be labelled, packaged, treated or processed in any particular manner as the Act dealt with only the legal consequences of where the goods have been so treated in a false or misleading manner [12]. This is one of the problems encountered or created by this Act. To this end therefore, any person who contravenes any provision of this Act or regulations or fails to comply with any requirement imposed on him by a notice under Section 4(1) of the Act shall be guilty of an offence and shall be liable on conviction, a fine not exceeding N1000.00 or to imprisonment for a term not exceeding 2 years, or to both.

On the other hand, where the offence is committed by a body corporate and it is proved that it so committed in connivance of, or attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly.

However, one of the major problems encountered by the regulating agencies is that proceedings for an offence under this section shall not be commenced except within six months of the commission of the offence thereof and; secondly, it shall be a defence in any proceedings under this section for the defence to show that;

(i) the accused sold the article in the same package and in the same condition as it was in when he bought it; and

(ii) the accused could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations.

The Act was however amended in 1999 by the **Food and Drugs (Amendment) Decree No.21 of 1999** to provide for certain diseases, including the Acquired Immune Deficiency Syndrome.

It is worthy to note too that some states also made laws to protect the sale of Food and Drugs in their jurisdictions. For example, under the Public health Law Cap 134 Laws of the Defunct Bendel State, sellers of food like 'akara', 'cooked rice' and stew', 'roasted meat' - (suya) are prohibited

[519] See S. 3 of tile Act. Here Drug was defined tinder section 20 of the Act to include any substance or mixture of substances manufactured, sold or advertised for use in the diagnosis, treatment, mitigation or prevention of any disease, disorder, abnormal physical state, or the symptoms thereof, in man of in animals; restoring, correcting or modifying functions in man or in animal and the disinfections or control of vermin, insects or pest; or contraception. [12] See S. 5 of the Act.

from displaying or offering for sale in public places any such food, unless those food are suitably protected from contamination and kept in appropriate containers.

Finally, another hitch associated with the prosecution of offenders of this Law pacified that imported food, drugs etc. are to be accompanied by a certificate from the manufacturer of the food or drug to the effect that it was manufactured in accordance with existing standard code of practice pertaining to such product or, where such standard or code do not exist for the particular product, in accordance with any international standard laid down in the case of food under the directive of the Codex Alimentations Commission and also a certificate issued by or on behalf of the Government of the Country where it was manufactured from, to the effect that its sale in that country would not constitute a contravention of the Law of that country. The above provision is to ensure that food items and drugs found unfit for human consumption in a foreign country are not dumped into Nigeria.

However, the problem associated with this regulation is; what will then be the legal effect of the certificate issued by the manufacturer by virtue of Section 8 of the Act in the context of a purchase made by a consumer. This certificate could be equated with a guarantee, and the guarantee in this context primarily means an undertaking by the manufacturer that the product is in perfect order. However, the benefit of this guarantee can only be enforced by an inspecting officer who reserves the power to seize and detain for such time as may be necessary for the purposes of this Act, any article by means of or in relation to which he reasonably believes any provision of the regulation made there under has been contravened[520].

5.0 The Merchandising Marks Act:[521]

This Act was created to deal directly on trade descriptions. The Act defined trade description and a false trade description as that 'which is false or misleading in a material respect as regards the pods to which it is applied and includes every alteration of a trade description'.[522] The Act provided a means of ensuring fair dealing in goods and services with particular reference to the marking of goods and the deception of the public who are consumers by the offer of goods bearing incorrect description but not much have been achieved by this legislation.

[520] See 5.10 (1) of the Act. What this means in effect is that the benefit can only be enforced by a consumer if they form part of a contract which he is a party. Thus, where a guarantee is given by a manufacturer, it will be difficult to give it any criminal legal effect since there will rarely be a contract expressly and deliberately entered into between the manufacturer and the consumer.

[521] See Cap 233 UN. 1990.

[522] See S.2 of the Act.

6.0 The Weight and Measures Decree[523]

This Act came into force on the 1st June, 1975. This law is very relevant to trade descriptions and the Trade Malpractices (Miscellaneous Offences) Decree as the Decree provides that it should be read together with the Weight and Measures Act. The Act is intended to regulate weights and measures, standardize weights and measures, control the accuracy of the instrument used for weighing and measuring by traders in order to protect the consumer against short weight or measures. By Section 32 (1) of the Act, where there is a sale by weight or measure prohibited by the Act, the sale shall he void. Sale is defined under the law to 'include any contract or other transaction whatsoever.[524] Therefore, while the Act imposes criminal liability for non-compliance with its provisions, it makes it possible for the consumer to avoid the contract and reject the goods.

The Trade Malpractices (Miscellaneous offences) Decree stated in broad term' provisions which render a person criminally liable for possessing or using weighing instrument or measuring instrument which is false or unjust or which is not stamped or marked as required under the law; or who refuses to weight or measure the product in the presence of the person to whom the product was delivered when requested to do so by that person or with intent to defraud, alters any weigh, measure or number than is purported to be sold or corresponds with the price charged. It is also an offence to misrepresents to a consumer howsoever the weights or measure or number of anything to be sold or offered for sale[525]. It also makes it an offence under the Decree to advertise or invite subscription, for any product or project which does not exist.

The only protection it offered to consumers are contained in section 25 of the Act which provides that 'any person who sells any article by weight measure or number and delivers or causes to be delivered to the purchaser a less weight, measure or number, as the case may be, than is purported to be sold or than corresponds with the price charged, shall be guilty of an offence. If this penal provision is effectively enforced, the policy of protecting the consumer by their very wide ambit will be achieved. The problem associated with this law is that the definition of 'false or unjust measure as used in the Act was given as illustrated in the English case of *Makinson vs. J. K. Dewhurst Ltd*[526], the Defendants butchers had in their possession a self-indicating and price computing machine which had inbuilt tendency to give a short weight unless a simple zeroing adjustment was made about two hours of use at every point in time. Their employee failed to zero the machine when test purchases were made. The question was whether the machine was 'unjust'.

The divisional court dismissed the prosecutors appeal on the ground that as construed, the machine was a just one, even as used without the recommended adjustment.

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[523] See Cap 467 LFN, 1990.
[524] See S. 32(2) of the Act.
[525] See S. 1(g) of the Act.
[526] (1981) Unreported QBl), cited in Harvey & Parry -The Law of Consumer Protection and fair Trading, 5th Edition. Butterworths, London, 1996.

7.0 The Control Price Act:[527]

This is another major legislation which has enhanced the concept of product liability for the benefit of consumers. This Act contains provisions under which a price control scheme is formulated. Under this Act, stiffer penalties and measures are prescribed. The Price Control Board was established at the Federal Government Level and each State in the Federation had power to set up its own price control committee. The Board has power to impose price control on any of the goods specified in the first schedule to the Act[528]. The Board also has power to add or delete any goods from price control. Under section 5 of the Act, the Board may by notice published in the Federal Gazette, fix the price of any controlled commodity or vary same. The Act makes it an offence for any person to sell or employ any other person, whether or not that person is of full age, to sell any controlled commodity at a price which exceeds the controlled price[529]. It is also an offence under the Act for any person to violate any of these provisions. The punishment is that the stock of the controlled commodity will be forfeited.

However, it is worthy to note that these provision which help minimize unfair pricing in Nigeria are not being implemented, a situation which has resulted in many traders capitalising on the socioeconomic conditions of the Country to arbitrarily hike prices of goods to the detriment of consumers. However, for any meaningful control of price to take place, it must first seek to reduce the costs of production and it is the neglect of this crucial consideration that has made price control law a dead piece of Legislation in Nigeria.

8.0 Consumer Protection Council Decree No. 66 of 1992:

This Decree established a Council to provide redress to consumers' complaints and cause the offending company or individual to compensate or provide relief to injured consumers. This is the most far reaching of all legislations promulgated to protect consumers. By the very nature of this legislation, the right to supply a particular good or service is made to depend on the maintenance of minimum standards considered to be necessary for the protection of the users of the product or service. For instance, Section 12 of the Decree provides that any person who, in contravention of any enactment whatsoever for the protection of the consumer:

(a) sells or offers for sale any unsafe or hazardous goods or;

(b) provides any service or proffers any information or advertisement thereby causing injury or loss to a consumer is guilty of an offence and liable to N50,000.00 fine or to five years imprisonment or to both the fine and the imprisonment'.

If this section is to be read with other enactments whatever for the protection of the consumer, the first task would be to determine the Statute which is for the protection of the consumer. The standard to determine is to understand the intention of the Legislature[530]. Therefore, it may be

[527] See Cap 365 LFN, 1990.
[528] See S. 4 of the Act.
[529] See S. 4 of the Act.
[530] A. D. Badaiki- Interpretation of Statutes, Tiken Publishers, -Lagos, 1996.

suggested then that such Statutes as the Food and Drugs Act[531], Hire Purchase Act[532], the Weight and Measures Act [533], Merchandising Marks Act [534], the Trade Malpractices (Miscellaneous Offences) Decree [535] are all relevant, This is because the offences created by the Consumer Protection Council Decree itself do not cover unfair trade practices except in the area of misleading claims in an advertisement.

In a bid to setting out standards, the Legislature established the Standards Organisation of Nigeria Act [SON][29] This legislature established the Standards Organisation Council [SOC] whose main responsibilities are the establishment of industrial standards. But it is doubtful whether SON can be liable to the consumer for industrial standards set by reason of which trade unfairness manifests[536]. Another major problem this piece of Legislation encountered is that, it failed to establish a statutory cause of action for the consumer[537].

9.0 Trade Malpractices (Miscellaneous Offences) Decree No. 67 of 1992:

This Law appears to be the leading legislation on checking of false trade description and false advertisement. It creates certain offences relating to trade malpractices and set up a Special Trade Malpractices Investigation Panel to investigate such offences. It is an offence under the Law for any person to:

(i). label, package, sell, offer for sale or advertise any product in a manner that is false or misleading or is likely to create a wrong impression as to its quality, character, brand name, value, composition, merit or safety; or

(ii). for the purpose of sale, contract or other dealing, uses or has in his possession for use, any weight, measure, weighing instrument or measuring instrument which is false or unjust; or

(iii). for the purpose of sale, contract or other dealing, uses or has in his possession for use, any weight, measure, weighing instrument or measuring instrument not stamped or marked as required under the Weights and Measures Act or any other Law in respect of which no certificate of verification is in three; or

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[531] See Cap 150, LEN, 1990.

[532] See Cap 169, LEN, 1990.

[533] See Cap 467, LEN, 1990.

[534] See Cap 23., LFN, 1990.

[535] See Decree No. 67 of 1992.

[29] See 412, LEN, 1990.

[536] Dr. 13. 13. Kanyip 'Reflections on Consumer Protection in Nigeria' in Essays in Honour of Mohammed BelIo, NIALS, Lagos, maintains that the 'NIS' Certification mark on products does not signify an assurance of quality and safely of the products as akin to Certificate of Fitness. Thus the learned writer disagreed with N. A. Inegbedion in his article on 'Consumerism, merchantabilily and the SON' in EDSU Law Journal, 1993 Vol.12 No.1

[537] K. A. Apori- Cutting a Swarth Around (lie Nigerian Consumer, The Consumer Protection Council Decree' 1992, EDSU Law Journal, Vol.3 No. I, 1993194

(iv). sells any product by weight or measures in any warehouse, market, store or other public place and refuses to weigh or measure the product in the presence of the person to whom the product was delivered when requested to do so by that person; or

(v). with intent to defraud alters any weight, measure, weighing instrument or measuring instrument stamped or marked pursuant to the Weight and Measures Act or uses in any sale, contract or other dealing, any such altered weight, measure, weighing instrument or measuring instrument; or

(vi). sells any product by weight, measure or number and delivers or causes to be delivered to the purchaser a less weight, measure or number, as the case may be, than is purported to be sold or corresponds with the price charged; or

(vii). in connection with the sale or the exposing or offering for sale of anything, makes any misrepresentation however or does or omits to do any act, matter or thing calculated or likely to mislead the seller or purchaser or prospective seller or purchaser as the case may be, as to its weight or measure or as to the number to be sold or offered for sale; or (viii). advertises or invites subscription for any product or project which does not exist.

Any person found to have contravened any of these provisions is liable to a fine of not less than N50, 000.00.

10.0 National Agency for Food and Drug Administration and Control Decree No. 15 of 1993.

This Decree was created to further achieve the goal of the Food and Drugs Act. Under this Act, the National Agency for Food and Drug Administration and Control was created. The Act also created the Governing Council. This Agency was charged with the administration of the Food and Drugs Act in the Country for the protection of the Consumer. It is empowered to regulate and control the;

a. the importation, exportation, manufacture, advertisement, distribution, sale and use of food, drugs, cosmetics, medical devices, bottled water and chemicals;

b. conduct appropriate tests and ensure compliance with standard specifications designated and approved by the Council for the effective control of the quality of food, drugs, cosmetics, medical devices, bottled water and chemicals and their raw materials as well as their protection processes in factories and other establishments;

c. undertake appropriate investigations into the production premises and raw materials for food, drugs, cosmetics, medical devices, bottled water and chemicals and establish relevant quality assurance systems including certification of the production sites and of the regulated products;

d. undertake inspection of imported food, drugs, cosmetics, medical devices, bottled water and chemicals and establish relevant quality assurance systems, including certification of production sites and of regulated products;

e. compile standard specifications and guidelines for the production. importation, exportation, sale and distribution of food, drugs, cosmetics, medical devices, bottled water and

chemicals; undertake the registration of foods, drugs, cosmetics, medical devices, bottled water and chemicals;

g. pronounce on the quality and safety of food, drugs, cosmetics, medical devices, bottled water and chemicals after appropriate analysis;

h. issue guidelines on, approve and monitor the advertisement of food. Drugs, cosmetics, medical devices, bottled water and chemicals.

The Agency shall on completion of an investigation into any case make a report to the Attorney General of the Federation, who may institute proceedings against any person accused of any offence. The major problem this Law encountered was that in most cases, the investigations were never concluded or that Officers of the Agency may be bribed along the way and offenders in most cases are let loose. Furthermore, there was also a situation where it may take up to six months or a year before the officers can conclude their investigations.

Soon after this Decree was promulgated, it would appear that the authorities that be, realized some of the short comings in the law and consequently, the National Agency for Food and Drug Administration and Control (Amendment) Degree No.19 of 1999 was created. This, Law gave the Agency additional power and responsibility of determining 'the suitability or otherwise of medicines, drugs, food products, cosmetics, medical devices of chemicals for human and animal use' and to reduce bureaucracy in the prosecution of violators. Furthermore, it conferred powers on any officer of the Agency to conduct criminal proceedings in respect of the offences under this Decree or regulations made under this Decree.

Thus section 30 of the Principal Decree was amended by inserting in the appropriate alphabetical order the following new definitions:-

(a) 'cosmetics' includes any substance or mixture of substance intended to be rubbed, poured, sprinkled or sprayed, introduced into or otherwise app lied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the complexion, skin, hair or teeth and includes deodorants and detergents powder;

(b) substituting for the definition of regulated products for the following new definition – 'regulated products means food, drugs, cosmetics, medical devices, detergents, bottled water and chemicals'.

11.0 Drugs and Related Products (Registration, etc) Decree No.19 of 1993.

This Decree, among other things prohibits the manufacture. importation, exportation, advertisement, selling or distribution of drugs, drug products, cosmetics or medical devices which are not registered by the National Agency for Food and Drug Administration and Control Decree.

Under the Decree, the Agency shall from time to time, publish a notice in the Gazette notifying the registration of a drug, drug product, cosmetics or medical device under the Decree. It has power to suspend or cancel the registration of a drug, drug product, cosmetics or medical device if:

(a) the grounds on which the drug, drug product, cosmetics or medical device was registered were later found to be false or incomplete; or

(b) the circumstances under which the drug, drug product, cosmetics or medical device was registered no longer exists; or

(c) any of the conditions under which the drug, drug product, cosmetics or medical device was registered has been contravened; or

(d) the standard of quality; safety or efficacy as prescribed in the documentation for registration is not being complied with; or

(e) the premises in which the drug, drug product, cosmetics or medical device or any part thereof is manufactured, assembled or stored by or on behalf of the holder of the certificate of registration are unsuitable for the manufacturing, assembling or storage of the drug, drug product, cosmetics or medical device.

Where the registration of drug, drug product, cosmetic or medical device is suspended or cancelled, the Agency has power to withdraw from circulation that drug, drug product, cosmetic or medical device and shall cause same to be published in the Gazette.

Any person who contravenes provision of this Decree or a regulation made under it is guilty of an offence and shall be liable on conviction to a fine not exceeding N50,000.00 or to imprisonment for a term not exceeding 2years or to both fine or imprisonment. Where it is corporate body, a fine not exceeding N 100, 000.00 is imposed.

12.0 The Advertising Practitioners (Registration, etc) Act:[538]

This Act which was promulgated initially as Decree No: 55 of 1988 makes provision for the control of the practice of the profession of advertising and to make provisions for practitioners. The Act established the Advertising Council of Nigeria[539]. The Council is charged with duty of:-

> *'regulating and controlling the practice of advertising in all its aspects and ramifications to protect consumers'.*

But by an amendment contained in the Advertising Practitioners (Registration Etc) Amendment Act No.116 of 1993, Section 1(d) of the Principal Act was amended as follows:- 'regulating and controlling the practice of advertising subject to the approval of the Minister of Health and Human Services, where the advertisement relates to matters of food, cosmetics, beverages and drugs'.

13.0 Criminal Code:[540]

In order to further achieve the aim of the protecting criminal rights of consumers in the society, the Criminal Code also created some criminal offences. For instance, section 243 (1) of the Code makes it an offence for any person to sell as food or drink or to have in his possession with intent

[538] See Cap 7, LFN, 1990.
[539] See 5.1 of the Act.
[540] See cap 48 of the laws of the Defunct Bendel State 1976, (now applicable in Edo and Delta States)

to sell as food or drink, any article which has become or has been rendered noxious or in a state of unfit food or drink, having reason to believe that same is noxious as food and drink. Any person found guilty of this offence is guilty of misdemeanour and liable to imprisonment for one year.[541]

These provisions contain certain notions which relate to consumer protection, but it is doubtful whether any person can actually be successfully prosecuted and convicted under these provisions as the Nigerian butcher is almost guilty of these offences every day. Furthermore, the illiterate butcher in the Nigerian market cannot for sure tell when a meat is contaminated or not.

Secondly, the tern 'noxious' may also vary from one country to another depending on the state of economic well being of the consumers therein and the health officials of the state who are ill equipped may not say categorically when a meat is noxious or not as they may not have the adequate materials to conduct on the spot tests. This was the position in the English case of *Web v. Baker*[542] where a provision of an English statute was in issue and investigations were conducted on the spot, tests carried out and the result showed that the rabbits involved were unfit for human consumption all in one day. It is quite certain that such an investigation cannot take place in Nigeria where we virtually have no equipments to carry out such on the spot tests.

Finally, the Trade and Professional Associations[543] are also vital tools in product liability and have helped to protect consumers in Nigeria. These bodies are encouraged by legislative policy and are set up primarily for their own professional purposes. They have their administrative structures and regulations guiding the admission and registration, practice and conduct of their members.

Through the enforcement of their values of conduct, ethics and discipline, the standard of the products and services they render are enhanced indirectly in the interest of the consumer. To some extent, self-regulation by these bodies has contributed to advance the lot of the Nigerian Consumer by the reaction of these bodies to incidents of unfair and deceptive trade practices. For example, the Pharmacy Board of Nigeria has helped NAFDAC in the control and check of sale of fake drugs in Nigeria by encouraging consumers through advertising media to purchase drugs from only accredited members of the Board who carry their logo sign (XP) on their sign posts. This has helped to ensure that members of the public purchase drugs from only accredited Pharmacists. Furthermore, the Nigerian Bar Association has also regulated the incidence of fake lawyers in the Nigerian society. A typical example is the recent apprehension of gentleman in Warri, Delta State by the NBA branch practicing and parading himself as a Lawyer. He has been charged to Court for prosecution.

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[541] See also Sections 243(2) & 2440) which makes it an offence for any person to adulterate any article food or drink so as to make it noxious with intent to sell such food or drink and to sell diseased animal or the carcass of any animal killed by a disease etc.

[542] (1916)2K. B. 753.

[543] They include Advertising Practitioners Council of Nigeria, Nigerian Bar Association, the Pharmacy Board of Nigeria, Medical Association, etc, which all have their enabling Statutes.

These Associations and the appropriate Government Ministry should encourage the preparation and dissemination to their members of self regulatory codes of practice for safeguarding and promoting the interests of consumers.

However some of the main weaknesses of these self regulatory bodies are how to get and sustain committed members, the difficulty of enforcement of their Codes which depends on the discipline of the trade and profession; and lastly the non applicability of the Code to traders who are not members of the relevant Associations.

14.0 Problems of Criminal Litigation on Product Liability and Recommendations:

In the context of criminalizing Consumer protection schemes, the criminal law could only address specifically defined deceptive and unfair trade practices. The Statutory provisions must be construed strictly by the Courts and the standard of proof beyond reasonable doubt been adopted by the judicial process is a heavy burden of proof on the part of consumers[544].

Secondly, most of the time legislations regulated by criminal enactments are not broadly worded. For example, under S.1(1)(b) of the Trade Malpractices (Miscellaneous Offences) Decree, it is provided that any person who for the purpose of sale, contract or other dealing uses or has in his possession for use any weight, measure, weighing instrument or measuring instrument which is false or unjust commits an offence under the Decree. The test to determine therefore weight, measure, weighing instrument or measuring instrument is whether it is 'false or unjust'. If this provision can be compared with other provisions creating offences in the legislation, the Courts will have good grounds for giving a purposive interpretation to the Statutes.

Another difficulty with criminal legislative provisions is that they do not give room for the consumer to enjoy new rights of action under them. For example, for statutes to eliminate the deceptive and unfair trade, it should have general provisions prohibiting misleading indications as to the quality, quantity, pricing of goods and services[545].

Furthermore, by the expensive, dilatory, technical and delayed nature of litigation in our regular Courts, there is need to establish Consumer Claims Tribunals as can be in developed countries[40]. These tribunals would deal with claims of consumers arising out of the purchase of goods or services against persons in the business of supplying of goods and services. The tribunal should he designed to provide a method of dealing with disputes which are easy to initiate for example, by simple application to the Registrar or Clerk of the Local Tribunal, free from technicality where parties should unless with the approval of the Tribunal in special circumstances, present their own cases. The rules of evidence should also not be bound by the Tribunals but evidence must be given

[544] A. D. Dadaiki- 'Towards an International Regime of Consumer Protection for Developing Countries: Nigeria As A case Study', 1993, EDSU Law Journal, Vol. 6 No.4, Pg. 16.

[545] Examples of such Statutes creating Statutory Rules are the Consumer Protection Act 1987, Supply of Goods (Implied Terms) Act 1973, the Unfair Contract terms Act 1977, Sale of Goods Act 1873, etc. [40] See for example the Consumer Claims Tribunals Act, 1974 of the New South Wales.

on oath by parties. Secondly, there should he appeals from the decisions of these Tribunals unlike the practice in the New South Wales.

Finally, there is also the problem of deficiency and absence of comprehensive consumer based legislations in virtually all spheres. Whereas there are numerous penal provisions and regulatory bodies, the result in most cases, is that the cart is usually put before the horse in that most of the regulatory schemes degenerate into instruments of exploitation of the consumer by cleverly devised deceptive and unfair trade practices by those who implement them. By this, judicial approach to formulate rules necessary to check malpractices thus becomes elusive.

It is therefore suggested that any consumer protection legislation enacted should be broadly worded. It should be clear and simple in language so as to make the task of interpreting the law easy and nothing is wrong if a new Statutory right of action for consumers is created by the legislature as this will foster a legal regime for the Nigerian consumer.

Finally, there should be individual consciousness. Consumers must be informed of their rights through effective mass campaign strategy. Thus they should be made to know their rights and when to enforce them.