



CONSUMER RIGHTS: Returning Goods and Requesting Refunds

Outside of contractual terms agreed to by a buyer and seller, reliance is often placed on the Sale of Goods Act, 1895 and the Consumer Protection Act, 2005 ("CPA") as the primary statutes that speak to the rights of a purchaser under a contract for sale of goods. The latter Act is, however, particularly important as it is specifically geared towards the protection of the consumer; which the Act defines as "any person who acquires or wishes to acquire goods for his own private use or consumption."

The consumer rights granted under the Act may also be relied upon by any "commercial undertaking that purchases consumer goods".

Where a consumer realises that particular goods purchased are defective in any respect, the usual course of action pursued is to return the product to the store and ask for a replacement. Sellers usually comply with this request, although they may not be aware that there is legislative provision for such compliance in the CPA. However, some consumers wonder whether they have the right to request a refund of the purchase price instead of merely requesting an exchange. In this regard, Section 24 of the CPA provides that, in limited circumstances, the consumer may be entitled to "monetary compensation" where he is the recipient of defective goods. But what of the instance where there is nothing wrong with the product? Can the consumer request a refund merely on the grounds that he has changed his mind and no longer wants it? Can he get his money back "just because..."?

A Jamaican consumer ought to look to the provisions of the CPA when assessing his right to refunds in respect of purchases of goods from a "brick and mortar" store. However, for "click and order" online purchases from a website, consumers are directed to the Electronic Transactions Act, 2006 ("ETA"), which extends the refund right found in the CPA. A Jamaican online consumer may return goods purchased online and request a refund of the purchase price "just because..." where the particular transaction falls within Part IV of the ETA.

The provisions of Part IV of the ETA apply to any supplier, whether in or outside Jamaica, who offers goods or services to any person in Jamaica. Assuming that the particular product is not included in the list of exempted goods, a Jamaican consumer is therefore entitled to rely upon the particular consumer rights provided for in Part IV. Additionally, the effect of Section 31 of the ETA appears to be that parties cannot exclude, in any contract, any of the rights or obligations provided in Part IV.

These consumer rights include the right to conduct the transaction in a particular manner which allows the consumer to, amongst other things, review and withdraw from the transaction before placing an order. Additionally, the supplier's website should provide the consumer with minimum information about the supplier and the transaction. This information includes the complete cost of the transaction including all transportation costs and taxes, delivery time, the contract terms and conditions, the supplier's return/exchange/refund policy. Of particular relevance to this article is the seeming expansion of the consumer's refund rights referred to in the CPA. Section 28(1)(a) of the ETA provides the consumer with the general right to cancel a transaction, without giving any reason and without incurring any charge or penalty, within 7 days after the receipt of the goods. Provided that the particular product or transaction is not exempted – for example where the goods are made to a particular customer's specifications or are clearly personalised – the consumer is entitled to be refunded the purchase price within 30 days after the date of cancellation. The only cost to be charged by the supplier is "the direct cost to the supplier of returning the goods". Being a fairly novel right, the administration of this section remains to be seen. For example, is return of the goods by the consumer to be deemed as cancellation? If so, what would be the date of cancellation – the day the product is received or the day on which it is despatched by the consumer? What, if any, would be the direct cost to the supplier where the consumer undertakes the responsibility and cost of to return the product?

Undoubtedly, the ETA introduces a new right which is not currently applicable to physical purchases, even though there may be no change in the parties or the product. That said, the consumer must necessarily weigh the cost of taking advantage of the right to return goods and request a refund. This computation should necessarily include the non-monetary cost, especially when dealing with a recalcitrant or unwilling supplier.

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