

# Analysis of the Legal Obligation of Suppliers and Manufacturers to Consumers in Nigeria and the United Kingdom

Michael Sunday Afolayan, PhD<sup>1</sup>, Eniola Adedayo Arogundade<sup>2</sup>

<sup>1</sup>Senior Lecturer, Business & Industrial Law Department, Faculty of Law, Ekiti State University, Ado-Ekiti, Nigeria

<sup>2</sup>LL.M Research Student, Faculty of Law, Ekiti State University, Ado-Ekiti, Nigeria

**Abstract:** This paper analysed the obligations of the suppliers and manufacturer of goods to the consumers under the legal regime for the protection of consumers in Nigeria and the United Kingdom. The work examined the legal framework in Nigeria and United Kingdom, which governs the relationship between the manufacturers, producers, suppliers and consumers. The work also compared the legal regime in the two jurisdictions for the purpose of observing the similarities and differences in the suppliers/manufacturers and consumers relationship. Doctrinal Legal research methodology was adopted with the use primary and secondary sources of legal material. It was discovered that the attitude of Nigerian courts to the obligations of the manufacturers to the consumers has been strictly viewed from the negligence point of view (fault theory) contrary to what obtained in the United Kingdom, where the courts make use of the negligence theory and the strict liability theory whenever the court is called upon to adjudicate on issues bothering on the obligations of manufacturers to consumers. The work concluded that the obligations of the manufacturers to consumers must be reviewed in Nigeria, using the United Kingdom's combined approach of the negligence and strict liability theories, in addition to criminal prosecution, in appropriate cases, of erring manufacturers in the discharge of their obligation to the consumers. This will in no small measure rid the Nigerian market of fake and counterfeit products from manufacturers who are only profit-oriented. The work made attempt at proffering solutions or better way of doing business in the supplied chain in Nigeria considering the global best practices around the globe.

## I. INTRODUCTION

The obligation of the suppliers and manufacturers to the consumer is a relationship that is protected by the law. The main obligation of the manufacturer to consumers is the duty of care. The duty simply means that the manufacturing companies are under duty of care to make available products that are safe for the use of the Consumers. The bottom line is that the manufacturers are under legal duty and obligation to make safe products. The manufacturer faces liability once the product leaves the factory. Product safety is governed by legislations and ethical concerns means the manufacturer should only produce products that have been tested for safety while knowingly producing dangerous product is illegal and unethical, especially where the use of such products may have unintended and harmful effects on the consumers. The

decision in the case of *Donoghue v Stevenson*<sup>1</sup> which served as the basis of enforcement of the obligation of the manufacturers to consumers in the United Kingdom and Nigeria will be x-rayed along with the strict liability principle, the law of contact and criminal prosecution of the erring manufacturer to strength the obligation of the manufactures to consumers.

In Nigeria, the theories of liability available to product liability claimant are fault liability and strict liability. The main sources of product liability law are English Common Law, as received from the United Kingdom, domesticated by local statutes and further developed in Nigerian case law and Nigerian statutes.

### Conceptual Clarification

#### a. Manufacturer/Producer

A manufacturer is defined as 'A person or entity engaged in producing or assembling new product.' The Consumer Protection Act<sup>2</sup> in the United Kingdom described producer as:

*The producer of the finished article, the producer of any material or component, and any other person who, by putting his name, trademark, or other distinguishing features on the article cannot be identified, each supplier of the article shall be treated as its producer unless he informs the injured person within a reasonable time of the identity of the producer or of the person who supplied him with the article. Any person who imports into European Community an article for resale or similar purpose shall be treated as its producer.*

#### b. Consumer

A Consumer has been defined as one who buys goods or services for personal, family or household use with no desire of reselling same.<sup>3</sup> Robert Lowe and Geoffery F. Wordroffe defines a consumer beyond the ultimate buyer to include any person likely to be injured by lack of reasonable care.<sup>4</sup>

<sup>1</sup> (1932) AC 562

<sup>2</sup> 1987

<sup>3</sup> Garner Bryan A, Black's Law Dictionary (West Group) 7<sup>th</sup> ed. 311

<sup>4</sup> Robert Lowe and Geoffery F. Wordroffe, Consumer Law and Practice, (London, Sweet and Maxwell 1980) 4<sup>th</sup> ed. 29

c. *Product*

Any good or electricity, including product compromised of other products either as component raw material or otherwise. Dangerous product means unsafe or perilous products. Defective product means an imperfect product or products with shortcoming.

d. *Duty of Care*

There is no doubt that the manufacture owes a sacred obligation of duty of care to the consumer. The guiding parameter of determining a consumer is the foreseeability rule formulated in the case of *Heaven v Pender*<sup>5</sup> and approved by Lord Atkin in *Donoghue's* case.<sup>6</sup> Nigerian courts have adopted the principle enunciated in the above cases. The manufacturer is expected to take reasonable care not to negatively affect the consumers through his products consumption.

The facts of the case of **Donoghue v Stevenson** are as follows;

On August 26, 1928, Mrs. Donoghue's friend bought her a ginger-beer from well meadow café in Parsley. She consumed about half of the bottle, which was contained in a dark opaque glass. When the remainder of the content was poured into a tumbler, the decomposed remain of a snail floated out causing her alleged shocked and severe gastro-enteritis. Mrs. Donoghue was unable to claim through breach of warranty of a contract; she was not a party to the contract. Therefore, she issued proceeding against Stevenson, the manufacturer, which snaked its way up to the House of Lords. The question for the House of Lords was if the manufacturer owed Mrs. Donoghue a duty of care in the absence of contractual relationship contrary to established case law. Donoghue was effectively a test case to determine if she had a cause of action, not if she was owed compensation for any damage suffered. The House of Lords found for Mrs. Donoghue with the leading judgment delivered by Lord Atkin in a 3-2 majority with Buckmaster L. and Tomlin dissenting.

The *ratio decidendi* of the case is not straightforward. Indeed, it could be interpreted to establish a duty not to sell opaque bottle of ginger-beer, containing the decomposed remain of a dead snail to Scottish widows. Read broadly however, the decision has several components: first, negligence is distinct and separate in tort; secondly, there does not need to be a contractual relationship for a duty to be established; third, manufacturers owe a duty to the customers who they intend to use their product. However, the primary outcome of Donoghue's case and what it is best known for is the further development of neighbour principle by Lord Atkin. The House of Lords held that the manufacturers owed a duty of care to her, which was breached, because it was reasonably foreseeable that failure to ensure the products safety would

lead to harm to consumers. There was a sufficient proximate relationship between consumer and product's manufacturer.

Legal Framework for the Protection of Consumers' Rights in United Kingdom

The Consumer protection Act<sup>7</sup> implements the European Union Product Liability Directive 85/374/EEC into United Kingdom national law and establishes a strict liability (i.e, no fault) regime to enable claimants to seek compensation from the producer of a defective product<sup>8</sup>. In United Kingdom, for the claimant to succeed under the CPA, he/she is required to prove that the product was defective, that they suffered damage, and that there was a causal relationship between the defect and the damage.

The following remedies are available to consumers for claim under the CPA

- i. A short-term right to reject the goods and claim refund
- ii. A repair or replacement of the product for breach of the minimum statutory warranties or contractual term
- iii. Final right to reject or price reduction
- iv. Criminal sanctioning may also be imposed. In 2019, a retain chain Mamas and Papas Ltd (M&P Ltd) was fined e20,000 and ordered to pay e50,000 in cost. The judge may also made a confiscation order under Part 2 of the Proceed of Crime Act<sup>9</sup> to account for the profit made from the supply of the unsafe product.

Legal Framework for the Protection of Consumers' Rights in Nigeria

There are so many legal frameworks for the protections of the obligations owe by the manufacturer to the consumers. Some of the legal frameworks are stated bellow.

1. Consumer Protection Council Act.<sup>10</sup>
2. Sales of Goods Act.
3. Standard Organization of Nigeria Act.<sup>11</sup>
4. National Agency for Food and Drug Administration and Control Act.<sup>12</sup>
5. Food, Drugs and Related Products (Registration, etc) Act.<sup>13</sup>
6. The Tobacco Smoking (Control) Act.<sup>14</sup>
7. The Trade Malpractices (Miscellaneous Offences) Act.<sup>15</sup>

<sup>7</sup> 1987

<sup>8</sup> Cooley LLP, At a glance: the source of Product liability law in United Kingdom (England & Wales) <lexology.com/library/detail.aspx?g=b24b48a8-1e20-4137-8e65-844920936fc101

<sup>9</sup> 2002

<sup>10</sup> Cap C25 of the Laws of the Federation of Nigeria 2004

<sup>11</sup> No. 14 of 2015

<sup>12</sup> Cap N1 Laws of the federation of Nigeria 2004

<sup>13</sup> Cap F33 Laws of the federation of Nigeria 2004

<sup>14</sup> Cap T6 Laws of the federation of Nigeria 2004

<sup>15</sup> Cap T 12 Laws of the federation of Nigeria 2004

<sup>5</sup> (1883)11 QBD 503

<sup>6</sup> Donoghue v Stevenson

8. The Counterfeit and Fake Drugs and Unwholesome Processed Food (Miscellaneous Provision) Act.<sup>16</sup>
9. The Law Reform (Tort) Laws of Lagos.<sup>17</sup>

#### *Liability of the Manufacturer to the Consumers for A Defective Product*

The maxim; *ubi jus, ubi remedium* which means when there is an injury, there must be remedy comes to play here. The Consumer can go against the manufacturer for breaching the duty of care owes to him if there is a breach by the production of defective product.

In the case of breach, the Consumer can go against the manufacturer in four different ways;

- a. Sue for negligence;
- b. Sue on breach of strict liability;
- c. Sue for breach of contract of sale; and
- d. Commence criminal proceedings against the offending party.

#### *Sue for Negligence*

Manufacturer's liability in negligence is determined by the general principle of negligence. The consumer must show that the product was defective as a result of the manufacturer's negligence and that the defect caused injury. The standard of care imposed upon the manufacturer is the standard of care that a reasonable prudent person in the position of the manufacturer would exercise in designing, producing and warning in order to avoid risk of harm from use of his product by those likely to be exposed to the risk.<sup>18</sup> Negligence, which is the basis of culpability, is defined as the failure to exercise the standard of care that a reasonable prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to prevent others against unreasonable risk of harm except for conduct that is intentionally, wantonly, or willfully disregarding of others' right.

In *Abubakar v Joseph*<sup>19</sup> the Supreme Court defines negligence as "...the omission or failure to do something which a reasonable man under similar circumstances would do, or the doing of something which a reasonable man would not do." The followings element must be established to successfully prosecute an action against the manufacturer

- i. Existence of Duty of care
- ii. Breach of that duty
- iii. Causation that has resulted in damages of occasion harm to the complainant.

The guiding parameter of determining a consumer is the foreseeability rule. It was formulated in the case of *Heaven v*

*Pender*<sup>20</sup> and approved by Lord Atkin in *Donoghue's* case. The Nigerian courts had adopted the principle enunciated in the above case. The manufacturer is expected to take reasonable care to avoid injury being caused or suffered by those who are to use or consume his product as intended.

The Nigeria product liability law as it currently stands, is anchored on the fault-based principle as formulated in the case of *Donoghue v Stevenson*. In *Nigerian Bottling Co v Ngonadi*<sup>21</sup> where the Supreme court held that defendants/appellant has been in proximate relationship to the Plaintiff and owed her a duty of care which duty they breached by supplying a defective product. Also, in *Ocenosor v Niger Biscuit*<sup>22</sup> the court held that a person who manufactures goods, which he intends to be used or consumed by the others, is under a duty to take reasonable care in their manufacture, so that they can be used or consumed in the manner intended without causing physical damage to person or property.

There is no doubt that the theory has its challenges which serves as burden on the prospective consumer. The prospective claimants are expected to establish fault as one of the constituent elements of the fault theory before a claimant could be held culpable. The question then is how does one expect a Consumer to establish fault on the part of manufacturer? It is a great burden or uphill task in case of design defect and inadequate warning instructions defect. It must be noted that the consumer does not have an insight into the complex product process of the manufacturer.<sup>23</sup> Also, the court place undue emphasis on legal technicalities and procedure at the expense of doing justice.

#### *Strict Liability*

A manufacturer is strictly liable in tort when he places a defective product in the market which causes injury to the ultimate consumer. The consumer must prove the necessary causal relation by establishing that the injury resulted from the defective product and that the product was defective when it left the manufacturer's control. This is usually accomplished by the utilization of circumstantial evidence to produce sufficient evidence that there was a greater probability that the defect was in the product at the time it left the manufacturer's control and that the defect caused the injury. In *Nigerian Bottling Company Plc v Olanrewaju*,<sup>24</sup> the Court of Appeal held that a higher standard of proof applies in food poisoning cases. The Claimant must establish a direct link between the food or drink ingested and the subsequent ailment that he or she suffered. The only available defence is to establish that an intervening conduct on the part of the consumer or

<sup>20</sup> (1883) 11QBd 503

<sup>21</sup> (1985)1Nwlr Pt739

<sup>22</sup> (1973)7CCHCJ 71

<sup>23</sup> Gbade Akinrinmade, 'The Jurisprudence of Product Liability in Nigeria: A Need to Complement the Existing Fault theory,' *Afe Babalola University Journal of Sustainable Development Law and Policy*, 7 (1) 2016 <<http://dx.doi.org/10.4314/ljssdp.v7i2.9>

<sup>24</sup> (2007)5Nwlr (Pt. 1027) 255 at 269

<sup>16</sup> Cap C 34 Laws of the federation of Nigeria 2004

<sup>17</sup> Cap L82 of the Laws of Lagos State 2015 (LRTL)

<sup>18</sup> Ron A. Bender, Liability of the Manufacturer to the Ultimate consumer, *Montana Law Review* Vol. 31(1) 1969

<https://www.scholarship.law.umt.edu/cgi>view> content>

<sup>19</sup> (2008) ALL FWLR Part 432 At 1100

intermediate vendee. If the intervening conduct merely in a failure to discover the defect in the product or a failure to guard against the possibility of its existence, rather than a voluntary, conscious, unreasonable encountering of a known risk, the manufacturer will not be relieved from liability.

Strict liability substantially provides more effective protection for the consumer than a negligence action. The burden of proving and establishing the specific negligent act of the manufacturer is eliminated. Strict liability greatly enhances the consumer's chance of obtaining compensation for an injury sustained from the use of a product produced and distributed without proper regard for consumer safety.<sup>25</sup>

The Law Reform (Torts) Law of Lagos State created a statutory cause of action by imposing strict liability on producers of defective products. It stipulates that a manufacturer or producer, importer, supplier or retailer is liable for damage caused wholly or partly by a defective product

#### *Remedy Under Law of Contract*

Another legal remedy available to a consumer for defective product is under the law of contract as laid down by the Sales of Goods Act. The contract of sale of goods in Nigeria is governed by the Sales of Goods Act.<sup>26</sup> The Manufacturers are also under the implied obligation as stipulated by the Nigerian law and that of United Kingdom.

The Sales of Good Act stipulates that where a contract provides for sale of goods by specification, there is an implied condition that the goods shall correspond with the said specification. Also, where the buyer has expressly or impliedly made known to the seller the particular purpose for which the goods are required, an implied condition arises that the goods shall be reasonably fit for such purpose and that the goods are of merchantable quality. If the seller breaches any of the implied warranties or conditions, the buyer may maintain an action against the seller for damages for breach of warranty or condition.<sup>27</sup>

#### *Criminal Law Remedy*

There is also remedy for manufacturer's liability for defective product provided in both Criminal and the Penal Code Act of Nigeria. Section 243<sup>28</sup> and section 184<sup>29</sup> make it an offence punishable with imprisonment against anybody who exposes for sale things unfit for consumption.

There are other statutory offences in relation to the manufacturer and distribution of certain product within the country. For example:

1. Food and Drug Act<sup>30</sup>
2. Weight Act.<sup>31</sup>
3. Trade practices (Miscellaneous Offences Provision) Act.<sup>32</sup>
4. Counterfeit Fake drugs and Unwholesome Food (Miscellaneous Provision) Act.<sup>33</sup>

These statutes are to enhance the prevention of the production of adulterated and substandard product that would have been harmful to the final consumer.<sup>34</sup>

#### *Available Defences to the Manufacturer.*

The manufacturers also have some defences available in law. They are:

- i. That the product is defective in order to comply with domestic law
- ii. The party the claim is made against did not supply the product
- iii. That the product was not manufactured or supplied in the course of business
- iv. That the defect did not exist at the time the product was put into circulations
- v. If a party is being sued because it manufactured a component that the defect is a defect within the finished product, and the fault came about because of the way the finished product was designed was because of the instruction given by the manufacturer.<sup>35</sup>

## II. CONCLUSION

The manufacturer has legal obligation to the consumer to produce good and safe product. This sacred duty had been enforced severally by the courts in United Kingdom and Nigeria. There are many legal frameworks available in Nigeria to enforce the obligation of the manufacturer to the consumers. There is no doubt that Nigeria has the legal frameworks to enhance prevention of the adulterated and substandard product that would be harmful to the final consumer thereby making the Manufacturers to sit tight in discharging their obligation to the consumer.

## III. RECOMMENDATION

Government should back up all various institutions like Standard Organisation of Nigeria (SON), National Food and Drugs Administration and Control (NAFDAC), Nigeria Custom and Excise, Pharmacist Council of Nigeria (PCN) in

<sup>25</sup> Babatunde A.Sodipe, At a glance: the source of product liability law in Nigeria October 2020  
<<https://www.lexology.com/library/detail.asp?g=c1960386-15ed-4b7b-a226-1d3a4b7cb8f1>

<sup>26</sup> 1893

<sup>27</sup> M.C Okany, Nigerian Commercial Law (Africana First Publisher 2009) Rev ed 383

<sup>28</sup> Criminal Code Act, Cap 77, Laws of the Federation of Nigeria 1990

<sup>29</sup> Penal Code Cap P3 Laws of the Federation of Nigeria 2004

<sup>30</sup> Cap F32 Laws of the Federation of Nigeria 2004

<sup>31</sup> Cap W3 Laws of the Federation of Nigeria 2004

<sup>32</sup> ibid

<sup>33</sup> ibid

<sup>34</sup> Edith Ebeguki Oni-Ojo and Oluwole Iyiola, Legal Implication of Manufacturer's negligence and its effect on Consumer: A study of South west of Nigeria, Global Scholar Journal of Marketing 1(1) 2014  
<<https://www.globalscholarjournals.org/MS/GSJMK>>

<sup>35</sup> Pinsent Mason, Product Liability under the Consumer Protection Act 2020<<https://www.pinsentmasons.com/out-law/guides/product-liability-under-the-consumer-protection-act>

controlling, apprehending and prosecuting the proliferation and distribution of defective/harmful products.

The Nigerian Court need to change approach from negligence rule which has been the major approach by the courts to a strict liability rule to enable consumers to get redress with little stress while the manufacturer sits tight to discharge the obligation effectively.

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