

**CONSUMER PROTECTION AND SERVICE DELIVERY BY
THE RETAIL INDUSTRY IN THE GREATER DURBAN
AREA:**

**THE LEGAL IMPLICATIONS OF THE
CONSUMER PROTECTION ACT 68 OF 2008**

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DECLARATION

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DEDICATION

I dedicate this dissertation to two very special people in my life who passed away during the period of my study:

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ABSTRACT

As a result of weaker bargaining power, consumers are often exploited or treated unfairly in the business arena. Whilst consumer abuse is a global problem, South African consumers are more vulnerable due to various socio-economic conditions that affect their ability to negotiate equally in the marketplace. Factors such as poverty and illiteracy contribute to consumer abuse and is perpetuated by the discrimination which was inherent in the apartheid era. Accordingly, the Consumer Protection Act, 2008 (CPA) was promulgated to promote the respect for consumer rights, create awareness, enhance consumer protection and eliminate unfair and dishonest business practices which were prevalent at the time.

This study aims to investigate the implications of consumer rights for service delivery within the retail sector. The main objective of this research was to explore the levels of awareness of consumer rights and to identify consumers' expectations and perceptions of service delivery in relation to the CPA. The research design was quantitative in nature. A questionnaire was designed to assess the levels of awareness of rights and consumers' expectations and perceptions of the service delivered by retailers, in relation to the service quality dimensions. Using convenience sampling, data was obtained from 337 respondents in the greater Durban area. Data was analysed using SPSS version 24.0 and interpreted using descriptive and inferential statistics.

The findings of the gap analysis revealed that the respondents' perceptions of service quality was consistently lower than their expectations, in respect of several dimensions of service quality. These negative gaps indicate that the level of the delivered service had fallen below the respondents' expectations of service quality amongst retailers. This implies that respondents' were dissatisfied with business compliance with provisions of the CPA. Businesses are hence encouraged to take steps to ensure legal compliance, thereby enhancing customer satisfaction and attaining higher levels of service excellence.

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CHAPTER 1

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

Consumers and businesses both play a very important but inter-dependent role in any free market economy. The Consumer Protection Act (South Africa 2008), (hereinafter referred to as the “CPA” or the “Act”) defines a consumer as every person to whom goods and services are marketed or sold (Section 1 - Consumer Protection Act). Therefore, a consumer may purchase anything from groceries, clothing and motor vehicles to travel tickets and electricity. A person who receives medical treatment, legal advice, or education also qualifies as a consumer. This implies that every person will be a consumer through most part of his life.

Retailing is a global, high-tech industry and consumers rely on retail businesses to supply them with superior quality goods and services (Levy and Weitz 2012: 23). People have become so involved in retailing activities that these transactions are often taken for granted (Levy, Weitz and Grewal 2014: 5). So many consumers today, simply accept imperfect meals in restaurants, inferior quality merchandise and poor customer service rather than complain. If consumers are unwilling to complain because it is inconvenient, time-consuming or there is a general belief that the retailer will always “win”, then this implies poor service delivery on the part of the retailer and no justice for the consumer.

For decades, consumers have fallen prey to unfair, unethical and discriminatory business practices. Consumers were vulnerable in the marketplace because of unequal bargaining positions between the seller and the consumer, a general lack of knowledge and information on the part of the consumer and inadequate resources for the consumer to pursue legal action, amongst others (Woker 2010: 230).

In South Africa, the apartheid regime actually fostered a culture of differential and unequal treatment where both private individuals and business entities

discriminated against consumers, primarily on the basis of their race (Reddy 2006: 785). Consumer exploitation was no doubt exacerbated by various socio-economic factors such as inequality, poverty, poor education, illiteracy and unemployment. There were many instances where consumers, particularly from the poorer communities, were treated harshly by the business sector and this has been highlighted throughout the study.

The existing legislation was unclear and provided little protection for the consumer (Woker 2010: 219). Hence, South Africa needed more comprehensive laws that would not only explain what constitutes unfair business practices, but also provide for specific consumer rights and protection against the violation of these rights. Mason (2007: 30) argues that consumer protection legislation is necessary to uphold high standards of trading and ensure that consumers receive acceptable levels of quality. This premise establishes the link between good service quality offered by retail businesses and consumer protection and hence, reinforces the aim of this study.

The CPA was specifically aimed at the promotion and advancement of the social and economic welfare of all consumers in South Africa (Section 3). This long-awaited statute prevents consumers from being “ripped-off” in commercial transactions (Kopel 2009: 461) by providing a comprehensive “Bill of Consumer Rights” (Fouché 2015: 335). Today, South African consumers are amongst the most protected in the world (Knowler 2012). However, the CPA has far-reaching consequences in the event of non-compliance and suppliers, retailers and manufacturers are obliged to comply with its provisions. With a much greater onus now being placed on businesses, issues pertaining to consumer awareness and service delivery are of paramount importance. This also brings into question not only the retailers’ legal duties but their ethical obligations to consumers as well.

Accordingly, this research study involves a cross-disciplinary study between retailing and the law, with the specific purpose of exploring the impact of the Consumer Protection Act on retail businesses.

1.2 Problem statement

Consumer exploitation has been a worldwide problem and consumer rights organisations have fought tirelessly for many years for greater legislative control over unfair business practices and the poor treatment of consumers. In South Africa, the existence of racial discrimination and inequality only served to worsen the exploitation of consumers. Whilst many services and public resources were reserved for the exclusive use of certain races, Reddy (2006: 784) believes that most people experienced different forms of discrimination and inferior service quality in the retail sector.

Naudé (2006: 363) maintains that it is essential to firstly understand the problems that consumers face before attempting to effectively apply the law. Du Preez (2009: 63) agrees by suggesting that consumer laws must be drafted within the specific context within which the laws will apply. By 1994, the South African nation was already weighed down by unacceptable high levels of illiteracy, low income and poverty. The majority of the population were severely prejudiced in that they were unaware of their rights and did not possess any autonomy to negotiate transactions with businesses (Naudé 2006: 366). As a result, consumers did not know the legal implications of such transactions and businesses took advantage of consumers' ignorance. According to Mason (2007: 27), in more advanced economies such as the USA and the UK, consumerism is clearly prevalent and consumers are "savvy about their choices". However, in less developed countries like South Africa, consumer awareness levels are much lower. Nevertheless, even when consumers are aware of their rights, they generally do not stand up and fight for their rights.

Existing laws such as the Trade Practices Act (1976) and the Consumer Affairs Act (1988), both of which are now repealed, fell short of actually protecting the consumer or providing accessible redress for the consumer. In cases where these laws were applied, it was done inconsistently (Woker 2010: 219). It was necessary, therefore, to create a balance between powerful businesses that possessed financial resources and legal power and consumers who generally had no knowledge and poor resources.

The Constitution (1996) signalled a new era for South African life and brought with it a new political and social dispensation (Devenish 2005: 145). Accordingly, the state is obliged to do whatever is necessary to “heal the divisions of the past and eradicate poverty and illiteracy” (Preamble to the Constitution). This culminated in the passing of the CPA, the purpose of which is to promote the social and economic welfare of consumers by eradicating consumer exploitation and encouraging equal participation of all consumers in commercial activities (Section 3(1)).

The problem however, is that consumers may not fully understand their legal rights and even if they are aware of consumer rights, many consumers do not know how to exercise their rights. The aims of the CPA can only be fulfilled if consumers are aware of their rights and the redress mechanisms available to them if their rights are violated by retail businesses. In addition, in order to ensure that the provisions of the CPA are being complied with, the State must ensure that businesses are being constantly monitored, failing which, the CPA will become ineffective. Accordingly, the rationale for study, as alluded to in 1.4 below, explains the purpose of this study.

1.3 Aim and objectives

The aim of this research study is: To investigate consumer rights, consumer protection and service delivery in relation to the Consumer Protection Act and its implementation in the retail industry, with particular reference to retail businesses in the greater Durban area.

In satisfying the aim of the study, various objectives have been identified, which are as follows:

- To explore the provisions of the CPA insofar as they impact on consumer protection and service delivery in the retail industry;
- To determine whether consumers are aware of their legal rights and the nature of their contractual obligations with business;
- To determine from consumers what their expectations and perceptions of service quality, as provided by the retail industry, entails, in relation to the provisions of the CPA; and

- To determine consumers' satisfaction with consumer law and consumer protection.

1.4 Rationale for the study

In terms of the CPA, manufacturers, suppliers and retailers are now legally bound to ensure that agreements contain fair, reasonable and just terms; that their business practices are transparent and not misleading in any way; and that they respect the rights of consumers as embodied in the CPA. Whilst compliance with the Act is mandatory, businesses are also required to conduct themselves in an ethical and socially responsible manner. Adopting ethical practices will enhance the service quality of the business and ultimately increase performance and profitability (Abratt, Bendixan and Drop 1999: 91).

It is important to note, that, unfair and unethical business practices will continue to persist if consumers are unaware of their legal rights, or the existence of the CPA coupled with the lack of legal support in respect of redress, and there is a lack of monitoring of business practices. Accordingly, this study is necessary because many of the provisions of the CPA have not yet been adequately tested either by the National Consumer Commission, the Consumer Courts or any other court of law.

This study investigates the implications of the CPA for retail businesses, and how its aim establishes a connection between compliance with legal provisions and the goal of achieving service quality and customer satisfaction for its consumers. The survey investigates consumer awareness levels as well as highlighting consumer experiences of fair and unfair business practices. Hence, the results obtained from this study produces a greater and more objective understanding of the key themes which are consumer awareness, consumer protection, service delivery and retail business compliance in the greater Durban area. It also provides some insight on whether the CPA is indeed achieving its purposes, as intended by the legislature.

1.5 Research methodology

This section of the study describes the different methodologies used in this study and the procedure for collection of data and data analysis.

1.5.1 Research design and method

The research design presents a systematic method of collecting and analysing the data, and then interpreting and reporting it for the study (Creswell and Plano Clark 2011: 53). The formulation of the research design and method must take account of the aims and objectives of the research study. The research design for this study followed a quantitative approach. Quantitative research focuses on the quantification of the data collected, and therefore entails a collection of numerical data (Bryman and Bell 2011: 31). This methodology answers questions relating to how many, where, how often, whom and how much (Cooper and Schindler 2014: 146). Hence, the findings are reported in a more analytical manner.

1.5.2 Questionnaire content

The questionnaire was the most suitable data-gathering tool for this study. A self-completion questionnaire was designed to obtain information relating to the objectives of the study. Hence, closed and open-ended questions were formulated to gather information relating to the consumers' knowledge of fundamental rights contained in the CPA, levels of awareness of contractual terms in the agreement, consumers' expectations and perceptions of service delivery in relation to the provisions of the CPA, consumers' experiences relating to unfair business practices and their awareness of legal remedies and redress mechanisms.

1.5.3 Population and sampling

The research design determines who the participants of the research study are (the population and sample) and how they will be selected (the sampling method). A sample is usually drawn from a larger group that is the focus of the research. The sample must be representative of the population, in other words, an exact miniature

of that population for the research findings to be credible (Welman, Kruger and Mitchell 2005: 55). The target population for this study included all consumers in the greater Durban area. The sample comprised 400 consumers who have used retail businesses. This sample size was guided by Sekaran and Bougie (2013: 268) who suggest that for a population exceeding 1 million, a sample of 384 was sufficient for the researcher to draw inferences.

The researcher chose to use the convenience sampling method, which is a type of non-probability sampling, since it was the most appropriate method for the questionnaire approach. Convenience sampling is based on aspects of convenience to the researcher such as respondents who are easily accessible, close in geographical proximity, known contacts or ready to participate in the study (Kumar 2014: 244). Accordingly, for the purposes of this research study, random customers who were handed out a questionnaire by the researcher over a period of time were included in the sample. This process of selecting the sample continued until the required sample size of 400 was reached.

1.5.4 Data collection and analysis

The research instrument used in the collection of data was questionnaires. The questionnaire is an effective tool to elicit the views, opinions and attitudes of participants and is an extremely popular way of collecting data in business studies (Ghauri and Grønhaug 2002: 94). The questionnaire was administered to the sample of customers to elicit their understanding on their rights under the CPA, as well as their expectations and perceptions of service delivery by retail businesses in Durban. The questionnaire contained both closed and open-ended questions. The open-ended questions were aimed at extracting explanations and descriptions of consumers' experiences of fair and unfair business practices and their overall views relating to consumer protection.

The researcher and assistants had personal contact with most of the participants so that the purpose of the study and its relevance thereof was explained. This ensured a higher response rate. When the process of data collection was complete, a statistician assisted in the analysis of the quantitative data. The quantitative data

was analysed by using the SPSS computer software, that is, Statistical Package for the Social Sciences, version 24.0.

1.5.5 Validity and reliability

According to Cooper and Schindler (2014: 257), the term validity refers to “the extent to which a test measures what we actually wish to measure” whilst reliability refers to “the accuracy and precision of a measurement procedure”. Accordingly, the research instrument must adequately test all the relevant criteria or aspects of the research study. The questionnaire was subjected to a pre-test to ensure reliability. Further, the Cronbach’s Alpha, which is a measure of internal consistency, was also used in respect of the reliability of the study. To ensure validity of the quantitative study, factor analysis was undertaken.

1.6 Contribution of the study

This study was aimed at exploring not only the awareness of consumer rights amongst the target population but also to gain information relating to retail business practices and business compliance with the provisions of the CPA. The results of this study will assist in highlighting the plight of ordinary consumers, good practices amongst retailers and the unscrupulous business practices in the retail industry. Accordingly, the results will assist the researcher in making recommendations for improvement of consumer education and legal compliance.

1.7 Chapter outline

Chapter 1: Introduction and Background to Study

This chapter places the research in context and provides an overview of the study. It sets out the problem statement and highlights the purpose of this study. The aim and objectives of this research study are also explained.

Chapter 2: The Retail Industry and Service Quality

This chapter entails a review of existing literature dealing with the history of retailing within the South African context and a discussion of the various principles of retailing, with a view to understanding this industry. It further analyses various issues relating to consumer protection and its impact on service delivery within the context of retail business operations.

Chapter 3: Consumer Law and the Protection of Rights

This chapter comprises an overview of the history and the development of consumer law, nationally and internationally. In particular, the chapter focuses on an analysis of the provisions of the CPA and its impact on retail business practices.

Chapter 4: Research Methodology

This chapter sets out the research design and methodology that was used for the study. It also explains the sampling methods and the processes used in the collection of data and analysis of data.

Chapter 5: Data Analysis and Discussion of Results

This chapter examines and interprets the data collected from surveys and discusses its findings. The results and findings of the empirical investigation are then presented.

Chapter 6: Conclusions and Recommendations

This chapter provides the conclusions derived from the analysis of the data. It also makes recommendations with regard to the effective implementation of legal provisions within retail business management.

1.8 Conclusion

This chapter provided a background to the study and set out its aim and objectives. It presented the research problem in relation to consumer protection in the retail industry. It also highlighted the methodology used and gave an outline of the chapter structure. Chapter 2 deals with an analysis of the retail industry and the dimensions of service quality, in relation to consumer protection.

CHAPTER 2

THE RETAIL INDUSTRY AND SERVICE QUALITY

2.1 Introduction

Life in the 21st century has been extensively influenced by the retailing industry as people all over the world thrive on shopping for a wide variety of goods and services to satisfy their immediate and long-term needs. The business of retailing is generally perceived as the selling of goods and services to consumers. Consumers are the life-blood of the retail industry. Hence, retailers must do whatever is necessary to meet the needs of their customers' and keep their customers satisfied through excellent service quality. Customer loyalty is crucial for businesses to remain sustainable in the present global economy (Yuen and Chan 2010:226; Chinomona and Dubihlela 2014:24).

Businesses are primarily concerned with maximising profits, earning good returns and increasing the market share (De Jager and Van Zyl 2013: 752; Naicker and Brijlal 2012: 6471). Unfortunately, this often comes at the expense of the consumer who has always occupied the position of the underdog in the supply chain. Deceitful, dishonest and unfair business practices are widespread amongst retailers. Today, however, consumers' interests are of paramount importance all over the world, particularly in developing economies like India, Nigeria and South Africa. Consumer protection and consumer awareness is no longer an option but rather mandatory in terms of the laws of several countries.

The purpose of this study is to explore the provisions of the CPA, insofar as their impact on consumer protection and service delivery within the retail industry. It is important to have an understanding of retail operations so as to place these legal provisions within the context of this industry. Accordingly, this chapter provides an overview of the nature and effect of retailing, the history of retailing and the key retailing principles, with particular emphasis on service delivery and the protection

of consumer rights. A brief discussion is also presented on the importance of corporate social responsibility on retailing management.

2.2 The nature of retailing

The business of retailing is a dynamic, high-tech and competitive industry (Levy, Weitz and Grewal 2014: 7) that is constantly evolving due to economic, political, social, legal and cultural influences. Yet retailing still remains the largest contributor to the country's economic stability. There are several acceptable definitions of retailing. According to Dunne, Lusch and Carver (2014: 4), however, retailing comprises "the final activities and steps needed either to place a product in the hands of the consumer or to provide a service to consumer". Hence, the retailer, who occupies the last stage in the distribution process, does all that necessary to transfer ownership of the goods and services from the producer to the consumer (Berman and Evans 2013:36).

Retailing has a huge impact on the life of every citizen because retailing activities occur everywhere and every person participates in some form of retailing on a daily basis (Fernie, Fernie and Moore 2003: 1). Retailers range from clothing stores and supermarkets to banks, petrol stations and gyms, amongst many more. Today however, retailing also entails selling products through mail orders, over the telephone, via the internet, door-to-door, vending machines and street carts (Dunne, Lusch and Carver 2014: 5).

A supply chain is a set of firms that make and deliver goods and services to consumers and retailers are a key component in this chain (Levy, Weitz and Grewal 2014: 7). Retailers act as intermediaries between manufacturers, wholesalers and the consumer (Terblanche 2013: 4). This is important because on the one hand, consumers learn about the quality and characteristics of goods from retailers and on the other hand, manufacturers are informed by retailers about product demand, defective goods and leading brands (Berman and Evans 2013: 37). Figure 2.1 illustrates a typical distribution channel or supply chain.



Figure 2.1: Example of a supply chain (Source: Levy, Weitz and Grewal 2014: 7)

Retailers occupy the last stage in the supply chain and hence, add value to the supply chain by providing the consumer with a variety of products and brands to choose from, the convenience of shopping at one place and buying goods in small quantities (Levy, Weitz and Grewal 2014: 8).

2.3 The role of the retailer

The primary role of the retail business is to supply consumers with goods and services. Accordingly, every business must develop its own retail mix which will appeal to its target market and meet its financial objectives. A retail mix is a combination of essential elements for a retail business which ensures a positive consumer experience so that the customers keep coming back. These are price, location, merchandise, advertising and promotion, store layout and design and customer services (Dunne, Lusch and Carver 2014: 67).

Retailers are exposed to constant changes in the internal operations of a business and the external environment within which they operate. The retailing industry is constantly evolving due to global economic, legal, political and social changes. Hence, retailers must take cognisance of these changes and subsequently develop strategies to counteract these challenges (Chinomona and Sandada 2013: 438).

There are several factors that retailers must take account of for the efficient execution of their operations. The most important factors are illustrated in Figure 2.2.



Figure 2.2: Factors influencing retail business (Source: Adapted from Dunne, Lusch and Carver 2014: 18)

Retailers have to constantly work at maintaining a competitive advantage to differentiate themselves from each other (Mpinganjira and Dos Santos 2013: 274). New competitors will enter the retail market on a constant basis. This is evident in the presence of international giants such as Wal-Mart, Zara and H & M in South Africa. Hence, retail businesses should seek out new approaches and utilize retail opportunities to their advantage.

The role of the retailer is multi-faceted and hence, ranges from buying goods, marketing, advertising, transporting and storage (Berman and Evans 2013:37), to store design, customer service, brand promotion, relationship marketing and social responsibility (Goworek and McGoldrick 2015:9). Although, the nature and functions of a retail business appears to be a very complex one, Varley and Rafiq (2004: 12) identify five distinct roles of a retailer which are incorporated in the CPA, albeit in a more extensive legal formulation. Whilst these roles are centred on providing a better service to the consumer, it reaffirms the aim of the study that compliance with legal provisions will ensure enhancement of service quality. Hence, the roles of the retailer, within the context of this study, are as follows:

- **Advertising and promotion of new products.** Customers are informed of new products, competing prices and the latest trends. The CPA regulates this activity in terms of the right to fair and responsible marketing (Sections 29-32);
- **Advice and guidance to the consumer.** Sales personnel provide guidance on the products suitable for the customer and facilitate the transaction. Here, the CPA provides for the right to disclosure and information (Sections 22-26);
- **Negotiating and forming contracts.** Retailers conclude legal contracts daily. Here, the CPA compels the retailer to comply with the consumer's rights to fair and honest dealings and fair, just and reasonable terms and conditions (Sections 40-51);
- **Accepting and arranging for payments and accepting risks of default.** Retailers offer various payment options for the convenience of the customer; and
- **Handling warranty claims and after-sales facilities.** Retailers are liable for repairs, maintenance and replacement of damaged or defective goods. This is an extremely important role of a retailer and deals with the consumer's right to fair value, good quality and safety (Sections 53-58).

Whereas the role of the retailer was derived from the principles of retail management and imposed only a moral and ethical duty to serve the customer well, the law now makes provision in that it is mandatory for the retailer to perform certain duties towards the customer. This new development impacts on the business processes employed by retailers.

2.4 Retailing and the economy

The retailing sector is very important to society as they provide the means through which people enjoy life and living, whether it is through the clothes they wear, the entertainment they enjoy or the motor vehicle they drive. Retailing is the largest contributor to a country's economy because, firstly, they add value and worth to goods and services and secondly, they are the largest source of employment (Terblanche 2013: 20). The extraordinary contribution of the retail industry to a

nation's economy is evident in the rapidly increasing quality and diversity of retailers all over the world (Dunne, Lusch and Carver 2014: 3).

Consumer spending plays a critical role in the economies of developed and developing countries. The more revenue that consumers spend on purchasing goods and services from retailers, the more a country's economic climate flourishes. However, if consumers feel uncertain about their financial future, due to environmental changes, and make decisions to curb their spending, then the economy will slow down. Consumer demand is a good indication of a thriving financial system and the retail sector is instrumental in maintaining stability and prosperity (Levy, Weitz and Grewal 2014: 12).

Retailers also play a vital role in developing economies where they serve the needs of poorer consumers, who constitute 25% of the world's population. These consumers nevertheless still have a huge spending power which is evident in the size and growth of developing markets such as China, India and Brazil. However, retailers in these countries also face many challenges because people generally lack consumer knowledge and have poor access to mass media as compared to consumers from more affluent markets (Levy, Weitz and Grewal 2014: 14).

There is a huge amount of retail manufacturers and wholesalers that operate in South Africa. The high volumes of sales generated by these businesses and the large number of people employed within this sector indicates the importance of retailing to the economy of the country (Cant 2010: 4). Poloian (2013: 3) maintains that "retailing is all around us" and most of a country's wealth or gross domestic product (GDP) is derived from retailing. The GDP is the total value of all goods and services produced by a country within a specified period of time. In South Africa, the wholesale and retail sector is the fourth largest contributor to the GDP and employs 22 percent of the country's workforce. Retail entrepreneurs are amongst some of the wealthiest people in the country and today, retail managers and marketers earn incomes that are well above the average (Terblanche 2013: 20).

However, retailing is a challenging industry that is also dependent upon other sectors for its own sustainability and hence, a weak economy will have a major

impact on retailers and consumers (Berman and Evans 2013: 33). A country's economy fluctuates due to various domestic and international risks (Bureau of Market Research 2014: 19). For example, turmoil in the Middle East will result in escalating crude oil prices which will further impact on domestic fuel prices and cause a rippling effect on the price of commodities offered in the South African retail market. Hence, this would cause a downswing on the profit margins of retailers in South Africa.

South Africa's weakened economy is a product of the result of both political and environmental factors that have had a direct impact on its economy. Examples of these are seen in strike actions, service delivery protests, social unrest and load-shedding which has had a negative impact on retail productivity and profitability. A lack of confidence in the South African economy causes a depreciation of the rand, poor foreign investment, lower consumption expenditure and decreased levels of South African exports (Bureau of Market Research 2014: 20).

In light of a constantly changing environment, retailers must adjust their strategies to accommodate these changes (Terblanche 2013: 26). Tax increases, stock market volatility, the consumer price index (CPI), inflation and recession are crucial factors that impact directly on retail sales and the economy. Hence, retailers must be well-informed of and keep up-to-date with global, national and local social and economic conditions if they intend remaining profitable and viable (Poloian 2013: 36).

2.5 The history of retailing in South Africa

Historically, ancient retailing took the form of informal markets where simple, basic goods were sold, which gradually developed into small shops owned by a sole proprietor (Davies and Ward 2002: 2). However, globalisation and modern technology of the 20th century has transformed the retailing industry so drastically that doing business is so much more than selling and buying. Today, the retail landscape is characterised by speciality stores, chain stores and supermarkets, engaging in multi-channel retailing and dominated by multinational corporations. South Africa however, is still characterized by street vendors and flea markets that form an important part of informal retailing. It is lucrative to entrepreneurs with

minimal capital as there are fewer barriers for operation and limited skills required for this type of retailing (Terblanche 2013: 21).

South Africa's apartheid laws kept the retailers and the consumers of different races apart (Cant 2010: 7). Hence, there were insufficient shopping facilities in the so-called "black" areas but an abundance of retailing outlets in the so-called "white" areas. Retail shopping was divided between a "modern first-world shopping infrastructure controlled by traditionally white business-owned retailing facilities, and emerging third-world shopping facilities hampered by poor infrastructure in black townships under black ownership" (Strydom 2002: 23).

Whilst retail businesses focused on providing quality to satisfy the needs of the rich, the rest of the population were poor and uneducated and were forced to accept what was made available to them. Retailing businesses used the system to exploit consumers who were poorly educated, earned lower incomes and had little or no access to the justice system. Since 1994, the disparity in economic inequalities between the white minority and black majority became clearly evident (Stratfor 2008: 2). Accordingly, there was a definite need for legislative intervention to address the needs of "disadvantaged" consumers.

Since 1994 however, the government redeveloped the retailing infrastructure. The new political dispensation promised many socio-economic changes and accordingly, consumers also expected to be serviced by modern retailers. Strydom (2002: 20) argues that the larger retail corporations were initially hesitant to invest in townships due to rampant crime in these areas. With time however, several new retailing facilities in the form of shopping centres and regional shopping malls have now been established (Strydom 2011: 152).

Nevertheless, the South African retail landscape was still dictated by various social, economic and political factors that resulted in the unfair and unequal treatment of consumers. Mugobo and Malunga (2015: 224) argue that there was an urgent need for new consumer protection laws because of the low level of literacy in the country, particularly in the rural areas. Consumers who possess little education do not fully understand their rights and are therefore susceptible to exploitation in the consumer

market. Rampant price fixing, the marketing of poor quality goods and the bureaucratic channels that a consumer had to follow to raise a complaint, were some of the many reasons to implement a more comprehensive set of consumer laws. The CPA was accordingly implemented to promote fair and ethical business practices as well as to provide protection to the most vulnerable consumers in our country.

2.6 Types of retailing

There are several retailers who offer the same or similar goods and services, all competing with each other for business. But the retailer whom the consumer chooses to patronize will depend, not only on the consumer's individual needs and expectations (Cant 2010: 5) but also one that will satisfy the consumers' needs more effectively than their competitors (Levy, Weitz and Grewal 2014: 36). The following is a brief explanation of some of the most popular retailers.

2.6.1 Store retailing

These are retailers that are housed in actual stores or shops known as "bricks-and-mortar" retailers. These include speciality stores, department stores, convenience stores, hypermarket, catalogue showrooms and service businesses, which may offer self-service or full service (Erdis and Cant 2015: 5). Stores are designed to maximize efficiency and reduce costs and has many benefits for the consumer such as touching and inspection, personal service and risk reduction (Levy and Weitz 2012: 62).

2.6.2 Non-store retailing

This involves retailing that does not take place in a shop. These include direct selling, direct marketing, television home shopping and automatic vending (Levy, Weitz and Grewal 2014: 67). Direct marketing uses the advertising media to seek customers such as catalogue marketing, telemarketing and electronic or internet sales. Direct marketing is a very popular form of retailing today and has been specifically dealt with in the CPA.

2.6.3 Food retailers

Food retailing has changed so drastically over the last 50 years. Full-service supermarkets offer a “one-stop” shopping experience and stock a variety of goods such as groceries, meat, fruit and vegetable, bakery and other non-food items. These would include SPAR, Shoprite, Pick n Pay and Checkers. Superstores and hypermarkets stock a variety of fresh and frozen food, clothing, appliances, furniture and other household products. An example of a superstore is Checkers Hyper. There are also warehouse clubs which are characterized by bulk product purchases at a low-priced no frill shopping environment such as Makro. (Terblanche 2013: 42). Small convenience stores are popular for their convenient location such as the historically termed “spaza shops” or tuckshops and still exist in the lower socio economic communities. Such “spaza shops” which are rapidly on an increase due to high unemployment rates are a means of survival and operate informally from makeshift dwellings or from homes in order to serve their local consumers.

2.6.4 General merchandise retailers

Department stores, discount retailers, speciality stores, category specialists and off-price retailers will fall into this category. Department stores usually offer a variety of goods under one roof and comprise of different departments. Department stores are characterized for their high levels of service and high prices as well, for example, stores such as Stuttafords, The Hub and Ackermans. Discount retailers offer a variety of goods at lower or value-based prices such as Game. Speciality stores cater for a limited number of products but the level of customer service is much higher, for example, Green Cross and American Swiss. Category retailers are larger than speciality stores and display more expertise in their category of products such as Sportsman’s Warehouse (Terblanche 2013: 44).

2.6.5 Services retailing

The term “retail” is often only interpreted as comprising the sale of goods to consumers. Services retailers, who sell services rather than products, are also a large component of the retail industry (Levy, Weitz and Grewal 2014: 56). Services

entail a wide variety of complex activities that may be difficult to define. Lovelock and Wirtz (2011: 37) suggest that “services are economic activities offered by one party to another; where in exchange for money, time and effort, service customers expect value from access to goods, labour, professional skills, facilities and networks.” Even though organisations such as universities, banks, legal clinics, hospitals and health spas have generally not considered themselves as retailers, competitive strategies by similar businesses have now compelled these organisations to adopt retailing principles to attract customers in order to be sustainable.

2.6.6 Franchising

Levy, Weitz and Grewal (2014: 61) define franchising as “a contractual agreement between a franchisor and a franchisee that allows the franchisee to operate a retail outlet using a name and format developed and supported by the franchisor”. Franchises are very popular in the South African retail industry and they play an important part in fostering entrepreneurship, small business development and job creation in South Africa. It is a major contributor to South Africa’s economy, comprising 9,7 percent of the country’s GDP (Bizmag 2013). It is very promising to note that 90 percent of South Africa’s franchise opportunities are based on locally developed concepts. Today, franchising has become more accountable within the business environment as franchise agreements are now specifically regulated by the CPA and franchisees enjoy greater protection from the law.

2.7 Principles of retailing

Berman and Evans (2013: 43) state that retailers with “genuine character, definitive core values, and concern for the community” are more successful and profitable. The “total retail experience” is aimed at satisfying customers’ expectations and achieving not only satisfactory levels of service quality but also developing a long-term relationship between the customer and the retailer (Terblanche 2013: 8). Customer service and service quality should not be compromised because the quality of the service delivered will determine the customer’s level of satisfaction.

2.7.1 Customer service

Customer service may be defined as “the totality of what an organisation does to add value to its products and services in the eyes of customers” (Machado and Diggines 2012: 2). In other words, it involves everything that the retailer does from the moment it comes into contact with the customer to make the customer’s experience worthwhile. Customer service therefore entails the provision of service to the customer before, during and after the purchase (Brink and Berndt 2008: 56).

High-quality customer service is crucial in a highly competitive retail environment to enhance customer retention, loyalty and profitability (Brink and Berndt 2008: 55). In a free market economy, customers automatically expect quality goods at reasonable prices, but they do not always expect good service (Timm 2011: 109). Although quality customer service is crucial for building customer relationships (Zeithaml, Bitner and Gremler 2006: 5), the issue of poor customer service is a global problem. Even in South Africa, consumers are becoming increasingly dissatisfied with the services provided to them.

According to Berman and Evans (2013: 45), customer service has a strong impact on the attainment of the total retail experience. Retailers have to differentiate themselves from competitors in the nature of the service offered, because if a customer is dissatisfied with either the product or the service, he is unlikely to support that retailer again (Lusch, Dunne and Carver 2011: 76). By offering excellent customer service, a retailer can attain customer loyalty and a good reputation which can be sustained for a long time (Levy, Weitz and Grewal 2014: 516). In any industry, customer loyalty is an asset which serves as a barrier to competitive entry and is crucial in a technologically driven 21st century market (Boshoff and Gray 2004: 28).

Customer service has become increasingly important throughout the retail industry, whether it is tourism, hospitality, health care or banking. In Canada, for example, banking institutions regard their customers as “king”, because the “one size fits all” banking service did not meet customer expectations as customers themselves see their individual needs as unique (Battista 2014: 13). Accordingly, a business’s

marketing policy must incorporate the principle of customer service all aspects of marketing, namely product, price, promotion and place. In addition, the strategy must include essential elements such as store layout, credit acceptance, sales personnel, parking space, returns and repairs facility, information counters and customer follow-up, amongst several others (Berman and Evans 2013: 45).

Excellent customer service is one of the most effective ways to market a business, however, business policies that were drafted a few years ago will be ineffective in today's economic environment since the technological global environment is ever changing in its landscape of operations. Therefore, both customers and businesses must constantly keep abreast of changes in the circumstances within which they operate, in order for the long term survival of their industry. Retail business strategies must meet the needs of today's customers (Harris 2013: 3). More importantly though, customers have certain rights which must be respected and fulfilled by businesses.

Marx and Erasmus (2006: 57) note that most research on customer service is undertaken in sophisticated Western societies, with little understanding of how consumers in developing countries and different cultural backgrounds evaluate customer service. Nevertheless, irrespective of socio-economic status, the customer service experience must still be a memorable one that adds satisfactory value to the purchasing experience of that consumer. It seems that retailers offer better customer service in more affluent communities because consumers with a high socio-economic status are more aware of consumer rights and are less tolerant of bad service. Hence, consumers in poorer communities experience greater challenges because they are generally unaware of their rights or the legal remedies available to challenge poor customer service (Marx and Erasmus 2006: 60).

Today, consumers are much more knowledgeable about products and services offered by retailers and have certain expectations with regard to service delivery (Machado and Diggins 2012: 3). For example, previously it was difficult for South African consumers to return goods, particularly appliances, to retail stores, not only because very few retailers offered this service but also due to the stringent criteria associated with return policies. Today however, it is law that every consumer shall

have the right to a refund, return or replacement of goods purchased, subject to certain conditions (Sections 16, 20 and 56 of the CPA).

A lot of hard work goes into building the reputation of a business and maintaining customer loyalty. However, it takes very little effort to lose customers through bad service delivery. This may result in a loss of future income, damage to the reputation of a business, an increased number of consumer complaints and unhappy employees (Machado and Diggins 2012: 13). Extraordinary customer services is not only achieved through the knowledge and skills of the sales staff but is also dependent upon the manner in which the entire organisation, “from top management downwards, pulls in the same direction and presents a clear, positive message to customers” (Jahanshahi, Gashti, Mirdamadi, Nawaser and Khaksar 2011: 254).

Striving to attain a high degree of service excellence is paramount to the success and sustainability of the client base of a business. Hence, if staff are adequately trained, in both the legal and ethical domains of business, this will also satisfy the obligations of business to meet the needs, expectations and rights of consumers. The idea of “the customer is King” and the “customer is always right” should always prevail and staff have to adhere to that concept. Retail staff must be well trained in conflict resolution, professionalism and product knowledge, and go the extra mile in satisfying customers’ needs. Hence, recruitment programmes are very important to a business since quality staff will produce quality output and ultimately, the business will reap the benefits thereof.

2.7.2 Customer satisfaction

The global trend towards service quality began in the 1980’s when marketers established that quality products were not sufficient to maintain an advantage over competitors, so customer satisfaction was identified as the crucial element in any product or service offering (Van der Wal, Pampallis and Bond 2002: 323). Customer satisfaction comprises the customer’s views and feelings on whether a certain product has met or exceeded the customer’s expectations. Hence, the retail business must direct its efforts towards satisfying customers rather than on selling products (Brink and Berndt 2008: 58).

The quality of the product, as well the interaction between retail personnel and customers, is a major factor in establishing customer satisfaction. Accordingly, the two key components of customer satisfaction are customer perceptions and customer expectations, often referred to as the “first law of customer service” (Machado and Diggines 2012: 148). Customer satisfaction then may be defined as the attitude resulting from what a customer thinks *should* happen (expectations) in relation to what a customer thinks *did* happen (performance perceptions) (Fogli 2006, as cited in Machado and Diggines 2012: 148). Hence, it is crucial for businesses to firstly identify what constitutes customer satisfaction in relation to their business, which is measured in terms of the context of perceived quality, and secondly to identify the factors that their customers consider most important for a high-quality service, that is the expected service (De Jager and Van Zyl 2013: 753).

Whilst the impact of service quality has been researched in several industries, such as retail, telecommunications, banking and healthcare, all studies have concluded that there is a definite link between service quality, consumer satisfaction, competitive advantage and profitability (Govender and Naidu 2011: 108). Cant, Brink and Brijball (2006: 6) have noted that for businesses to thrive in the present day economic climate, they must deliver long-term customer value and this can only be attained through customer satisfaction, adopting the marketing concept and focusing on their customers’ needs. This principle is encapsulated in Figure 2.3.

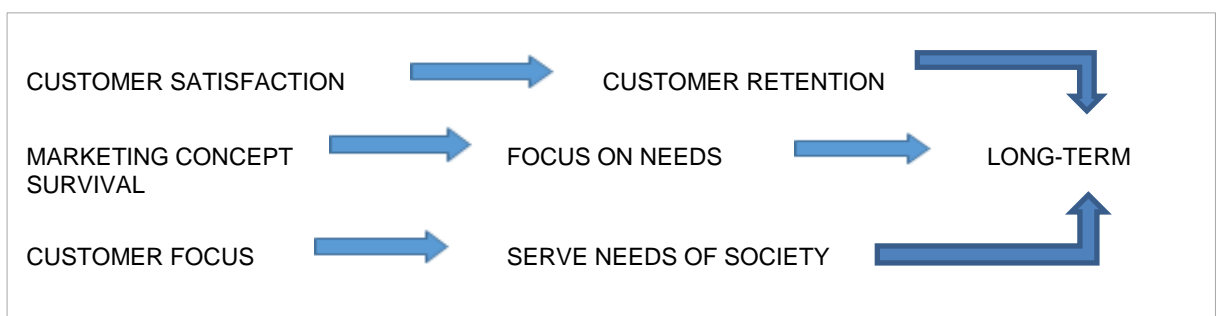


Figure 2.3: Principles underlying customer satisfaction (Source: Cant, Brink and Brijball 2006:6)

Presently, businesses have acknowledged the benefits associated with customer loyalty and customer retention because the costs of recruiting new customers far exceeds the costs incurred in keeping existing customers happy. Hence, customer satisfaction extends far beyond a single transaction towards establishing long-lasting lucrative relationships with customers.

Service quality is critical to customer satisfaction because if customers are happy due to superior quality service, existing customers will be retained and the customer segment will increase. Hence, retail businesses have to conform to customer expectations on a constant basis (Arunkumar, Manjunath and Shivashankar 2012: 168). Furthermore, customer satisfaction leads to continuous repurchase behaviour by consumers. Repurchase intention refers to the individual consumer's decision to repeatedly purchase the product or service from the same company resulting in an increase in profit margins and ultimate rapid growth of the business (Chinomona and Dubihlela 2014:24).

Machado and Diggines (2012: 150) identify some benefits of customer satisfaction:

- Customer loyalty: Satisfied customers will not easily move to a competitor;
- Price advantage over competitors: Satisfied customers are willing to pay more for the satisfaction of receiving a superior quality of service;
- Positive word of mouth: Communication from friends and family are regarded as being more trustworthy and enhances reputation; and
- Increased sales and profitability: Satisfied customers generally shop more often.

Customer satisfaction is also important because dissatisfied customers will quickly switch brands if their basic needs are not fulfilled (Chinomona and Dubihlela 2014:33). Good service quality will lead to customer loyalty as it enhances the customer's trust and satisfaction towards the business (Yuen and Chan 2010: 226). This point is important insofar as consumer protection is concerned because consumers will revisit a store if they trust the retailer. Often, retailers promote services and products that mislead consumers into transactions, which they would not have concluded if they presented with all of the facts relating to the transaction.

Whereas previously the common law was unclear on the nature and consequences of unfair, deceptive or dishonest business practices, the CPA explicitly lays down important criteria for such transactions. Consequently, a consumer has greater recourse against the retailer if the consumer is dissatisfied and believes that he/she has been taken advantage of (Van Eeden 2013:28).

2.7.3 Service quality

The terms “satisfaction” and “quality” are often used interchangeably. However, Zeithaml, Bitner and Gremler (2006: 108) define the term service quality as “a focused evaluation that reflects the customer’s perception of the dimensions of service quality”. In other words, service quality is determined by whether the retailer delivers an excellent or superior service in relation to the requirements of reliability, assurance, responsiveness, empathy and tangibles.

Van der Wal, Pampallis and Bond (2002: 325) maintain that services are intangible, perishable, produced and consumed simultaneously, and heterogeneous. Therefore, it is not only a huge task for businesses to deliver service quality consistently, but also somewhat difficult for customers to assess service quality. Quality represents the extent to which a product or service meets or exceeds the customer’s expectations. Service quality then, is the difference between what a customer expects from that service provider and what is actually delivered.

The delivery of superior service quality has long been identified as a prerequisite for business success and even survival (Parasuraman, Zeithaml and Berry 1988: 13; Mansoor and Jalal 2011: 104). Although the South African business sector has grown rapidly since democracy, service excellence and customer satisfaction has stagnated in recent years (Beneke, Hayworth, Hobson and Mia 2012: 27). Whilst the South African supermarket industry is dominated by the so-called “Big Five” namely, Pick n Pay, Shoprite, Checkers, Spar and Woolworths, all of them virtually offer the same and/or similar products. To remain lucrative, each one must develop their own strategies that differentiate their products and services as superior to the other. According to Boshoff and Gray (2004: 27), this is achieved through excellent

customer service and high service quality, thereby ensuring customer loyalty and customer retention.

Parasuraman, Zeithaml and Berry (1988:13) maintain that, although the quality of goods can be measured objectively (for example durability and number of defects), service quality is an abstract element. In other words, consumers' perceptions of their shopping experiences differ according to their own needs, values and expectations. Hence, Parasuraman *et al*, whose pioneering research on service quality has been seminal, developed the multi-item scale for measuring service quality, called "SERVQUAL". The authors maintain that the construct of quality actually involves "perceived quality" which is the consumer's judgment of the provider's overall excellence and superiority (Parasuraman, Zeithaml and Berry 1988: 15).

According to Terblanche (2013: 277), retail businesses must start by employing persons who can 'do the job'. In most instances, it is the frontline employees who are in constant contact with customers, so their jobs are crucial for service quality. Unfortunately, it is these employees that are unskilled and earning basic salaries. Their first encounter with customers sets the tone for the rest of the business and the loyalty of the customer. Hence, employees must embrace the culture of having a passion to serve the customer efficiently and attend to their needs.

According to Berndt (2009: 1), service quality is crucial for retail businesses, particularly in developing countries like South Africa, because service quality impacts on customer satisfaction and customer loyalty, creates a competitive advantage, enhances customer relationship marketing, and increases profitability.

2.7.4 Dimensions of service quality

Academically, the SERVQUAL model/instrument has been accepted as the most appropriate method and instrument available to measure service quality (Van der Wal, Pampallis and Bond 2002: 325). The final dimensions of service quality that arose from the SERVQUAL approach are reliability, assurance, tangibles, empathy and responsiveness. According to Parasuraman *et al* (1988: 30), SERVQUAL has

good reliability and validity enabling retailers to enhance their understanding of consumer expectations and perceptions.

- **Reliability**

This involves showing a sincere interest in solving consumer complaints and problems. More importantly, it entails a commitment by retail businesses that they will not only perform services on time but also, perform a service right the first time. It also entails the ability to execute the promised service accurately because loyalty can only be gained through consistent and reliable service delivery (Brink and Berndt 2008: 66)

- **Assurance**

This dimension covers the duties of employees within the business such as displaying courtesy and politeness to customers on a regular basis, being equipped with sufficient knowledge to answer questions and instilling in customers confidence so they will feel safe in their purchasing transactions (East, Wright and Vanhuele 2013: 179).

- **Tangibles**

This comprises physical facilities that are neat and appealing, employees who are neat in appearance, modern looking equipment and a visually appealing store layout. Professional staff and communication materials such as pamphlets and brochures are important in this regard as it provides a total educational experience (Govender and Naidu 2011: 110).

- **Empathy**

This dimension is customer-orientated and involves employees giving customers personal attention, having the customer's best interests at heart, understanding the specific needs of their customers and accommodating to customers (East, Wright and Vanhuele 2013: 179).

- **Responsiveness**

This would entail meeting the expectations of customers, never too busy to respond to customer requests and always willing to assist the customer (East, Wright and Vanhuele 2013: 179).

As mentioned previously, customer service entails a variety of actions associated with the relationship between the customer and the retailer. The manner in which the customer is accepted, the nature of the information and advice conveyed to the customer, the procedures that were followed before and after the transaction was entered into, the explanation of legal obligations associated with the transaction, the handling of after-sale customer queries, payments and defaults, and several other issues, are inseparable and form part of the same transaction with the customer.

These and other issues have now been incorporated in the provisions of the CPA, implying that it is mandatory on the part of the retailer to ensure that these services have been met in accordance with the provisions of the law. Consumers now have the right to demand quality goods (Section 55), quality services (Section 54) as well as fair and equal treatment when negotiating the contract (Section 40). In addition, they will have a legal right of recourse if the retailer fails to comply. It is important for retailers to not only invest in educating their employees on consumer legislation but also display transparency in respect of customer service policies.

There is a fine line between the principles of retailing and the provisions of the CPA. Accordingly, it may be implied that compliance with the provisions of the CPA will result in the provision of excellent service quality, ultimately achieving customer satisfaction, which is necessary for the continued existence of the business.

2.7.5 Expectations and perceptions of service delivery

To manage a retail business effectively, managers must regularly establish whether their customers are satisfied with the standard of service provided. Terblanche (2013: 271) maintains that retailers often conduct customer surveys to determine the levels of customer satisfaction within a business. Generally, customers develop certain expectations of individual retailers through information from other

consumers, their personal experiences, advertising and marketing strategies of the retailer and their own needs and wants. Accordingly, they will evaluate the service provided by comparing their actual experience with their expectation of that retailer (Terblanche 2013: 272). This implies that if the level of service delivery does not meet the expectations of the customer, he or she will generally be unhappy and an unhappy customer is not likely to revisit that retail store.

Schiffman and Kanuk (2010: 483, as cited in Mpinganjira and Dos Santos 2013: 24) maintain that post-purchase consumption enables consumers to compare their initial product expectations with their actual experience. For example, a consumer who purchases a new computer which is supposed to give excellent service, will evaluate the performance of the computer. If the computer meets the consumer's expectations, these expectations are confirmed or may be exceeded. This results in consumer satisfaction, an emotion that affects a consumer's decisions. On the other hand, according to the authors, a product that does not meet consumers' expectations may result in consumer dissatisfaction. Therefore, a satisfied consumer will not only return to a store that has provided excellent service but will also purchase the same brand of product in the future thereby becoming a "brand-loyal customer".

According to Harris (2013: 16), a perception is the way we see something based on our experience whilst expectations are our personal vision of the result that will come from the experience. This perception may be positive or negative. Therefore, customer perceptions are influenced by the type of service received. However, services are regarded as being tangible and therefore difficult to assess. So customers will assess the manner in which the employees deliver the service and not just the outcome of the service. Timm (2011: 150) maintains that the perception of a value is highly subjective. However, consumers will know the value of the service when they experience it and can assess if the experience benefitted them or not.

The five customer service dimensions or characteristics that have been formulated by Parasuraman, Zeithaml and Berry (1988: 23) and have been widely accepted are reliability, assurance, tangibility, empathy and responsiveness. They maintain that

this multiple-item scale can be used by retailers to better understand the service expectations and perceptions of consumers thereby improving service quality. These characteristics have already been briefly explained in 2.7.4 above.

Machado and Diggines (2012: 141) maintain that whilst customer expectations can become complex, it is important for retailers to exceed customer expectations in order to achieve customer satisfaction. This can be attained by knowing your customers, enquiring from customers on what their expectations are, informing customers of the level of service offered, living up to the created expectation and consistent delivery of excellent service.

Bick, Brown and Abratt (2004: 300) undertook a study to examine the perceptions and expectations of South African banking customers. Their findings showed that there was a major difference between the customer perceptions of the value they were receiving from their banks and their expectations of that value. Customers were generally not satisfied with the service, products and level of customer intimacy delivered by their banks. Accordingly, to achieve operational excellence, retail banks had to become more customer focused through the formulation of a customer intimate strategy such as customer relationship management.

The SERVQUAL Gaps Model was developed to improve retail customer service quality by measuring the “gap” between the expectations and the perceptions of service quality (Parasuraman, Zeithaml and Berry: 1985: 44). In terms of this model, a service gap will result when the customer’s perceptions of service delivery by a retailer falls short of the customer’s expectations. The service gap may entail the knowledge gap, the standards gap, the delivery gap or the communication gap. This model sets out the steps that can be taken by retailers to close the respective gaps (Levy, Weitz and Grewal, 2014: 525).

The concepts of expectations and perceptions are inherent in the principle of service quality. Accordingly, the SERVQUAL instrument, which is a quantitative diagnostic instrument, will assist managers in identifying shortfalls in the quality of service delivered by the retail store (Goworek and McGoldrick 2015: 252). This process is termed the “gap analysis”.

It must always be borne in mind that any failure to comply with the rights of consumers will negatively affect the levels of service quality thereby creating a “gap” in the service delivery (perceptions) and the compliance (expectations), ultimately damaging the business reputation. With the advent of the CPA, the expectations of customers are now even higher and consumers have become more demanding of retailers. Accordingly, it remains in the best interests of business to comply with all aspects of the law to enhance consumer perceptions and maintain customer satisfaction and loyalty.

2.7.6 Customer relationship management

Customer relationship management (CRM) is a modern approach to customer satisfaction and is extremely important to any retail business. Previously, retailers used mass-media advertising and sales promotions to attract customers but this approach treated all customers the same. Today however, retailers are focused on delivering personalized services to their best customers in order to create customer loyalty. Accordingly, customer relationship management is defined as “a business philosophy and set of strategies, programs, and systems that focuses on identifying and building loyalty with a retailer’s most valued customers” (Levy, Weitz and Grewal 2014: 292).

Retailers are now focusing on relationship marketing in terms whereof the sales transaction is viewed as the commencement of a symbiotic relationship between the buyer and the seller (Cant, Brink and Brijball 2006: 259). Understanding the customers’ needs and wants is of paramount importance because if the goods and services satisfy the customers’ needs, the business will maximize its profitability. To achieve this end is no easy task therefore, before CRM is implemented, the business must transform itself to focus on the customer. This process involves teamwork, support at executive level, excellent customer service and technology to gain customer knowledge and insight (Cant, Brink and Brijball 2006: 266).

Roberts-Lombard (2011: 3487) maintains that businesses must implement CRM into their strategic operations to thrive in an ever-competitive global industry. Organisations such as banks and insurance companies are now realizing the

benefits of CRM and its potential to acquire new customers, retain old customers, and enhance their lifetime value. Accordingly, it is no longer a means to achieving a competitive advantage but has become a necessity for business survival (Roberts-Lombard 2012: 3804).

It is further maintained by Roberts-Lombard (2012: 3805) that the rationale behind CRM is to improve business performance by enhancing customer satisfaction and loyalty through two key components, that is, trust and commitment. Trust entails the willingness to rely on a contracting partner in whom confidence and security is placed. The parties presume that each one will act in the best interests of the other, and that each party will be credible and possess the required skill and expertise. Often, most consumers do not fully understand what they are buying but they will buy it based on trust.

A study undertaken amongst short-term insurers, Roberts-Lombard (2012: 3815) established that the objectives of CRM can only be attained if the entire organisation supports its implementation, that is, from top level management through to the sales personnel. In order to secure and retain loyal customers, it is essential for a business to conduct itself in a trustworthy manner, communicate efficiently with consumers, resolve conflicts timeously and effectively but do whatever is necessary to avoid customer conflicts (Roberts-Lombard, 2011: 3488).

Personal relationships with customers are strengthened through interaction and by making them “feel special”. The shopping experience of the customer becomes critical and retailers must pay careful attention to customer opinions and suggestions in order to make the shopping experience a memorable one (Naicker and Brijlal 2012: 6478). With the recent increase in food prices and other goods, consumers are shopping more carefully and deliberately. They are particular about what they buy, where they buy and how they pay (Grewal 2009: 2). Consumers are now more informed and therefore, retailers are required to be more vigilant and performance driven to retain their status in the global market.

Today, CRM is achieved through initiatives such as loyalty or frequent shopper programmes which offer customer rewards based on the amount of goods they

purchase (Levy, Weitz and Grewal 2014: 292). Large retail stores offer various incentives such as Pick and Pay's smart shopper card, Woolworths rewards, Clicks clubcard, Voyager air miles, Discovery Vitality points and so on. All these programmes offer cash-back vouchers to encourage and entice customers to revisit the retailer in the future thereby establishing customer retention and loyalty.

Retail businesses are constantly affected by different economic and environmental changes. Factors such as global economic crisis, high unemployment levels, increasing inflation, sudden drops in property and share markets and decreasing purchasing power will affect all consumers, particularly those in developing countries (Mansoor and Jalal 2011: 111). For a business to prosper, it must be able to predict consumer behaviour thereby anticipating consumer needs and expectations. However, even fulfilling that need or service is not sufficient. Businesses must also "create an emotional connection with the consumer that evokes a positive feeling and keeps him coming back for more" (Mansoor and Jalal 2011: 112).

2.8 Corporate social responsibility (CSR)

Corporate social responsibility (CSR) involves organisations and corporate entities voluntarily engaging in business practices that meet or exceed the legal and ethical expectations, not only of its shareholders but also its employees, customers, and society in general (Levy, Weitz and Grewal 2014: 12). In accordance with the UN Sustainable Development Goals (2015), eradicating poverty in all its forms is essential for equitable and sustainable development. Corporate participation in this development process is necessary (Skinner and Mersham 2008: 239). Accordingly, multinational corporations and business organisations have been identified as the key role players in solving social, economic and environmental problems (Ramlall 2012: 271).

In South Africa, the King III Report and the new Companies Act (2008), signified a milestone in the development of corporate governance by requiring JSE listed companies to report on how their operations have impacted, positively and negatively, on the economic life of the community and the environment (PWC 2016).

However, despite the King III Report, there is no express provision dealing with corporate social responsibility in the Companies Act but for the reference to the creation of social and ethics committees (Section 72(4)(a)). This implies then that businesses cannot be legally compelled to act in a socially responsible manner (Kloppers 2013: 166). McCorquodale (2009: 385) argues that the regulation of company activities without law and legal compliance mechanisms can hardly be effective in bringing about social, economic or public behavioural change.

Companies are being pressurised to implement CSR programmes to ensure accountability for the impact of their business operations. To demonstrate such responsible corporate citizenship, companies are required to adopt an ethical approach to CSR. This suggests that corporate ethical behaviour extends beyond the mandatory compliance with the law to desirable philanthropy (Ackers 2015: 12). Accordingly, directors and managers are required to take cognisance of ethical, moral and social values when implementing CSR policies. Many businesses have already embraced CSR and have accepted their duties to contribute towards the upliftment of society, as envisaged by the Constitution.

CSR activities are increasingly being seen as the “entry ticket to doing business in the 21st century” (Beckmann 2007: 28). Skinner and Mersham (2008: 241) however warn that in South Africa, the contributions of many companies with regard to corporate social responsibility are cosmetic and self-serving. They allege that many corporate social programs focus on publicity and reputational gain for the business rather than focusing on social benefits and social change. Studies indicate that there is still a significant gap between the practices of these companies and their policies of accountability and fairness. Accordingly, many businesses present only an image of being more socially responsible whilst making very few substantive changes (Neil 2009, as cited in Hinson and Ndhlovu 2011: 333).

John Ruggie (2008: 5) proposes that corporations have a responsibility to respect human rights in their day-to-day operations, whether or not this is required by law, because it is the most basic expectation that society has of business. The author also states that the principle of corporate responsibility brings into question the role of ethics in contemporary profit-based, shareholder-owned business enterprises but

claims that “the corporate responsibility to respect human rights is an ethical or moral responsibility and should be recognized as such by corporations themselves”.

Social responsibility may be linked to several consumer-related issues such as fair marketing, sustainable consumption, access to essential services, and education and awareness. Hence, businesses must ensure that they do not engage in deceptive or misleading practices and that they provide complete and understandable information to consumers (Kloppers, 2013:179). This is extremely important for consumer protection because in terms of the CPA, the negotiations and agreement must be honest and fair in every respect.

The primary purpose of the CPA is to promote and advance the social and economic welfare of consumers. In so doing, consumers must be educated about their rights and also what they should expect of socially responsible businesses. Kloppers (2013:181) claims that the CPA has the potential to drive the principle of corporate social responsibility in that it advocates consumer awareness as well as responsible and informed consumer choice. Ramlall (2012:285) advocates for businesses to take on the socio-economic challenges of the communities in which they operate and to implement their CSR strategies sincerely. Without such a commitment, South Africa will face a long road to achieving the socio-economic changes envisaged by the Constitution.

2.9 Legal and ethical issues in retailing

Whilst it is crucial for retailers to take cognisance of all the laws and regulations that pertain to each of their respective industries, they must also be wary of societal morals and business ethics in their day-to-day operations. The dictates of society also expect, at least, the minimum level of morality and ethics not only from individuals but from organisations and businesses as well (Vijayalakshmi and Madegowda 2014: 434). It may be suggested that although the concepts of law and ethics are different in context to each other, they can play an integrated role in business practice.

Law is defined as “a set of rules governing the conduct of natural and juristic persons, which is recognised as binding by the State, and enforced when necessary” (Fouché 2015: 4). On the other hand, ethics may be described as “a branch of philosophy that deals not only with the values, standards and norms expected by the society, but also with the behaviour of each individual to assess what is good, what is right, what is bad and what is wrong” (Vijayalakshmi and Madegowda 2014: 435). It has become important for businesses to take account of both legal and ethical duties governing their respective industries. Varley and Rafiq (2004: 304) state that although businesses are obliged to comply with the law, there is also mounting pressure from society at large for retailers to conduct themselves in a manner that benefits the overall society, above and beyond legal obligations.

According to Lloyd, Mey and Ramalingum (2014: 570), business ethics is embodied in the values and standards that guide the business. The provisions of the CPA, although mandatory in terms of the law, really does appeal to the ethical obligations of business. For example, there are hundreds of consumers who are not aware of the CPA and businesses must engage with their ethical principles to ensure that consumers are not exploited or treated unfairly because of their ignorance. However, if these practices are not monitored in an effective manner by the relevant institutions or authorities, they will continue to manifest in society. Building a more just society involves a transformation of the current unequal social and economic status quo, with a view to achieving a society where human dignity is guaranteed and every person’s well-being is protected (Coomans 2005: 169).

In recent years, in South Africa, the issue of business ethics has come under the spotlight with various companies being investigated for price fixing, corruption, bribery, exploitation, collusion and fraud. These kinds of unethical scandals can have a huge impact on the financial stability of a business (Lloyd, Mey and Ramalingum 2014: 569). However, businesses that adhere to ethical behaviour and comply with codes of business ethics actually perform better financially compared to businesses that do not follow ethical principles (Joyner and Payne 2002: 297).

In South Africa, small businesses are instrumental in providing for job creation and assisting in the alleviation of poverty. However, the change in the global business

landscape has placed an undue burden on these businesses resulting in them becoming focused on survival in a highly competitive environment rather than operating ethically (Van Niekerk 2013: 79). Nevertheless, businesses have an ethical responsibility to produce and distribute goods and services with due regard to high quality, reasonable prices, proper weights and measures, safe products, and so on (Vijayalakshmi and Madegowda 2014: 437).

Terblanche (2013: 38) maintains that retailers face various ethical dilemmas such as advertising products at a special price, when in actual fact it is not; non-disclosure of material information to the buyer that may affect the sale; pressurizing a customer to buy an item when you know that this is not the best purchase for his needs; and selling goods on credit at higher interest rates especially to low-income customers who do not understand the concept. These practices are still prevalent even after implementation of the CPA.

Tim Melville-Ross (2013), the president of the Institute of Business Ethics in the United Kingdom, argues that “companies can’t just say that they’re ethical, they need to prove that they have embedded ethical values” in order to earn the trust of the public. Today’s breed of consumers demand more from business than in the past because they are environmentally, socially and ethically aware (Varley and Rafiq 2004: 316). Although the degree to which each retailer adopts these legal and ethical initiatives will differ depending on their corporate structure, the legal, ethical and social commitments of business cannot be overlooked in retail practice.

2.10 Conclusion

This chapter provided a brief overview of the retailing industry and the most important elements that comprise retail operations. The nature of the supply chain and the importance of the retailer in bringing value to the consumer was explained. More importantly, the duties of the retailer was discussed in relation to specific provisions of the CPA. The history of retailing in South Africa was also discussed in that it has a particular significance to this study of consumer protection and respect for consumer rights. The principles of retailing, that is customer service, service quality and expectations and perceptions of service quality were also analysed, with

particular reference to its relevance in the compliance of the provisions of the CPA. The chapter was concluded with a brief analysis of the concepts of corporate social responsibility and ethical compliance, and its relevance in ensuring sustainability of the corporate environment. The next chapter deals with a detailed analysis of the provisions of the CPA that are relevant to retail businesses.

CHAPTER 3

CONSUMER LAW AND THE PROTECTION OF RIGHTS

3.1 Introduction

Historically, consumers all around the world have had little or no negotiating powers in business-to-consumer transactions and therefore suffered many atrocities at the hands of prudent, unscrupulous salesmen and businessmen. Governments did very little to protect or assist unsuspecting and vulnerable consumers from abusive business practices. There was no clear-cut legislation to regulate business practices anywhere in the world, neither was there any form of consumer law that identified the rights of consumers.

The South African retail landscape has for a long time been plagued by various forms of consumer abuse, mainly because discrimination and inequality were inherent in the apartheid system of governance. So, the gross maltreatment and exploitation of consumers went undetected and unpunished for decades. Although there were some consumer protection laws in South Africa, these laws applied to specific industries only (Woker 2010: 218). Nevertheless, there was very little recourse available to a consumer who wished to challenge the retailer.

Prior to the CPA, the marketplace was dominated by businesses and consumers usually succumbed to the unreasonable demands of business. No doubt over the years, the status quo of the business-to-consumer relationship worsened as the result of various political, economic and social consequences of apartheid. It is within this context that the CPA aims to ensure the advancement of the social and economic well-being of South African consumers (Section 3). Accordingly, this chapter examines the implications of the provisions of the CPA, insofar as they relate to consumers in the retail industry and service delivery. It is however important to have some understanding of the history and development of consumer law, with particular reference to South Africa.

3.2 The evolution of consumer protection

It was only in the beginning of the 20th century that the consumer movement began to materialize with the establishment of consumer advocacy groups. There was a clear need, at that time, to restore some balance in the marketplace between the strong players (business enterprises) and the weaker players (ordinary consumers).

3.2.1 Recognition of consumer rights and consumer protection laws

Over the last 50 years, the notion of consumer rights became a fundamental component of business theory and industry practices (Larsen and Lawson 2013: 515). Consumer protection laws play a pivotal role in the social and economic development of all states and are particularly important in developing countries like India, Nigeria and South Africa. Darley and Johnson (1993: 37) argue that whilst consumer protection is heralded in countries like the USA and the UK, many African and Asian countries still lag behind in terms of consumer protection.

Consumer protection is essential in establishing a fair and transparent marketplace where consumers can make better, more informed choices. Consumer exploitation and the violation of basic rights are inherent in countries that experience social and political turmoil like South Africa. Consumer laws then become necessary to protect populations that display high levels of illiteracy, unemployment and poverty. Such laws encourage unhappy consumers to challenge dishonest and abusive practices, thereby ensuring that businesses become accountable when they take advantage of vulnerable and unsuspecting consumers (Western Cape Government, 2004:52).

The first voice of consumer advocacy was heard in the early 1890's, yet many of the challenges faced by consumers then are still experienced by consumers now. Consumer rights are an essential component of peoples' day-to-day lives and helps to ensure fair and honest trade (Sewanand 2012: 1). The USA was at the forefront of consumer advocacy but it was only truly recognised in the 1960's, when President Kennedy acknowledged that consumers are a constituency with rights (Mierzwinski 2010: 580). President Kennedy promoted consumerism vigorously and not only set the platform for the recognition of consumer rights in general but more importantly, recognized the need for specific laws to protect consumers who have been treated

unfairly by businesses. He introduced the acclaimed “Consumers’ Bill of Rights” which incorporated four basic rights, that is, the right to choose, the right to be informed, the right to be heard, and the right to safety.

The field of consumer law has progressed substantially in the 20th century with several countries having formulated laws to balance the power of suppliers and manufacturers over individual consumers (Kingisepp 2012: 49). Nevertheless, consumer exploitation continues to erode the marketplace. Twigg-Flesner and Micklitz (2010: 204) maintain that the real challenge lies in the implementation process because globally there are poor mechanisms to ensure that these laws have the desired practical impact.

Research shows that manufacturers, retailers and marketers alike, are primarily profit-orientated and therefore more likely to overlook basic consumer rights. Even where formal business strategies incorporate consumer protection, these strategies fail to materialize into any positive action in the marketplace. Hence, protecting consumer rights should form part of the corporate social duties of businesses because businesses have both economic and social roles to satisfy (Alsmadi and Alnawas 2012: 159).

3.2.2 International consumer law

The UN Guidelines for Consumer Protection (UNGCP) was adopted in 1985. Although it was the only major contribution at an international level, it has had a profound impact on the transformation of legal systems all over the world (Twigg-Flesner and Micklitz 2010: 201). This international policy sets out various consumer rights and obligations of member states in relation thereto (UN Economic and Social Council 1999).

The UN guidelines provide that consumer policies must take cognisance of the economic, social and environmental circumstances and the population needs of individual countries. The guidelines also recognises the need for high levels of ethical conduct from manufacturers and retailers of goods and the need to encourage governments to reduce abusive business practices that adversely affect

consumers (para I). These guidelines have since established a foundation for the introduction of consumer laws throughout the world.

The UNGCP have been summarized by the global non-profit organization Consumers International (2012: 7) into eight basic rights. These are the right to satisfaction of basic needs; the right to safety; the right to be informed; the right to choose; the right to be heard; the right to redress; the right to consumer education; and the right to a healthy environment. These rights do not warrant any further discussion since the CPA forms the basis of this study.

International documents such as the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR) do not specifically provide for individual consumer rights but their provisions may be interpreted to make provision for consumer protection. These policies have formed the basis for the recognition of various basic human needs as constitutional rights (Consumers International 2012:5).

A culture of consumer activism is necessary in any state. Legislation and regulation cannot replace the voice and action of individual consumers or consumer advocacy groups (Western Cape Government, 2004:49). Consumers International is the only independent global advocacy group for consumers. Their vision is to ensure that people all over the world “can make informed choices on safe and sustainable goods and services and in which individual and collective consumer rights are secure and respected” (Consumers International 2012: 3).

In the present day, the extensive ambit of industry regulation and consumer laws contribute towards ensuring the safety of medicines, cars, electrical appliances, and foods, amongst several other products and commodities, as well as the safety of the environment and also encourages fair competition in the marketplace. Consumer advocates today are striving to achieve the same goals set out by the 19th century consumer pioneers, that is, quality, reliability, safety and fair business practices (Mierwinski 2010: 581).

3.2.3 Consumer rights as human rights

The question often arises as to whether consumer rights may be regarded as human rights. Consumers International (2011: 9) have stressed upon the view that many consumer rights have their origin in internationally-recognized fundamental human rights and others have shared the same sentiment (Kingisepp 2012: 49; Deutch 1994: 537 and Credit Information Ombud 2008: 19). Being a consumer is a basic human condition because consumers benefit from the protection of human rights, for example, the right to health and the right to life (Kingisepp 2012: 50). In a society that is so consumer-driven, the protection of consumers is fundamental to achieving respect for human dignity whether by small enterprises or large multinational corporations (Deutch 1994: 537).

Human dignity forms the basis of many human rights and is thus contained in various international human rights policies, as mentioned above. Although consumer rights are not explicitly stated in these international documents, consumer protection may be implemented as a means of achieving the goals envisaged in these documents. For example, “adequate standard of living” includes the provision of quality foods as well as hygienic methods of production and distribution (Deutch 1994: 563). Fulfilment of the right to human dignity may be achieved through the implementation of effective consumer protection laws dealing with equality, the safety and quality of goods, adequate product information and improvements in environmental health (Eze 2011: 191).

Most countries have not included consumer protection *per se* as part of the fundamental rights in their respective constitutions. Nevertheless, several constitutional provisions may be interpreted in such a manner so as to apply to the protection of individual consumer rights. For example, Section 9(1) of the South African Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law. By implication, the term “everyone” includes the category of consumers as well. The Constitution also recognises that everyone has inherent dignity and the right to have their dignity respected (Section 10). Accordingly, consumers must be treated in a manner that does not impair their dignity. For example, a retailer may not unfairly prevent specific persons from

accessing its facilities or services or fail to provide goods to certain communities (Melville 2011: 35).

Countries that have specifically incorporated consumer protection in their Constitutions include Spain, Portugal, Poland, Brazil and Switzerland. These Constitutions oblige the state authorities to regulate economic activity so as to protect the welfare and interests of consumers. No doubt, the specific inclusion of consumer rights in these Constitutions has strengthened the protection of consumers in these specific countries (Eze 2011: 195) but more importantly, the constitutional recognition of basic consumer rights as human rights is a positive step towards the fulfilment of social justice (Deutch 1994: 574). In South African, the advent of the CPA has ensured that access to social justice for consumers has become a pleasant reality.

3.3 The development of consumer protection in South Africa

South Africa has come a long way since the freeing of Nelson Mandela from incarceration and the birth of its new democratic order. Sadly though, the country will always be associated with and remembered for its gloomy days of apartheid. Nevertheless, its history is relevant to the understanding of the need for consumer legislation and consumer protection.

3.3.1 The history of apartheid and its impact on equality and the fair treatment of consumers

Today, public speeches, biographies, short stories and movies depict the manner in which the colonial government systematically and wilfully inflicted severe discrimination and suffering on the majority of the South African population. These atrocities were so severe that not only did it alienate the country from the rest of the world but it resulted in the UN branding such actions as “crimes against humanity”. Liebenberg (2010: 2) describes apartheid as the disenfranchisement of the Black population in South Africa. It embraced white dominance and privilege in all spheres of life, that is, political, social, economic and cultural. Accordingly, Black people were deprived of access to basic needs, social services and land; and suffered immense

discrimination. Segregation along the lines of race resulted in unemployment, poverty, poor education and homelessness. These social conditions continue to plague the development strategies of our country, decades after the end of apartheid.

Pre-democracy, Black South Africans were denied the enjoyment of fundamental rights and respect for human dignity. Hence, the principles of equality and non-discrimination are firmly entrenched in South Africa's new constitutional order (Reddy 2006: 783). Although apartheid ended the inequality and discrimination that pervaded our society for so long, the majority of people still remain affected and burdened by poverty, unemployment, homelessness and illiteracy. It is these vulnerable consumers that are most likely to be exposed to the abusive powers of businesses in the marketplace.

The unfavourable socio-economic circumstances of consumers provided businesses with many opportunities to treat certain groups of customers differently but unfairly. Reddy (2006: 783) maintains that within the retail sector there were striking differences in the service quality offered to different groups of customers, particularly in the provision of inferior quality products at high prices, sub-standard shopping facilities and a general lack of empathy and concern for poor consumers. The service industry was no different because banks required customers to satisfy certain credit assessment criteria such as an existing bank account or proof of movable or immovable assets. Unfortunately, the majority of borrowers were from disadvantaged communities and were unable to meet these criteria. Accordingly, they were denied access to financial opportunities and branded as "high risk" (Reddy 2002: 674).

The reality of most consumers is that they are extremely vulnerable. Poor literacy levels, lack of formal education, living in remote areas and low salaries contribute to their susceptibility to abuse and exploitation in various aspects of their lives. Language barriers and the inability to read and comprehend meant that most consumers could not access certain resources, did not fully understand sales transactions or what was expected of them as contracting parties (Du Preez 2009: 63). In addition, their socio-economic plight prevented them from seeking redress

against businesses not only because they had no money for legal costs and could not travel long distances to court but mostly because they did not know when they were wronged and how they could get justice.

Due to the injustices of apartheid, the primary goal of government is to “heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights” (Preamble to Constitution). In this regard, several pieces of legislation were passed to empower disadvantaged communities and vulnerable persons such as the Equality Act and the National Credit Act. However, this did not solve the many problems associated with consumer abuse and exploitation. To achieve social justice in an unequal society, consumer awareness and consumer protection is of utmost importance. Hence, the long-awaited CPA was implemented to regulate business practices and promote the rights of consumers.

3.3.2 Consumer abuse and the need for consumer protection legislation

The abuse of consumers in the marketplace is not a modern phenomenon but has existed for many centuries (Du Preez 2009:58). Consumer exploitation is not unique to South Africa. All over the world, customers become victims of unfair business practices and unreasonable contractual terms (Reddy 2012: 586). Standard terms are included in contracts without consultation or negotiation with the customer and usually favour the business (Sharrock 2010: 295). Due to the lack of bargaining power between the parties, customers will often accept these terms without challenging their fairness (Reddy and Rampersad 2012: 7407). However, consumer exploitation is unique in South Africa because racial discrimination perpetuated the abuse of mainly Black consumers and this made South African consumers amongst the most vulnerable in the world.

Consumer activists and commercial law academics have for many years advocated for reform of the South African law relating to the protection of consumers because there was no single statute to deal with consumer issues but different pieces of legislation (Woker 2010: 218). Laws such as the Usury Act (finance charges); the Credit Agreements Act (instalment-sale transactions) and the Consumer Affairs Act

did not afford sufficient protection to consumers. The existing common law principles together with these laws made interpretation and adjudication difficult for the courts. Hence, Mc-Quoid Mason (1989: 243) argued that South African consumers, at the time, were being “short-changed” with regard to their rights. Prior to the advent of the CPA in South Africa, consumers in powerful economies like Australia, USA and the UK enjoyed far more protection compared to the largely disadvantaged and semi-literate consumers in Southern Africa.

The Department of Trade and Industry (DTI), the South African Bureau of Standards and the Departments of Agriculture, Health and Environmental Affairs were responsible for regulating the industry and ensuring compliance with standards and product safety. However, this system did not function effectively because the laws were disjointed and there was a general lack of co-ordination amongst the regulators themselves, thereby resulting in little protection for consumers (Woker 2010: 219). Ineffective laws only served to “increase the vulnerability of already marginalized consumers” (Du Preez 2009: 64).

The preamble to the Constitution proposed improving the quality of life of all citizens which encompasses social and economic justice (Devenish 2005: 26). In fulfilling this objective, the State was compelled to review the effectiveness of the existing legislation. Changes in the political, social and economic structure of the country posed new challenges for ordinary consumers. The National Credit Act was accordingly passed in an attempt to regulate the credit industry and protect vulnerable consumers.

As a result of the overwhelming call and support for legislative reform in the area of consumer protection, the Consumer Protection Bill (2008) was formulated. The Bill identified the key areas of concern as discriminatory and unfair market practices; proliferation of low-quality and unsafe goods; lack of awareness of rights; limited redress; inadequate protection for consumers; and weak enforcement capacity.

Of paramount concern was the fact that the legislative framework did not tackle the crucial challenges of discriminatory and unfair business practices and the lack of consumer awareness. In the circumstances, it was necessary to create and promote

an economic environment that strengthened the consumer culture of rights and responsibilities (Department of Trade and Industry 2008: 82). The CPA was born out of this process of review.

3.4 THE CONSUMER PROTECTION ACT No. 68 OF 2008

The CPA has been described as a “single comprehensive framework” for consumer protection and the first of its kind in South Africa (Havenga 2010: 483), placing South African consumers amongst the most protected consumers in the world. It has been described as a “Bill of Rights” for consumers and codifies the common law in relation to consumer rights (Fouché 2015: 335). The Act has far-reaching consequences for businesses who must now change the way they do business in order to comply. Previously, consumers had little or no recourse against retailers primarily due to a lack of proper regulation of the retailing industry. However, the CPA has now shifted the so-called “power balance” back to the consumer (Strachan 2011: 18).

In keeping with the objectives of this study, the following sections explore the various provisions of the CPA. However, the Act is quite extensive in its application. Therefore only certain sections that apply to consumer protection and service delivery within the retail industry are discussed.

3.4.1 Background and purpose of the Consumer Protection Act

The preamble to the CPA acknowledges the devastating effects that apartheid and discrimination has had on the South African nation and accordingly, the underlying purpose of the Act is to achieve social and economic equality by ensuring a fair, accessible and sustainable marketplace thereby reducing and eliminating any disadvantages associated with the accessing of goods and services by consumers, in particular, vulnerable consumers.

One of the main reasons for the complete overhaul of consumer protection laws in this country was to reduce unscrupulous retailers in industry and eliminate unethical business practices. Some of the CPA’s aims relating to this study are to (Section 3):

- Promote and protect the economic interests of consumers;

- Improve access to information, as well as enhance the quality of such information so that consumers can make informed choices;
- Develop effective means of redress for consumers;
- Provide for consumer education and awareness; and
- Promote consumer activism and empowerment.

3.4.2 Application of the Consumer Protection Act

The CPA regulates goods delivered as well as services rendered by businesses within South Africa. The consumer must be an individual or a juristic person with an annual turnover or asset value of less than R2 million. The Act applies to the relationship between a supplier and consumer before a transaction is concluded (during the promotion of goods and services), to the transaction itself and after the transaction has been concluded (Fouché 2015: 337; Section 5(1) of the Act). Certain transactions are exempted from application of the Act (Section 5(2)) but are not relevant to the objectives of the study and hence, will not be discussed.

In relation to the retail industry, the Act applies to the sale and marketing of goods or services, the agreement for the supply of goods or services, and to the quality of the goods supplied. It is also interesting to note that the CPA not only applies to retailers who sell directly to the consumer but liability is actually spread across the entire supply chain. Therefore, the producer, importer, distributor and retailer are all responsible in relation to the marketing of goods and services and will share liability if the goods are faulty or cause harm to the consumer (De Stadler 2013: 12).

The common law is still a source of South African law. Consumers still have common law remedies such as the option of returning defective goods, requesting repairs to faulty goods or even claiming for damages. However, prior to the CPA, most retailers did not readily entertain consumer complaints and civil claims were not easy to bring before the courts. In fact, in most instances, suppliers and retailers ensured that their liability was excluded in the terms of the agreement so that the consumer was left “empty handed” (De Stadler 2013: 22). Many consumers chose

not to institute civil actions because it was expensive, time-consuming or they were just unaware of their common law rights.

Today, the consumer enjoys protection from both the common law and the CPA. Accordingly, no provision may be interpreted so as to prevent a consumer from exercising any of his common law rights (Section 2(10)). However, where a consumer opts to rely on a specific right in the CPA, then he has to exhaust all procedures set out in the CPA first before approaching the ordinary courts. The National Consumer Tribunal or any other court is authorised to develop the common law so as to enhance the realisation and enjoyment of consumer rights, particularly in relation to vulnerable persons (Section 4).

Of utmost importance is the fact that the CPA materially affects the actual relationships between consumers and businesses, with the underlying purpose of serving the interests of the consumer. Therefore, it not only prohibits certain unfair business practices but also imposes positive obligations on the suppliers and retailers (Melville 2011: 29). In this regard, Section 4(5) of the Act specifically states that, in any dealings with a consumer, no person may engage in any conduct that is intended to defeat or frustrate the purposes of the Act, or engage in conduct that is deemed to be unconscionable (morally unacceptable), deceptive or misleading.

3.5 Fundamental rights of the consumer

The CPA is the first legislation of this kind in South Africa as it not only provides for the rights of consumers but also explains the obligations and responsibilities of retailers and suppliers (Havenga 2010: 483). Chapter 2 of the Act provides for nine fundamental consumer rights. These fundamental consumer rights are illustrated in Figure 3.1. This section will firstly deal with general consumer rights followed by a discussion of specific consumer rights relating to written contracts.

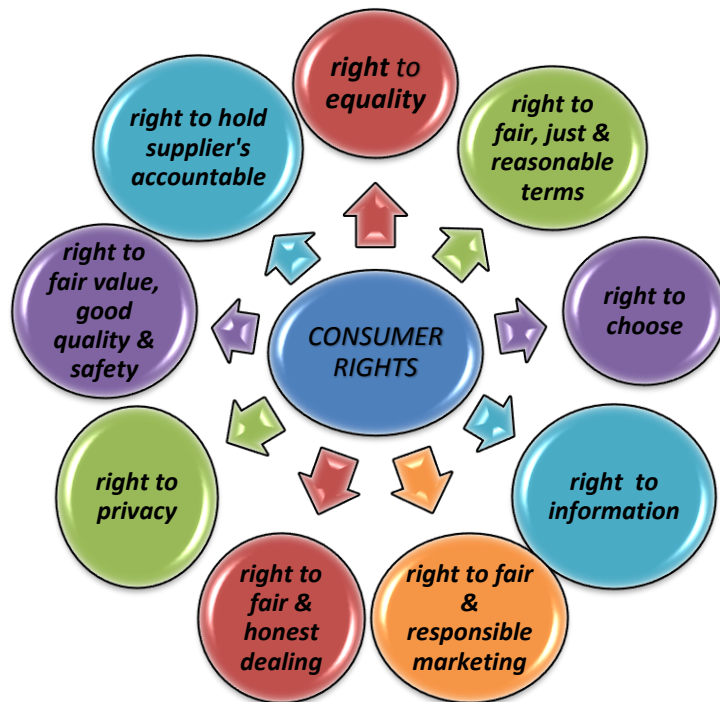


Figure 3.1: Fundamental rights of the Consumer Protection Act, 2008

3.5.1 Discrimination and the right of equality in the marketplace

South Africa has already undergone 20 years of constitutionalism and transformation, attempting to restore the fundamental human values of equality, human dignity and freedom. Pre-democratic South Africa was often described as one of the most unequal societies in the world. Accordingly, the rights to equality and human dignity and the various socio-economic rights have been strategically included in the Bill of Rights (Smith 2014: 610).

The apartheid system resulted in gross discrimination of Black South Africans. The country was governed under a “wicked system of law” which controlled various aspects of peoples’ daily lives, such as where they lived, where they schooled, who they married and what jobs they held (Chaskalson 2003: 590). As a result, these people were stifled in their enjoyment of basic necessities and other facilities. The Group Areas Act, 1950 which forcibly displaced people over the years and the Bantu

Education Act, 1953, which created separate education systems are common examples of discrimination. Mixed marriages across racial lines were prohibited and parks, beaches and transport services were reserved for whites only (Smith 2014: 610). Hence, discrimination also filtered through into the business and retail sector.

Given the vastness of the discrimination and the severity of the suffering, the significance of the right to equality in South African life can never be overemphasized but, at the same time, must also never be undermined in any way. “Like justice, equality delayed is equality denied”; these were the words of Ackermann J in the case of *National Coalition for Gay and Lesbian Equality v Minister of Justice and others* (1999: para 60).

Accordingly, the right to equality in the marketplace deserves special mention in that the abuse of consumers in South Africa arose as a result of the serious inequalities that existed amongst the people of the country. In terms of the right to equality (Section 9) in the Constitution, the term “equality” is defined as “the full and equal enjoyment of all rights and freedoms”. In light of South Africa’s volatile history, the present Parliament has been vigorous in the steps it has taken to eliminate discrimination.

Accordingly, the introduction of the right of equality in the marketplace is not only based on the foundational values of the Constitution, that is, human dignity and equality, but is also formulated in accordance with the objectives of the Equality Act (Melville 2011: 35). In terms of Section 8 of the CPA, a supplier of goods and services must not unfairly discriminate against any person or category of persons on the grounds listed in section 9 of the Constitution or Chapter 2 of the Equality Act. Therefore, a supplier shall not exclude access to, grant exclusive access to or prioritise the supply of goods or services to any person. Also, the supplier cannot supply different quality of goods or charge different prices for goods or services for different groups of people (Section 8(1)).

An exploratory study was undertaken by Reddy (2005: 133) to determine the discriminatory practices by retail chain stores in Clermont in Durban. The study revealed that the goods and services offered to the consumers from this historically

disadvantaged area was of an inferior nature compared to that provided at stores in historically “advantaged” areas and most respondents indicated that they were dissatisfied with this aspect of service quality (Reddy 2005: 135). It has been noted that poverty, low-level employment status and low educational qualifications, which are characteristics prevailing amongst low socio-economic communities, are often wrongly used to categorise people to determine what benefits or services they should be entitled to (Reddy 2005: 136). For example, most of the historically disadvantaged communities in the greater Durban area did not have access to these basic necessities, such as water and electricity.

In some instances, civil actions were instituted by members of these communities against the government, to compel provision of these services. Examples of these cases are that of *Government of the Republic of South Africa v Grootboom* (2001), which dealt with the right of access to housing and the government’s failure to address the needs of those who were homeless and forcefully evicted; and the more recent case of *Mtungwa & others v Ekurhuleni Municipality* (2011), which dealt with the municipality’s obligations to provide basic water and sanitation at the Langaville Informal Settlement.

More recently, five major South African retailers were served with court papers containing allegations of racial discrimination. According to newspaper reports (Magwaza 2015), it was alleged that the retail giants, Shoprite, Spar, Massmart, Woolworths and Pick n Pay, had been excluding black businesses from their supply value chain and often conducted security searches at stores situated in the predominantly black residential areas and this accordingly constitutes unfair racial discrimination.

This kind of conduct is contrary to the law and has no place presently in the country’s democratic transformation. Nevertheless, it has highlighted the plight of consumers with regard to the many unfair business practices that still occur in the marketplace today. It is hoped that the survey, upon which this research study is based, will bring to light some of the experiences of retail customers.

3.5.2 The right to fair and responsible marketing

The CPA has contributed substantially to the marketing sector by regulating the manner in which goods and services are marketed and advertised. It not only provides for rules relating to the general standards of marketing to consumers but also regulates specific marketing practices such as direct marketing, promotional competitions, bait marketing, customer loyalty programmes and so on. This area is quite extensive and therefore only some of these provisions are briefly covered in this section.

In accordance with the CPA, consumers are afforded the right to marketing which is not misleading and which is fair and responsible, taking into account the interests of consumers. All suppliers in the supply chain must ensure proper compliance with these provisions. It must be noted however, that the CPA has not removed the protection afforded by industry-specific or product-related legislation that is already in existence. In practice however, suppliers will be required to comply with the provisions of both the CPA and the industry-specific law (De Stadler 2013: 57).

Many of the provisions in the CPA are interrelated and cannot be considered in isolation. For example, although the Act does not specifically state that marketing must be in plain and understandable language, it may be presumed that marketing which is not in plain language can often be misleading, especially to vulnerable consumers (De Stadler 2013: 43). Hence, a supplier may not use unfair tactics in relation to the marketing or supply of goods or services to a consumer (Section 40). This also means that a supplier may not give a false or misleading representation to a consumer, or use exaggeration and ambiguity with the intention to deceive the consumer.

Marketing comprises an important aspect of any enterprise and is essential for the efficient and profitable running of a retail business. It involves a process of “looking outward toward the marketplace and inward toward the business” and reconciling these two concepts with the ultimate purpose of maximizing performance and profit (Brown 2001: 4). The marketing process is fairly extensive and the promotion and advertising of goods and services is one component of this structure.

Modern-day marketing practices are more customer-orientated however, with advances in technology and competition in the retailing industry, marketers are forced to “decorate and manipulate” their offerings to lure the customer. It is these promotional strategies that confuse and mislead ordinary consumers (Ravindra 2014: 30). Accordingly, the CPA now regulates marketing practices and advertising with a view to curb unethical practices and protect the vulnerable consumer. Hence, Section 29 of the CPA creates a general standard in terms of which all suppliers in the supply chain are required to refrain from marketing goods and services in a manner that is misleading, fraudulent or deceptive.

The CPA regulates the following important marketing practices. These include:

- Bait marketing (Section 30). Here, the consumer is lured by a promotional offer that is in fact not available. For example, when consumers arrive at the store and the goods are out of stock or no longer available as advertised. The CPA prevents this kind of practice because the customer is misled or deceived (De Stadler 2013: 78).
- Negative-option marketing (Section 31). An example of this is where a consumer is informed telephonically that he automatically qualifies for a credit card or special offer. Thereafter, the goods or the credit card is posted to the customer who becomes liable unless the customer declines the offer in writing. Any agreement concluded on the basis of negative option marketing is now rendered void.
- Catalogue marketing (Section 33). This refers to agreements for the supply of goods or services where the consumer has not had the opportunity to inspect the goods before concluding the agreement. (De Stadler 2013: 80). Suppliers are now obliged to disclose certain material information to the consumer prior to delivery.

3.5.3 The right to privacy

Direct marketing occurs where a supplier approaches a person, either in person or by mail or through electronic communication, for the supply or promotion of goods or services to the consumer (Fouché 2015: 340). Direct marketing, in the form of

unsolicited electronic communications, also implies that the company has certain personal details of the recipient.

With the overhaul of consumer protection laws in South Africa, direct marketing was identified as a serious consumer issue because the more vulnerable the consumers, the more likely they are to be ambushed or manipulated by unscrupulous salesmen and marketing representatives. The transaction is initiated by the supplier and not the consumer and consumers can become overwhelmed by e-mails, telemarketing, distribution of promotional material and so on (Fouché 2015: 340). Accordingly, the CPA included Section 11 which provides for the right to restrict unwanted direct marketing.

The consumer's right to privacy is protected in that the consumer has the option to refuse to accept the unsolicited messages or register a pre-emptive block against any direct marketing activities, at no cost to the consumer. Marketing agents are obliged to respect any opt-out or pre-emptive block. This implies that the company is required to check if the recipient has already opted out from direct communications from that company by checking if the recipient has added their details to the CPA "do not contact" registry (Kopel 2009: 463). In practice however, this rarely occurs.

Pieter Streicher (2012), a managing director of BulkSMS, maintains that it may be difficult for the company to facilitate the opting-out option. Consumers rarely exercise this option because normally, sending an SMS using the reply path to the SMS received, would cost the consumer a service fee, depending on the network. Toll-free numbers only apply to landlines. Even if opt-out via e-mail is an option, in South Africa four out of five users will be unable to utilize this option because of a general lack of access to internet or lack of an e-mail account.

Notwithstanding all of the above, until the National Consumer Council finds a more efficient way to regulate the system, consumers have the right, after receiving any direct marketing communication from a company, to refuse to accept such communication. Direct marketing to a consumer at home has also been prohibited during specified times, that is, Sundays or public holidays; Saturdays before 09h00

and after 13h00; and all other days between 20h00 and 08h00 the following day (Section 12; Government Gazette: 2011).

3.5.4 The right to a cooling-off period

Section 16(3) of the CPA provides that a consumer may rescind or cancel a transaction resulting from any direct marketing. The consumer must give written notice of cancellation to the supplier, within five business days of conclusion of the contract or delivery of the goods. The consumer is not obliged to give a reason. This right is available to consumers in addition to any other right to cancel a contract that may be available in terms of the law (Fouché 2015: 343). A consumer who exercises the right to the cooling-off period may return the goods to the supplier and receive a full refund.

A notable improvement with the CPA cooling-off period is that it applies to all transactions resulting from direct marketing and is not limited to those concluded at a location other than the supplier's business premises, as is stated in the National Credit Act (Fouché 2015: 343). The cooling-off period even applies to transactions where the goods are in perfect condition or the services are acceptable (De Stadler 2013: 32). The CPA also obliges the supplier to inform the consumer of the "cooling-off" right. The agreement itself may not contradict any of the consumer's rights in the case of direct marketing. For example, the contract cannot state that the customer is not entitled to return the goods once they have opened it because there is no provision in the CPA to that effect (De Stadler 2013: 35).

3.5.5 The right to choose and select suppliers

In terms of Part C of the CPA, consumers have the right to choose, that is, to select suppliers, to cancel fixed-term agreements, to choose goods or seek other remedies. This means that a consumer must not be forced into a transaction or forced to remain in an agreement with a supplier. This right includes the cooling-off right, which was discussed above, and only some of the other rights here.

The right to select suppliers is based on the principle of “bundling” of goods which is prohibited in terms of the CPA. This means that a retailer cannot supply goods to a consumer on condition that the consumer purchases any other particular goods from that retailer or a designated third party, unless such bundling will be for the economic benefit of the consumer (Section 13). For example, if a consumer purchases a new vehicle on condition that the warranty would only be valid if the consumer uses a designated third party for servicing and maintenance of the vehicle. However, suppliers are warned to advise consumers at the conclusion of the agreement as to why “bundling” applies to their contract and the economic benefit for the consumer (De Stadler 2013: 29). It is important that a consumer is well informed to avoid future claims however, this rarely occurs in practice.

3.5.6 The right to choose and examine goods

In terms of Section 18, a consumer has the right to examine and choose the goods. Previously, it was common for stores to put up notices stating “*You break it, you pay for it*”. But this kind of policy can no longer be implemented (De Stadler 2013: 32). A consumer can only be held liable for any loss or damage to goods if the consumer was grossly negligent, reckless, malicious or engaging in criminal activity.

If goods are displayed or sold from an open stock, consumers are allowed to select or reject any item from that stock (Section 18(2)). This simply means that the retailer cannot force the consumer to take a specific article if there are other articles available. If a consumer has agreed to purchase goods based only on a sample provided by the supplier, the goods delivered must comply in all material respects and characteristics with the sample or original description (Section 18(3)). The supplier must give the consumer an opportunity to examine the goods after delivery to ascertain whether the consumer is satisfied that the goods are of the type and quality agreed upon.

3.5.7 The right to return goods

The consumer has a right to return the goods and receive a full refund if the consumer was not given the opportunity to inspect or examine the goods prior to

delivery and is unhappy with goods after delivery. In addition, the consumer also has the right to return the goods if the goods were purchased for a particular purpose and the goods is now found to be unsuitable for the purpose intended (Section 20). It is interesting to note however, that Section 20 is not intended to substitute any common law rights but is in addition to this. Therefore, in terms of the common law, the buyer still has the right to return goods to the seller if such goods have been deemed to be unsafe or defective in any way (Fouché 2015: 344). Similarly, if the seller has breached the contract by delivering the incorrect goods or goods of an inferior quality to the buyer, the buyer can still institute a civil claim based on breach of contract.

3.6 Consumer agreements and the law

Contractual relationships between various parties are created on an on-going basis and play an integral role in peoples' daily lives. People enter into various types of contracts such as employment contracts, marriage contracts, agreements to purchase immovable or movable assets, agreements of loan, and many others. Consumer agreements are the most common type of agreement entered into by people and a legal relationship is created every time a consumer purchases goods or services from a retailer (McQuoid-Mason 1997: 16). Yet, in most instances, consumers have little or no understanding of the legal obligations that arise from these agreements.

3.6.1 The relevance of contractual agreements in relation to the Consumer Protection Act

Contractual agreements may be entered into and between individuals, individuals and businesses and between businesses themselves (Scott 2009: 42). In terms of the common law, once a valid contract has been concluded by the parties, it becomes legally binding between them and is thus enforceable in a court of law (Melville 2011: 26). The law of contract forms the basis of most aspects of consumer-protection legislation (Stoop and Chürr 2013: 516), hence, the general principles governing the law of contract will be applicable to consumer agreements as well.

According to Fouché (2015: 30), a contract may be simply defined as an agreement that is made with the intention of creating an obligation. Accordingly, the parties have the expectation that the law will recognize their contractual relationship and attach legal consequences thereto. The intention of the parties is therefore of utmost importance. However, in many contracts, even where the parties have the necessary intention to be bound to the contract, “the parties do not negotiate from a position of equality and the one who is in a dominant position often takes the opportunity to lay down the terms of the contract” (Kerr 1998: 5).

It has always been a common practice in the marketplace for businesses to adopt the “take it or leave it” policy, thereby compelling consumers to enter into standard-form contracts (Sharrock 2010: 296). Standard form contracts are still used in most commercial transactions for example, mortgage bonds, credit agreements, sale of motor vehicles, insurance policies, gym memberships, and so on. Standard form contracts are those “contracts that are drafted in advance by the retailer and presented to the consumer on a take-it-or-leave-it basis, thus eliminating opportunity for arm’s length negotiation” (*Barkhuizen v Napier* 2007: para135).

The contractual terms usually favoured the business rather than the consumer. Sharrock (2010: 296) notes that businesses actually derived substantial economic benefits from using standard form contracts in that they drafted only one uniform contract for all transactions, reduced the negotiating time with consumers, used untrained salespersons and restricted their legal liability. Furthermore, customers would rarely question a business or even suggest changes to the agreement because they were unlikely to find better terms or a more co-operative attitude with other retailers. Even today, customers are so preoccupied with hastily concluding the transaction that most do not take the time to read and familiarize themselves with the meaning of the terms or their legal consequences.

Posthumus (2011: 24) claims that the CPA has “revolutionized business-to-consumer relationships” and brought about significant changes to the way retailers have been accustomed to operating. In particular, the form and content of all consumer agreements have to be reviewed to comply with the CPA. So, for the first

time in the history of South Africa's legal framework, consumers have been afforded comprehensive protection during the conclusion of consumer contracts (Barnard 2014: 2).

Although most types of consumer agreements are reduced to a written document, many consumers do not even receive copies of such agreements for their own records. This can prejudice the consumer in the event of a dispute with the retailer. The CPA now provides that a retailer must furnish the consumer with a free copy of the terms and conditions (Section 50(2)). Van Eeden (2013: 236) maintains that by compelling retailers to furnish specific information to consumers, consumers become aware of onerous terms thereby reducing the vulnerability of consumers and protects them against unscrupulous traders.

Whilst businesses had to review their policies to ensure compliance with the Act (Du Preez 2009: 61), no doubt, this would have placed a huge financial and administrative burden on them. Accordingly, one of the objectives of this study is to ascertain whether the provisions of the CPA are being complied with by the retail industry through an exploration of consumer experiences and perceptions of service delivery.

3.6.2 Common law rules of contract and the impact of the Consumer Protection Act

The law of contract deals with private contractual relationships which are governed primarily by the common law. Over the many years however, the law of contract was based more on the law made by the courts rather than the legislature (Mupangavanhu 2015: 118). In the event of disputes arising out of a sale, consumers had to rely on the common law principles to solve their issues. The problem however was that these principles were either applied too strictly to written contracts, to the detriment of most consumers, or the common law did not actually provide adequate remedies for the consumer (Woker 2010: 223).

The CPA impacts drastically on the application of many of the common law principles which have been applied to the law of contract for decades. It appears

now that the introduction of the CPA calls for a relaxation of the strict application of common law rules by the courts. Recently, there have been several calls for the common law of contract to fully embrace the constitutional values of human dignity, equality and freedom (Bhana and Pieterse 2005: 887; Brand 2009: 72 and Mupangavanhu 2015: 118). Sutherland (2009: 72) proposes that the Constitution be used as a mechanism for the reform of contract law, thereby also ensuring the protection and dignity of vulnerable consumers.

Therefore, Mupangavanhu (2015: 120) argues that the modern law of contract should permit judges to be more flexible when applying common law rules by taking account of standards such as reasonableness, equity and good faith, thereby ensuring fairness of the contract whilst, at the same time, offering more protection to the weaker contracting party. Whether the implementation of the CPA can indeed achieve a balance between the principles of the law of contract and social justice, still remains to be seen.

3.6.2.1 Freedom to contract (*pacta sunt servanda* rule)

Under the common law, the sanctity or freedom of contract (*pacta sunt servanda*) formed the underlying principle of all contractual relationships (Van Eeden 2009: 72; Gibson 2005: 15). This implied that the parties to the contract had the complete freedom to choose how their contract will operate and what terms to include in the contract. Hence, the parties had absolute contractual power, as long as the contract was lawful and capable of execution (Tennant and Mbele 2013: 36).

Our courts entrenched the philosophy that they did not have the jurisdiction to modify contracts which parties have voluntarily and freely entered into, even if the terms appeared to be very harsh. Although the court had the power to set aside a contract if it was contrary to public policy (McQuoid-Mason 1997: 115), the courts would only interfere with contractual provisions in exceptional circumstances (Mupangavanhu 2015: 120; *Sasfin (Pty) Ltd v Beukes* 1989). This view was based on the premise that retailers and consumers were on an equal footing with regard to the process of bargaining and each had the power to negotiate the best deal for themselves but, in reality, this was not the case (McQuoid-Mason 1997: 115).

Previously, the justice system focused primarily on criminal sanctions for contravention of specific industry rather than on the actual fairness of the contract or infringement of public policy on common law grounds (McQuoid-Mason 1997: 116). A more modern stance on freedom of contract, however, is the view that because the parties are not always equal to each other in respect of their knowledge or abilities, this may result in the contract being more onerous for one of the parties or some of the contractual terms being grossly unfair (Scott 2009: 47).

In addition to the Constitution providing for the right to free economic activity, it also encourages that further measures be taken, legislatively or judicially, to promote economic growth and social justice. Accordingly, the CPA now provides strict guidelines that restrict the freedom of consumers and retailers to include whatever terms and conditions they choose, because one of the main objectives of the CPA is to protect consumers from unfair, unjust or unreasonable contractual terms (Posthumus 2011: 24).

In particular, certain provisions may not be modified, changed or ignored in a written consumer agreement. For example, a consumer agreement may not exceed 24 months unless the consumer has agreed to this (Section 14), the consumer has the right to cancel a reservation or booking or an order for goods, at a reasonable cancellation fee (Section 17) and the supplier who fails to supply goods or services because of shortage of stock or incapacity must provide the same or equivalent goods or services to the consumer (Section 47) (Tennant and Mbele 2013: 36). These provisions protect the uninformed, vulnerable consumers who often suffer financial loss and prejudice because of ignorance.

No doubt, the advent the CPA requires a revisit of the application of common law rules of contract and will require the courts to strike some balance between freedom of contract and fairness. Where terms and conditions are specifically prohibited in terms of the CPA, these will be declared void for non-compliance but where terms of a contract are not prohibited outright by the CPA, these terms ought to be subjected to the requirements of fairness and reasonableness (Mupangavanhu 2015: 130).

3.6.2.2 The *caveat subscriptor* rule

The party's signature on a written contract is meant to signify consensus and true intention with regard to the contractual terms and therefore implies some understanding of the nature of those terms (Melville 2011: 26). In other words, it is presumed that the party signed the contract willingly, after having read its contents.

The principle of *caveat subscriptor* has been a cornerstone of the law of contract for a long time (Nortje, 2011:741). This rule, which actually means "let he who signs beware", implies that if a person signs a contract and chooses not to read the contents thereof, he accepts the risk and is bound by the written terms and conditions (Fouché 2015: 53; *Burger v Central South African Railways* (1903); *George v Fairmead (Pty) Ltd* (1958)).

It is a general rule that the contracting parties cannot allege, after execution of the contract, that they did not read the document, it does not reflect their true intention or that they no longer wish to be bound by the contract (Woker 2010: 223). The strict application of this common law principle in practice meant that although consumers did read the terms but did not really understand the true meaning of legal terms in the agreement, they were nevertheless bound to those terms by virtue of their signature on the document.

In reality, consumers do not actually take time to read thoroughly through the written contract nor do they seek any explanation from the other party if they do not understand. However, with written contracts, consumers were often misled during the negotiation process, gave consent improperly, or agreed to terms that were unfair. Although in these circumstances it would appear that the consumer's consent is defective, this consumer could only set aside the contract if he could prove that he was "induced" through unconscionable conduct and this was very difficult to do (Woker 2010: 223).

Standard form contracts are often drafted by the attorney acting on behalf of the business and so, "the draftsman is concerned with incorporating all the terms beneficial to the company – usually to the detriment of the consumer" (Hopkins

2003: 154). Sachs J, in the case of *Barkhuizen v Napier* (2007:paras135 - 136), stated that “onerous terms are often couched in obscure legalese and incorporated as part of the “fine print” of the contract. As it is impracticable for ordinary people in their daily commercial activities to enlist the advice of a lawyer, most consumers simply sign and accept the contract without knowing the full implications of their act”.

The true effect of the *caveat subscriptor* rule on standard form contracts is that “a party is bound to all the terms of that contract, no matter how onerous, unreasonable or unexpected such terms may be” (Cornelius 1956: 150). But Tennant and Mbele (2013: 36) point out that although the rule still remains part of the common law, the CPA has now shifted the burden of “understanding the agreement” from the consumer to the supplier. Thus, the *caveat subscriptor* rule has been “softened” to an extent (Conlon 2012: 2), because it obliges the retailer to take steps to ensure that the consumer understands the agreement and to draw the consumer’s attention to special terms.

One of the objectives of this study was to examine whether consumers are aware of their legal rights and understand the nature of their contractual obligations with businesses. If the parties do not understand their legal rights, then they cannot fully understand the rights and duties that flow from their signature. Hence, for the survey, questions were formulated to test the level of understanding and awareness of consumers regarding various aspects of the contract and to determine whether retailers take time to explain legal and other terms to consumers. The requirement of plain and understandable language and the relaxation of the *caveat subscriptor* rule relation to specific terms such as exemption clauses is also significant to signing a written contract but will be discussed later.

Today, sales personnel are usually over-eager to conclude transactions without actually affording the consumer sufficient time before “signing on the dotted line”. Sutherland (2009: 61) claims that it is not practical for consumers to shop around for better terms or take time in a busy store to read and make sense of obscure terms in an agreement. What is of relevance in these circumstances however, is that if consumers are not aware of their contractual rights or do not understand the implications of terms, then the contract certainly does appear to be substantively

unfair. It is for this reason that the CPA places the onus on the retailer to notify the consumer of these terms before signature is executed on the contract.

3.6.2.3 Voetstoots clause

Sellers often include *voetstoots* clauses in their written contracts to limit their liability for latent defects because a seller can be liable even if he was unaware of the defect or did not act in bad faith (Collier-Reed and Lehmann 2006: 150). In terms of the common law, if a contract of sale was subject to a *voetstoots* clause, it means that the buyer was buying the goods “as is”, with or without defects and so the warranty against latent defects would not apply (Fouché 2015: 137). Therefore, the seller cannot be held liable unless he intentionally concealed the defect. The CPA however, provides certain warranties for goods and services which implies that the *voetstoots* clause is no longer meaningful and cannot be relied upon insofar as sellers are concerned (Tennant and Mbele 2013: 36).

According to Section 55(2) a consumer has the right to receive goods that are of good quality, in good working order, free of any defects and reasonably suitable for the purpose for which they are generally intended. A welcome provision in the CPA, is the implied warranty of quality in the sale agreement (Section 56). This means that the seller must ensure the products quality before the sale and can no longer rely on the *voetstoots* clause to shield him from liability. The effect of the *voetstoots* clause is also mentioned later in relation to the warranty of quality. Suppliers of goods and services can therefore no longer use the *voetstoots* clause to exclude liability because this would amount to a waiver of the consumer’s rights, which is now unlawful and therefore unenforceable (De Stadler 2013: 163).

3.6.3 The right to information in plain and understandable language

Countries all over the world have recognized that it is unfair to enforce unreadable, incomprehensible and non-negotiable agreements and have accordingly implemented plain language legislation. In South Africa, the Electronic Communications and Transactions Act and the National Credit Act already provided for the requirement of plain language (Gouws 2010: 80). Now, this important

requirement is included in the CPA as well. Part D of the CPA deals with various aspects relating to the right to disclosure and information. However, for the purposes of this study, only the right to information in plain and understandable language will be discussed.

3.6.3.1 Informed consent and understanding

According to Melville (2011: 42), the CPA promotes informed consent by the consumer. This means that it is essential for the consumer to have knowledge of all the material facts relating to the transaction in order for that consumer to make an informed decision about the transaction. Hence, informed consent within the context of a sale transaction, implies that the consumer must have a clear appreciation for the nature of the transaction, an understanding of all the terms and conditions of the particular sale and the legal consequences of the contract, including the consumer's rights and duties.

This requirement obviously presupposes that the consumer is literate or that the retailer will explain the terms to the consumer. But the latter rarely occurs in practice because salespersons are usually too much in a hurry to conclude the sale rather than to ensure that the consumer is satisfied with all aspects of the transaction. This element is of particular relevance and has been specifically tested in the questionnaire to ascertain the conduct of the parties during the signing of the contract.

The reality of the South African situation is that a large number of the consumer population are either illiterate, have low educational levels, are unaware of the laws of the country, do not understand their legal rights, are uninformed about consumer issues or are simply naïve when it comes to dealing with businesses. Understanding a written contract is hence a pre-requisite for empowering consumers. It is for this reason that the CPA affords protection to a special category of consumers, that is, vulnerable consumers.

3.6.3.2 Vulnerable consumers

The right to information in plain and understandable language is particularly directed towards the welfare of vulnerable consumers. Section 3(1)(b) defines vulnerable consumers as those who have a low income or are members of low-income communities; those who live in remote, isolated or low-density population areas; those who are aged or minors; and most importantly, those consumers who, by reason of low literacy or limited fluency in the language in which the information is presented, are unable to read and comprehend such information. Accordingly, retailers are expected to take special precautions when dealing with such vulnerable consumers.

Again, this can only be possible if consumers are aware of their rights in terms of the CPA and exercise these rights in relation to their dealings with businesses. For example, if the consumer is not very literate in English, then the consumer can demand that the contract be presented in an official language that he understands. Ultimately though, the onus to ensure compliance with the CPA lies in the mechanisms established by the relevant authorities of the State and most consumers do not even have access to some of these complaints and redress mechanisms.

Hutchison and Pretorius (2012: 24) argue that, in most cases, consumers enter into contracts without actually negotiating the language or terms of the contract. Hence, vulnerable consumers have little choice but to accept the terms proposed by the retailer in the language presented to them. It is these so-called “standard terms” in a contract that may not be clear or understandable to the consumer but which are open to abuse by businesses (De Stadler 2013: 104).

Due to the volume of transactions concluded by businesses, it is more viable for them to use standard-form contracts anyway because in reality, it is not practical for retailers to be able to satisfy the needs of every individual consumer with respect to the right to simple and understandable language, having regard to the multi-lingual South African population (De Stadler 2013: 104). In the South African context, justice cannot prevail if one contracting party does not fully understand the nature

and extent of his contractual obligations simply because the language used in the agreement is incomprehensible, ambiguous, unclear, or consists of legal jargon.

Barnard (2014: 3) argues that whilst it is not easy to assess who the “ordinary consumer” is, a large number of people actually fall within the category of “vulnerable consumer”. Hence, the drafter of the agreement should not assume any knowledge on the part of the consumer because the majority of consumers are not very well informed on consumer issues. There is no official language requirement in the CPA because this would have placed a huge administrative and financial burden on retailers to translate information and documents into all 11 official languages (Stoop and Chürr 2013: 534).

3.6.3.3 Plain language

The term “plain language” refers to language that is direct and straightforward, delivers a message to its intended readers clearly, effectively and without fuss and should be understood the first time they read or hear the words (Gouws 2010: 81). But De Stadler (2013: 105) argues that “plain” does not necessarily mean simple language because contractual terms are nevertheless confusing. Rather, the language used must be as understandable, transparent and reader-friendly as possible. The author also suggests that to “understand the content, significance and import of the document” means that the consumer has to have a good understanding of legal consequences and this requires some form of explanation to the consumer (De Stadler 2013: 106).

According to Stoop and Chürr (2013: 518), transparency is necessary to ensure fairness during the bargaining process. This implies that the retailer has the duty to provide adequate explanation of all the facts relating to the agreement with the consumer or, at the very least, to enquire from the consumer if he or she understands the nature of the agreement. Whether this duty is actually being fulfilled in the marketplace is still unclear and it is hoped that the results of the survey will shed some light on this issue.

The right to plain and understandable language is also relevant in determining whether a contractual term is unfair, unreasonable or unjust; or whether the retailer's representations were false, misleading or deceptive in any way. More importantly however, retailers cannot knowingly take advantage of a consumer who is illiterate, ignorant or cannot understand the language of the agreement. This means that retailers must enquire from the consumer whether he or she understands the contents of the agreement first and then explain the terms if the consumer requires assistance (Stoop and Chürr 2013: 524).

As a fundamental consumer right, the right to plain and understandable language serves to improve consumer awareness and information so as to promote informed choices and responsible consumer behaviour. Access to information also promotes consumer confidence and enhances the empowerment of consumers (Stoop and Chürr 2013: 528). Hence, in achieving social justice, the requirement of plain and understandable language is also crucial in establishing contractual fairness and some level of equality between the contracting parties.

3.6.4 The right to fair and honest dealing

The right to fair and honest dealing deals with unconscionable conduct; false, misleading or deceptive misrepresentations and fraudulent schemes. The aim of the CPA is to ensure competitive but responsible markets whilst protecting consumers from unethical and deceitful business practices. Accordingly, when dealing with a consumer, a person may not engage in any conduct that is "unconscionable" (Section 4(5)).

The South African Law Commission (SALC) (1996: 28) noted that the traditional ways of interpreting contractual terms were insufficient and specific legislative intervention was required to address the issue of unconscionability. Our courts however were apprehensive to make decisions on the "unconscionability" of contractual terms. Nevertheless, the SALC (1996: 25) made recommendations encouraging the striking down of unconscionable clauses in contracts by the courts.

The concept of “unconscionability” was never a part of South African law (Glover 2013: 689; Du Plessis 2012: 25). However, in the 1990’s the Business Practices Committee issued guidelines with regard to what constituted harmful business practices. Although the Committee was successful in preventing a number of suspicious undertakings, it had very little impact on the large-scale consumer abuse that occurred on a daily basis (McQuoid-Mason 1997: 127).

Du Plessis (2012: 24) argues that Section 40, which deals with “unconscionable conduct” concentrates on ways in which the will of the consumer may be improperly influenced by the supplier. Hence, it deals with procedural fairness, that is, the way the consent was obtained, rather than the substantive fairness of the contract. Accordingly, any conduct that is unethical or improper to the extent that it would “shock the conscience of a reasonable person” is regarded as unconscionable conduct (Section 1). However, there must be a high degree of impropriety and not just conduct that is considered to be unfair (Du Plessis 2012: 25).

Section 40 prohibits any conduct by a supplier against a consumer that amounts to the use of physical force, coercion, undue influence, duress, unfair tactics, or any other similar conduct. The inclusion of this section in the CPA is very significant in that it highlights the shameful behaviour that so many retailers will resort to on the pretext of “doing business”. For example, where the buyer agrees to give the seller power to unilaterally change a material term such as price or misrepresenting certain material facts of the transaction.

Jacobs, Stoop and Van Niekerk (2010: 346) suggest that the contracting parties must act in good faith to overcome unconscionable conduct. Previously, the consumer was compelled to continue with payment even though the goods were not working at all or the seller would resort to the use of “strong-arm tactics” to recover the goods sold or payment of the outstanding debt (McQuoid-Mason 1997: 302). This often resulted in consumers forfeiting monies already paid to the seller, paying for goods that were not in a working condition or surrendering the goods purchased for fear of an aggressive outcome.

Section 40 overlaps with other provisions, in that it is unconscionable for suppliers to knowingly take advantage of a consumer who is illiterate, ignorant, has a physical or mental disability, is unable to understand the language of the agreement and is therefore, unable to protect his interests (Section 40(2)). Again, retailers have to ensure that their customers understand the nature of the transaction. In addition, employees must be knowledgeable with regard to the provisions of the CPA and possess the patience and skill when dealing with lay persons. This in effect speaks to the customer service and service quality elements of retail management and reiterates the integration of legal and ethical duties of retailers.

Glover (2013: 696) however believes that the implementation of the doctrine of unconscionability is not an easy one and the courts will therefore face the some problems of interpreting the real meaning of the concept as other countries have, due to its confusing statutory construction. The South African courts are yet to test the concept of unconscionability of contractual terms but when this does take place, it will materialize in a new area of jurisprudence.

3.6.5 The right to fair, just and reasonable terms and conditions

Legislative control is of paramount importance when addressing the exploitation of consumers in relation to written contracts (Naudé 2006: 361). In South Africa, the CPA was welcomed, not only for the various rights and the protection it offers to consumers, but more particularly for its inclusion of provisions relating to unfair and unreasonable terms and conditions in a contract (Naudé 2009: 505).

The common law principle of freedom of contract still forms the basis of the South African law of contract (Van Eeden 2009: 72) and hence, the courts will enforce the terms of the written agreement based on the consensus of the parties. Hence, once concluded, the contract had to be strictly enforced, irrespective of whether the terms were unfair or unreasonable (Gibson 2005: 16). The courts were always loath to interfere with or set aside a contract for unreasonableness because the parties were presumed to have negotiated on an equal footing (Jacobs, Stoop and Van Niekerk 2010: 353).

The issue of unfair contract terms was problematic because businesses were prone to using standard-form contracts and the courts had to resort to the common law principles of legality and interpretation to determine what constitutes “unfair” terms. Although the courts have grappled with this area of law for a long time, the CPA has lent a new dimension to the interpretation of “unfair and unreasonable” terms in a contract. According to De Stadler (2013: 114), the right relating to fair, just and reasonable contractual terms is afforded protection in different ways. For the purposes of this study, the general right to fairness; prohibited or black-listed terms; and exclusions of liability and indemnity clauses will be discussed.

3.6.5.1 The general standard of fairness

A supplier or retailer may not supply goods or services at a price that is unfair, unreasonable or unjust, or contract on terms that are unfair, unreasonable or unjust Section 48(1)(a). Also, the supplier is not allowed to market or negotiate a transaction that is unfair, unreasonable or unjust (Section 48(1)(b)). The importance of this provision is that even if the contractual term complies with all the other provisions of the CPA, it can still be declared unfair if the general standard of “fairness or reasonableness” is applied (De Stadler 2013: 114). In addition, if a consumer has entered into a contract based on a false, misleading or deceptive representation, or a statement of opinion made by the supplier, this will also be regarded as unfair or unreasonable (Section 48(2)(c)).

The problem is that, to date, the South African courts have still not been clear in providing guidelines on how to assess unfair contracts. Sharrock (2010: 307) submits that the use of the words “unfair, unreasonable and unjust” themselves, are actually quite cumbersome and unnecessary because they overlap in meaning. Hence, the use the word “unfair” in the CPA would have sufficed in giving meaning to these terms.

Mupangavanhu (2015: 129) maintains that “a contract forms part of the fabric of society and as such, exists and functions within the realm of the values and interests of society”. Accordingly, he claims that the CPA is embedded with the constitutional values of dignity and equality and the courts must therefore, take account of justice

and fairness in the implementation of its provisions. Previously, the stringent rules governing the law of contract did not allow for flexibility in its application to the “complexities of modern society”.

In the case of *Barkhuizen v Napier* (2007:para 36), the court stated that in deciding whether the contractual terms are contrary to public policy, the nature of “reasonableness” and “fairness” must be considered. De Stadler (2013: 114) argues that these concepts are not easy to define and the CPA provides a very “circular” description because a term is unfair, unreasonable or unjust if the term is “excessively one-sided in favour of the supplier” or the term is “so adverse to the consumer that it is inequitable” (Section 48(2)). These terms are still too wide and vague to offer any real clarity. Furthermore, whether the contractual term is “excessively one-sided” or whether the “adverseness” of the contractual term is sufficiently extreme, is a matter purely within the discretion of the court (Sharrock 2010: 309).

However, the definition of “court” does not include a consumer court which implies that the orders can only be awarded by a normal civil court and not a consumer tribunal (Jacobs, Stoop and Van Niekerk 2010: 361). It has been repeatedly submitted that approaching the ordinary courts for relief implies high legal costs and time delays due to prolonged litigation, which are sufficient reasons to deter most consumers, particularly vulnerable and indigent consumers, from seeking any form of redress (De Stadler 2013: 115; Naudé 2009: 526; Woker 2010: 230).

Accordingly, if the enforcement and redress mechanisms are not effectively implemented in practice, it defeats the entire purpose of the CPA, which is to promote fair business practices and consumer awareness with a view to protecting consumers from exploitation in the marketplace.

3.6.5.2 Prohibited or black-listed terms

Section 51 of the CPA specifically prohibits certain terms from being included in a contract, meaning that if any of these terms are contained in a contract, such a term will be rendered void. Hence, the supplier or retailer cannot depend on the “prohibited or black-listed” term in discharging his obligations and cannot compel

the consumer to contract out of the CPA (De Stadler 2013: 116). The list of prohibited terms is quite extensive however some of the terms that occur regularly in daily business practices include terms that mislead or deceive the consumer; subject the consumer to fraudulent conduct; waive or deprive a consumer of a right under the CPA; and avoid the seller's obligations under the CPA.

Exemption clauses cannot be included in any contract and can even be considered "unconscionable". These clauses will exclude or limit liability of the seller for any loss resulting from gross negligence. These clauses include false acknowledgements that no representations were made by the seller; forfeiture clauses in terms of which the consumer is to forfeit monies paid to the seller if the consumer chooses to exercise any right in terms of the CPA; and where a consumer assumes liability to pay for any damage to goods on display (Section 51).

Several countries have so-called "black-listed or grey-listed" terms incorporated into their legislation. A black list contains terms that are deemed to be unfair in all circumstances, as those mentioned above. A grey list contains terms that are *prima facie* unfair but can be shown to be fair in certain instances (Sharrock 2010: 309). Naudé (2009: 520) suggests that both black and grey lists can be very helpful in that retailers are more likely to act positively by excluding such prohibited terms from their contracts. Such lists are important for regulation of unfair terms.

3.6.5.3 Exclusion and indemnity clauses

Retailers often use standard-form contracts in terms whereof their contractual duty or liability is specifically excluded. Ordinary consumers who are often ignorant of the law and contractual consequences will accept the standard terms because it takes too much time to read every time the consumer enters into an agreement (Naudé 2006: 367). In this way, consumers often abandoned their common law rights associated with breach of contract by the supplier, waived their right to claim damages, declined to sue for defective goods, waived the liability of the supplier in the case of a breach of warranty, and so on (Sharrock 2007: 205).

Accordingly, Section 49 was included in the CPA to prevent a consumer from entering into an agreement that may prejudice his rights or may involve circumstances where he was not aware of the existence of potentially prejudicial terms (Jacobs, Stoop and Van Niekerk 2010: 357). These terms include exemption clauses, where the risk or liability of the supplier is limited; assumption of risk, where the consumer assumes or takes on the risk or liability; indemnity clauses, where the consumer is obliged or agrees to indemnify the supplier for any cause; and acknowledgements of facts, where the consumer acknowledges or agrees that he has read and understood the terms of the contract or that no representations or warranties were given by the supplier before the contract was concluded (Naudé 2009: 508 and De Stadler 2013: 119).

Due to the prejudicial nature of these terms, Section 49 provides that notice must be given to the consumer to bring his attention to the inclusion of such terms in the contract. The inclusion of this duty of a supplier is of utmost importance in that these terms are often not negotiated between the parties and still included in present-day contracts as well. Consumers usually just skim through the document only confirming certain material terms such as the price, payment options and description of the goods.

Section 49(3) also provides that the terms itself must be written in plain language so that if a consumer does read it, he will understand it. More importantly, the existence, nature and effect of these terms must be brought to the attention of the consumer. This is a welcome provision as it places a duty on the retailer not only to ensure that the consumer is aware of these terms but also that the consumer understands the implications that the terms can have on his contractual obligations. According to Section 49(5), the consumer must be given adequate opportunity to comprehend the terms in the contract. In reality however, this is extremely difficult to achieve because it implies that every consumer who enters into a written contract must take time to read, and know and understand the terms contained therein.

Compliance with Section 49 of the CPA does place a huge burden on retailers because their employees must also be trained or skilled in explaining the implications of such terms should a consumer require clarification. Whether this is

actually taking place in practice is still to be ascertained and the survey may actually shed some light on this issue. Again, compliance with these provisions requires monitoring by the relevant authorities.

3.6.6 The right to fair value, good quality and safety

In accordance with the common law principles relating to a contract of sale, the CPA also provides that a consumer has the right to receive goods that are reasonably suitable for the purpose intended (Section 55(2)(a) and of a good quality, in good working order and free of defects (Section 55(2)(b)). Also, the goods must be usable and durable for a reasonable period of time, taking into account its normal use. This is a completely new right not recognised under the common law which implies that the consumer has, by law, the right to continued good quality. How this requirement will be applied in practice and interpreted by the courts still remains to be seen.

Whereas under the common law, the buyer could use the aedilician remedies if the goods were unfit for use but had to prove the defect existed at the time of the sale, under the CPA, the consumer has the right to receive the goods in a suitable condition, and therefore the consumer does not have the onus to prove that the goods were unfit for the purpose intended. This is welcomed in that consumers were often deterred from pursuing civil action against retailers because of the burden placed on them (Naudé 2011: 340).

The consumer is further protected by the implied warranty of quality which provides that the manufacturer, distributor and retailer guarantees that the goods are of the required standard and quality (Section 56). Hence, if the goods fail to satisfy the requirement of quality, the consumer may, within 6 months of delivery of the goods, return the goods to the retailer. The retailer is obliged to either repair or replace the unsafe or defective goods or refund the price paid to the consumer.

Prior to the CPA, the consumer had no choice if the goods were unsafe or defective and the retailer would determine whether the goods were refundable or had to be repaired. Section 56 (2) creates a crucial change to trade practices in that the consumer now has the choice of a refund, repair or replacement. In addition, the

consumer's choice to a refund, replacement or repair is not based on any qualification in reference to the seriousness of the defect (Naudé 2011: 346).

The implied warranty of quality exists in addition to any other common law rights of warranty that a buyer acquires when he concludes a contract of sale. Most importantly, Sections 55 and 56 of the CPA provides a clear and effective protection mechanism for consumers, which goes even beyond the minimum standards of the EC Consumer Sales Directive and UK consumer protection laws (Naudé 2011: 351).

3.7 Product liability

The design, manufacture and delivery of goods can also result in injury, loss or even death, as in the case of users of defective and unsafe products. Prior to the CPA, South Africans paid very little attention to issues of product liability. Accordingly, a party who suffered loss in this regard had to establish negligence on the part of the manufacturer under the law of contract or delict. But it was very difficult for a consumer to prove fault on the part of the manufacturer (Jacobs, Stoop and Van Niekerk 2010: 382).

The CPA now provides that the producer, importer, distributor or retailer of any goods is liable for any harm caused as a consequence of supplying unsafe goods; a product failure, defect or hazard in any goods; or inadequate instructions or warnings to the consumer (Section 61). This provision enhances the protection afforded to consumers in that negligence is no longer a requirement to establish liability. Also, it goes further than the manufacturer and holds all parties in the supply chain of goods and services potentially liable for the harm caused (Katzew and Mushariwa 2012: 1).

For many years South Africa lagged behind in terms of the law relating to product liability (Van Eeden 2013: 372). In the cases of *Wagener v Pharmacare Ltd*; *Cuttings v Pharmacare Ltd* (2003), the plaintiffs were given a defective local anaesthetic which caused a paralysis of the arm. The Supreme Court of Appeal was not prepared to recognise strict product liability and confirmed that fault had to be established for product liability (Jacobs, Stoop and Van Niekerk 2010: 382). The

court held that it was the task of the legislature to devise a set of principles and procedures for strict product liability, and the CPA has certainly met this challenge (Katzew and Mushariwa 2012: 2).

This provision enhances the protection afforded to consumers from poorer or disadvantaged backgrounds. Such claims required legal expertise and these consumers lacked financial and other resources to bring forth civil claims against manufacturers. Not only is the burden of proving negligence reduced, but all injured persons may now claim. Accordingly, strict liability claims can result from structural or design defects that result in unsafe buildings, a recipe in a book that calls for poisonous herbs as an ingredient, or defective computer software (Jacobs, Stoop and Van Niekerk 2010: 385).

The harm includes the death of or injury to a natural person; illness of a natural person; the loss of or any physical damage to property; and any financial loss that results from the harm (Section 61). This places a duty on manufacturers and retailers to ensure that their goods exceed the minimum standards of quality and safety so as not to cause harm to consumers. Although this enhances the protection afforded to consumers, it nonetheless places a huge financial burden on manufacturers to take out sufficient product liability insurance to cover themselves against the potential risk of claims.

3.8 Redress and enforcement mechanisms

Even after democracy, access to justice and redress mechanisms was generally out of reach for the majority of the population (Van Eeden 2013: 449; Van Heerden and Barnard 2011: 132). The Hoexter Commission (1983) identified key issues relating to the functioning of the judicial system, such as the inaccessibility of the courts, the slow pace of justice, the obstacles presented by poverty and illiteracy and the psychological barrier between the layman and the legal process (Van Heerden and Barnard 2011: 132). Hence, it became necessary during the drafting of the CPA, to specifically provide for more accessible means of redress for vulnerable consumers.

3.8.1 Access to justice in terms of the Consumer Protection Act

McQuoid-Mason (1989: 238) argues that consumers are reluctant to pursue legal action in respect of consumer complaints, particularly where the amount of the claim is small in comparison to the legal costs that may be incurred. Also, most poor people, at the time, lived in townships which did not have Small Claims Courts. In addition, mostly poor and indigent consumers were generally unaware that if the goods bought were defective or the consumer services were unsatisfactory, they could have an action in the Small Claims Court.

Most often, consumers fail to take on a dispute with a retailer because of the high costs of litigation (McQuoid-Mason 1997: 307). However, in accordance with international consumer rights policies, the consumer is now guaranteed to have access to redress. Hence, in terms of Section 69, the consumer is given a choice as to how he wishes to take up his complaint (Melville 2011: 125). The CPA provides for a consistent, accessible and efficient dispute resolution system (Section 3(1)(g)), as well as an accessible, consistent, and effective system of redress for consumers (Section 3(1)(h)).

Litigation is time-consuming, complicated and expensive and often results in the parties becoming frustrated with the judicial process itself (Mupangavanhu 2012: 322). Hence, the fundamental rights of consumers will be meaningless if they are not enforced in an effective manner. Accordingly, the CPA sets out different procedures that a consumer can choose to follow in the event of a violation of any of his rights. Redress procedures must be expeditious, fair, inexpensive and accessible, particularly to the low-income consumers (Van Eeden 2013: 450). In light of the social and economic conditions prevalent in South Africa, it is crucial that the system of redress is cost-effective and simple so as not to impede access to justice but rather to enhance it (Van Heerden and Barnard 2011: 132).

Hence, any person acting in his own capacity or on behalf of another, as a member of an affected group, or in the public interest, may approach the civil court, the National Consumer Tribunal, the National Consumer Commission, an applicable industry ombud, a consumer court or a dispute resolution agent (Section 69).

The various options of redress mechanisms are illustrated in Figure 3.2.

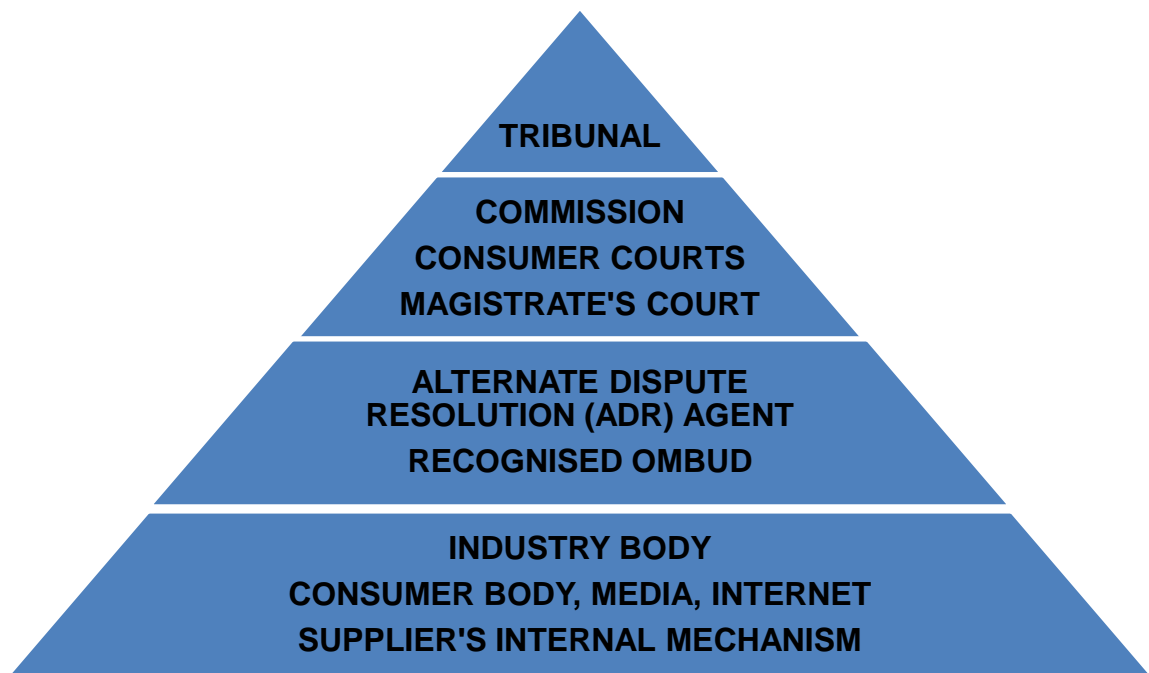


Figure 3.2: Pyramid of dispute-handling options (Source: Melville 2011: 126)

3.8.2 The National Consumer Commission

The National Consumer Commission (NCC), is an administrative body with jurisdiction throughout South Africa and is often called the “watchdog” of consumer protection (Mupangavanhu 2012: 322). It has a duty to receive complaints, conduct investigations and then evaluate them, which process can involve interrogations and searches (Sections 102-105). More importantly, it can issue compliance notices to any person or body that is believed to have engaged in prohibited conduct in terms of the CPA (Section 73 read with Section 100). Failure to comply with the NCC’s compliance notice may result in the impositions of an administrative fine by the National Consumer Tribunal (NCT) or the matter may also be referred to the National Prosecuting Authority (NPA) for prosecution (Section 99).

A very important role of the NCC is its monitoring function in accordance with Section 99(c) of the CPA. The NCC is obliged to monitor the consumer market in

order to ensure that prohibited conduct is prevented, detected and prosecuted, when necessary. This amounts to a huge responsibility on the part of the NCC and it still remains to be seen whether the NCC can actually fulfil these obligations (Mupangavanhu 2012: 324). From the time of its inception, the NCC has been plagued by administrative and bureaucratic issues.

A consumer can refer a complaint directly to the NCT which is mandated to make appropriate orders to give practical effect to the consumer's right of access to redress. Yet the CPA does not specifically define the terms "appropriate" and "practical effect" which implies that the meaning of the terms must be interpreted in accordance with the discretion of the courts (Mupangavanhu 2012: 324). Van Eeden (2013: 455) submits however, that such "appropriate" orders could include ordering the supplier to discontinue any conduct that is inconsistent with the CPA (Section 76(1)(a), awarding damages against a supplier for collective injury (Section 76(1)(c), or making any other order in terms of the Act. What is required is that the court order must advance, protect and promote the realisation of consumers' rights which is essential for consumer empowerment and the attainment of social justice in this country.

The monitoring role of the NCC is of particular importance to this study in that the survey aimed to establish whether businesses are actually complying with the provisions of the Act, particularly with regard to respect for the rights of the consumer. It is envisaged that the results of the survey will highlight consumers' perceptions and experiences of current retail business practices. This in turn will allow the researcher to draw inferences in respect of business compliance.

3.8.3 Provincial consumer courts

After a claim has been investigated by the NCC, it can still be adjudicated by a consumer court. When an order is made by the consumer court, it has the same effect as an order of the NCT or the High Court (De Stadler 2013: 173). In 2011, there were only three consumer courts in existence. Hence, this form of redress was unavailable and costly for most consumers, particularly indigent consumers and those who lived in remote rural areas (Van Heerden and Barnard 2011: 135).

However, it appears that more consumer courts have since been established. The consumer courts are expected to conduct proceedings in much the same way as the NCT (Section 73(5), however, it is unsure whether the legislature intended for the consumer courts to have the same powers (De Stadler 2013: 173).

Consumer courts are regulated by provincial legislation but the enforcement and execution of their orders have not been addressed by the legislature. Hence, even though consumers may file their complaints formally, many of these complaints remain unsatisfied (Du Plessis 2010: 517). It is therefore critical that proper enforcement and execution procedures be put in place as soon as possible (Mupangavahnu 2012: 327).

3.9 Consumer awareness and empowerment

Consumer awareness may be described as “the alertness of individual consumers of their rights and responsibilities in the marketplace” (Rousseau and Venter 1998: 16). It refers to the understanding by consumers of their rights associated with the buying of goods and services. Globalization, technological advancements, international trade and an endless variety of branded goods have complicated the purchase and consumption of goods and services for ordinary consumers.

Deceptive and manipulative retailing and marketing practices contribute to the exploitation of consumers. Whilst much progress has been made globally in respect of the implementation of consumer protection laws, these laws remain ineffective if consumers are unaware of the laws or on how to use them. In fact, if consumers show that they are aware of their rights and act upon it, businesses will engage in more fair practices (Mason 2007: 28).

The promulgation of the CPA was aimed specifically at affording protection to vulnerable groups in society such as, low-income communities, remote rural communities, illiterate and old-aged people (Department of Trade and Industry 2008: 82). A vast majority of the population possess little education and do not understand their rights hence making them vulnerable and pre-disposed to

consumer abuses and dishonest business practices (Mugobo and Malunga 2015: 225).

Ibarra and Revilla (2014: 68) maintain that consumer awareness is fundamental in ensuring consumer protection. This entails acquiring the necessary knowledge and skills to be an informed consumer. Therefore, consumers must not only understand the “complexity of the marketplace” but also understand the rights that protect them and be encouraged to take necessary action to promote and advance respect for their consumer rights (Mazlan, Redzuan and Bakar 2014: 449).

Developing countries like Brazil, India and South Africa, are characterised by vast socio-economic disparities. In spite of the existence of consumer protection laws, the majority of the population in these countries still suffer the consequences of unfair and dishonest business practices such as the supply of defective, unsafe and hazardous goods; false and misleading advertising; sub-standard quality and so on (Vijayalakshmi and Madegowda 2014: 434). Consumers must be encouraged to make careful, wise decisions when purchasing and be aware of how to use complaints mechanisms to their advantage (Ibarra and Revilla 2014: 69).

Any form of consumer knowledge will strengthen consumer behaviour but ignorance can weaken the consumer’s capacity and ability to exercise his rights and compel businesses to abide by consumer laws (Mazlan, Redzuan and Bakar 2014: 450). Consumer awareness affords individual protection and also benefits society by promoting consumer satisfaction and economic stability (Arora, Chawla and Sachdeva 2014: 139).

Mason (2007: 34) argues that whilst, in South Africa, the lack of knowledge and awareness is probably due to the high rate of illiteracy, consumerism today is not just about the educated but it supports and protects consumers from all levels of society. Accordingly, all consumers must learn to “speak their minds and stand up for their rights”. Consumer response to unscrupulous and deceitful trade practices must be intense and powerful. However, unless consumers become aware of the incredible power of consumer legislation, there can be no justice and protection for aggrieved consumers (Vijayalakshmi and Madegowda 2014: 444).

This is still a huge challenge in emerging and developing economies because consumers are not properly educated on various consumer issues. Most manufacturers and retailers are not even aware of general consumer dissatisfaction or bad consumer experiences because consumers fail to communicate their experiences to retailers (Donoghue and De Klerk 2009: 457). Therefore, awareness of consumer rights will serve as a control mechanism to ensure a more responsible business community (Ishak and Zabil 2012: 113). Hence, it is essential for governments and consumer bodies make a concerted effort to bring about a greater degree of awareness amongst consumers. If consumers are complacent about attaining redress against retailers, then unfair business practices and consumer exploitation will continue to erode society and the economy.

3.10 Conclusion

This chapter focussed on the protection of consumer rights, with specific reference to the provisions of the CPA and its implications for retail businesses in South Africa. It provided an overview of the development of consumer protection with regard to discrimination and the protection of human rights. The plight of South African consumers was explained, particularly within the context of the harsh treatment and discrimination they endured from retailers, as a result of their low socio-economic status. More importantly, this chapter provided a detailed analysis of the provisions of the Consumer Protection Act that impact on service quality and service delivery in the retail business sector.

The next chapter deals with research methodology employed for this research study.

CHAPTER 4

RESEARCH METHODOLOGY

4.1 Introduction

In Chapter 2, the various principles of retailing and dimensions of service quality was discussed extensively whilst Chapter 3 provided a detailed analysis of the relevant provisions of the CPA, and its implications for service delivery in the retail business sector.

Accordingly, the literature in these respective chapters assisted in answering the research questions and objectives identified by the researcher. Although these research questions were set out in Chapter 1 of this study, it is important to reiterate them in this chapter as the research design and method were formulated with reference to these critical questions. They are as follows:

- To explore the provisions of the CPA;
- To ascertain whether consumers know and understand their legal rights and the contractual obligations of their relations with businesses;
- To explore consumers' expectations and perceptions of the service quality provided by retail businesses;
- To identify consumers' experiences of retail business practices;
- To determine consumers' satisfaction with regard to the law and consumer protection.

This chapter discusses the theoretical background for the research design, research method, questionnaire, data collection, sampling techniques and data analysis.

4.2 Research design

Research involves a systematic process of collecting and interpreting information for the specific purpose of enhancing our knowledge of certain phenomena (Leedy and Ormrod 2005: 2). Choosing the most appropriate research method is of utmost

importance as it will dictate the specific procedures and techniques to be followed in the research design (Creswell 2009: 11). The research design then is the “blueprint for fulfilling objectives and answering questions” by using various methodologies (Cooper and Schindler 2014: 82).

There are five popular research designs identified by Bryman (2012: 45). These are experimental and quasi-experimental design, cross-sectional design, longitudinal design, case study design and comparative design. The cross-sectional design, which is used in this study, is often called a survey design where the data collected is examined to detect patterns of association (Bryman 2012: 59). Surveys are generally used to collect information from a large group of people within a short period of time through the use of questionnaires or interviews (Wagner, Kawulich and Garner 2012: 22). Survey designs are useful in providing a numeric description of trends, opinions, ideas or attitudes of the sample so that generalizations can be made by drawing inferences from the sample to the population (Creswell 2009: 146).

An important element of the research design is establishing the nature of the analysis. This study entailed a descriptive analysis. The aim of a descriptive study is to give a precise profile or describe the characteristics of people, events or situations (Saunders, Lewis and Thornhill 2009: 140). In descriptive research, quantitative data may be gathered to describe consumer satisfaction or demographic data (Sekaran and Bougie 2013: 97). Hence, the purpose of descriptive research is to find answers to the “who, how many, what, where, and when” research questions. Accordingly, this study was aimed at describing consumers’ experiences of current retail business practices, to establish the gaps between consumer expectations and perceptions of service quality and to determine the levels of customer satisfaction.

A questionnaire was designed as the primary instrument for achieving the quantitative research approaches in this study. Parasuraman, Zeithaml and Berry (1988: 13) developed the SERVQUAL instrument which is a multi-item scale for measuring service quality. It must be noted however that there is no existing consumer survey designed to test the implementation of the provisions of the CPA. Accordingly, the researcher adapted and modified the established dimensions of

service quality to suit the requirements of the present research study. Questions were formulated to investigate consumer awareness, customer satisfaction, service quality and retail business practices in relation to the provisions of the CPA. The intention of the researcher was to establish a connection between business compliance with specific provisions of the CPA and rendering quality service to the consumer.

4.3 Research methods

Choosing the most appropriate method for the research is of utmost importance in any research process. There are three common methods of conducting research and these are quantitative, qualitative and mixed methods. Whilst the qualitative and quantitative research approaches have been well established in social and human sciences for a long time, mixed methods research has also gained substantial popularity in various fields of research (Creswell 2009: 203). Kumar (2014: 17) argues that although certain disciplines will dictate whether the study is purely quantitative or qualitative, most disciplines today recognise that both approaches are equally important for a good research study.

4.3.1 Quantitative research

Quantitative business research may be defined as “research that addresses objectives through empirical assessments that involve numerical measurement and analysis” (Zikmund, Babin, Carr and Griffin 2013: 134). Hence, researchers will often select the quantitative approach when the response to research questions require numerical data (Williams 2007: 65). According to Welman, Kruger and Mitchell (2005: 6), when using the quantitative approach, the researcher is limited to what can be observed and measured impartially and accurately and accordingly, engages in a structured method for collection of data, such as in the administration of questionnaires.

Wagner, Kawulich and Garner (2012: 100) maintain that survey research through the use of questionnaires is one of the most common types of quantitative research approaches. Quantitative research however does not always involve the

identification of a hypothesis, but rather entails theory that represents various issues in relation to which the researcher must collect data (Bryman 2012: 161). From a quantitative perspective, the main aim of research is to collect facts on human behaviour which will provide statistical description, show relationships between variables and establish validation, prediction and control (Castellan 2010: 4).

Quantitative analysis is a useful tool to make observations and explain certain phenomena. It assists in identifying real human problems and deriving solutions to those problems (Daniel 2016: 11). Bryman and Bell (2011: 31) suggests that there is a great deal more to quantitative research analysis than the mere quantification of aspects of social life and deduction. Measurement in quantitative research is crucial because it allows the researcher to quantify differences in magnitude relating to certain concepts, provides a reliable benchmark for gauging differences and provides for precise estimation of the relationship between variables through correlation analysis (Bryman and Bell 2011: 33).

4.3.2 Qualitative research

Zikmund, Baban, Carr and Griffin (2013: 132) define qualitative business research as “research that addresses business objectives through techniques that allow the researcher to provide elaborate interpretations of phenomena without depending on numerical measurement”. Therefore, qualitative research approaches usually place emphasis on words rather than quantification in the collection and analysis of data (Bryman and Bell 2011: 31). Bryman and Bell (2011: 42) also identify various qualitative research designs such as ethnography, phenomenological designs, grounded theory and case study research. The researcher must therefore extract meaning from unstructured responses, such as texts from a recorded interview.

Qualitative research usually entails a descriptive study which is aimed at describing a phenomenon and its characteristics. Therefore, the enquiry is concerned with “what” rather with “how or why” something has happened. Although the data is collected qualitatively, it can be analysed by using frequencies and percentages to determine relationships (Nassaji 2015: 129). However, such qualitative data can

also be analysed quantitatively, which involves an inductive exploration of recurring themes, patterns or concepts and then interpreting these categories.

The researcher will focus primarily on the quantitative data obtained for this study. However, an analysis of the open-ended questions will also be conducted. This study involved an understanding of human behaviour from the perspectives of individuals experiencing a phenomenon, in this instance, consumers' perspectives on retail business practices, service delivery and the law. Although the study relied more heavily on a quantitative analysis in respect of consumers' perceptions and experiences, the open-ended questions were specifically included to establish consumers' experiences and opinions of current retail business practices, their levels of understanding of legal rights and redress procedures and their views on various consumer protection issues.

4.4 Population and sampling

The planning of the field work or survey is an essential step in the research process and the researcher must identify the kind of population that is best suited to the research topic (Bryman 2012: 184). Choosing the population and sample also assists the researcher in deciding on how best to design the questionnaire and how it should be administered (Bryman and Bell 2011: 170).

4.4.1 Target population

A population (universe) refers to a whole group, for example, college students or sales stores, that share some common set of features or characteristics whilst the term population element refers to an individual member of that population (Zikmund, Babin, Carr and Griffin 2013: 385). Somekh and Lewin (2005: 347) define a population as "all the people or phenomena under study, from whom a sample will be selected for research". The sample will then comprise of some of the members that have been selected from the population for the investigation, in other words, a subset of the population (Sekaran and Bougie 2013: 241).

The target population for this study included all the consumers using retail businesses in the greater Durban area. The Ethekewini Municipality, which Durban is a part of, is the largest city in the Province of KwaZulu-Natal and comprises approximately 3,44 million people according to the 2011 Census (Statistics South Africa 2011). The city of Durban, which comprises the urban component of the municipality, and its surrounding towns, is home to approximately 2,9 million people (IndexMundi 2016).

4.4.2 Sampling size

The best research would entail collecting data from every element within the population however, in reality, this may be actually impractical, time-consuming and uneconomical ('O Leary 2004: 102; Welman, Kruger and Mitchell 2005: 55). Sampling then is a process during which the researcher will study the sample and draw conclusions from that sample which are then used to make generalizations for the whole population (Sekaran and Bougie 2013: 241). A sample refers to that portion of the population that is selected for investigation (Bryman 2012: 187).

In order for research findings to be credible and to be able to generalize the findings to the whole population, the sample must be truly representative of the population (Bryman and Bell 2011: 168; Leedy and Ormrod 2005: 198). In reality however, this may not always be possible. The sample size in this study was guided by Sekaran and Bougie (2013: 268) who suggests that for a population exceeding 1 million, a sample of 384 was sufficient for the researcher to draw inferences. Hence, the sample size in this study comprised 400 consumers, to cater for incomplete or unusable questionnaires as well as non-responses.

4.4.3 Sampling method

Researchers use the results obtained from their investigations to make general conclusions about the larger population. However, Sekaran and Bougie (2013: 244) argue that in certain types of research studies, the concern is not about generalizability but more about exploration and fact finding, where the researcher wishes to understand the situation better or investigate a phenomenon. In such

instances, the researcher may choose the most conveniently available people to provide that information, as was the case in this study.

The researcher sought to investigate consumer expectations and perceptions about consumer protection and service delivery in the retail industry. By exploring the experiences of consumers, this research study will highlight the challenges faced by consumers, determine the levels of awareness of consumers with regard to consumer laws and ultimately, establish whether the CPA is being implemented effectively to achieve the protection of consumers. Accordingly, the main goal of this study is to obtain data that can provide a meaningful insight into the topic rather than make generalisations obtain the entire population.

There are two types of sampling methods in research, namely, probability and non-probability sampling. In probability sampling, the elements that comprise the population have a known chance of being chosen as sample subjects whilst in non-probability sampling, there is no known or predetermined likelihood of the elements being selected (Sekaran and Bougie 2013: 245). Non-probability sampling is a sampling method in terms of which the sample is selected on the basis of convenience and therefore, some elements in the populations are more likely to be chosen than others (Bryman and Bell 2011: 171). Hence, when the sampling technique is not random, human judgment may affect the selection process.

Convenience sampling, a type of non-probability sampling technique, was used in this study to select the sample. Convenience sampling is defined by Zikmund, Babin, Carr and Griffin (2013: 392) as “the sampling procedure of obtaining those people or units that are most conveniently available”. Hence, convenience sampling is the most expedient form of sampling methods because the researcher simply uses participants who are readily available or easily accessible (Wagner, Kawulich and Garner 2012: 92). It was less complicated, saved time and money and was most appropriate for this small scale study.

In this study, the researcher, with the assistance of research assistants, handed out questionnaires to consumers who were accessible at the given time. In addition, the researcher forwarded questionnaires via email to as many contacts as possible. The

researcher also handed out questionnaires personally to people who were accessible to the researcher.

It is important here to reiterate that every person is a consumer when they buy goods and when they pay for services rendered to them. This study is based on retail practices generally to give the researcher an opportunity to explore retail business practices in relation to the CPA. It does not limit the type of retail businesses used by the consumer. Those customers who volunteered to participate by completing the questionnaire were included in the sample. This sample selection process continued until the required sample size was reached.

4.5 Data collection

Data collection is an important part of the research project and may be structured, semi-structured or unstructured. The questionnaire is an example of an instrument used to collect data from participants in the study. As alluded to in the previous section, the researcher designed questions in the questionnaire that allowed for specific data to be collected to answer the research questions (Bryman 2012: 12). Both primary and secondary data sources were included in this research study.

Sekaran and Bougie (2013: 113) define primary data as “information that is obtained first-hand” by the researcher that is based on the elements of interest for the purpose of that particular study. This included the information collected from participants through the self-completion questionnaires. Therefore, this study relied on the responses received from respondents as the primary data collecting method.

4.6 Questionnaire design

The self-completion questionnaire is one of the principal instruments used for gathering data in a survey design. Kumar (2005: 129) defines a questionnaire as a document which contains questions on which the respondents record their answers. In the design of the questionnaire, the researcher must take note of the wording of the questions, how the variables will be classified and coded, and the general appearance of the questionnaire. All these are important considerations in

questionnaire design because they can reduce bias in research (Sekaran and Bougie 2013: 149).

A self-completion questionnaire was formulated by the researcher and structured according to the objectives of the study and after reviewing the relevant literature. The questionnaire must fulfil the purpose of the research. Therefore, it is vital for the questions to be relevant and accurate. A questionnaire is relevant to the extent that all the information derived from it will assist in addressing the problem (Zikmund, Babin, Carr and Griffin 2013: 335). A self-completion questionnaire was the most suitable method of collecting data quickly from respondents who were consumers of retail businesses. There are several advantages and disadvantages associated with the use of questionnaires. These have been summarised in Table 4.1.

Table 4.1: Advantages and disadvantages of questionnaires

ADVANTAGES	DISADVANTAGES
<ul style="list-style-type: none"> • The same instrument (questionnaire) can be sent to a large number of respondents. • They allow the respondents to complete the questionnaire at their own convenience. • It eliminates the element of bias as there is no interviewer. • They provide the greatest possibility of anonymity. • The instrument can be administered either personally (researcher or research assistant), through the mail or via internet or email. 	<ul style="list-style-type: none"> • The response rates are generally low, except in the case of group-administered questionnaires. • The researcher is not able to probe the respondent for further clarification. • The data has to be captured by hand before analysis is done, which takes time and may lead to transcribing errors. • It is difficult to reach target populations that may not have access to technology such as internet.

(Source: Adapted from Wagner, Kawulich and Garner 2012: 100)

4.6.1 Questionnaire content

The relevant literature as well as previous studies on service quality provided the basis for the formulation of the self-completion questionnaire for this study. With a view to achieving the aims and objectives of this study, the questionnaire was specifically designed according to the specific themes of the study. The questionnaire was aimed at establishing levels of consumers' awareness, expectations and perceptions of service quality, experiences of unfair business practices, and awareness of legal remedies and procedures.

As mentioned earlier in this chapter and chapter 2, the SERVQUAL instrument, which is a pre-existing validated instrument (Parasuraman, Zeithaml and Berry 1985: 41), was modified and adapted to test consumer expectations and perceptions in response to specific dimensions. The measurement consisted of the use of a five-point Likert scale, where strongly disagree = 1 and strongly agree = 5. The goal of the Likert scale, which is the most common technique in questionnaire design, is to measure intensity of feelings relating to the area in question (Bryman 2012: 166).

4.6.2 Question format and type

The questionnaire was divided into the following sections:

- Section A – Demographic data and general information
- Section B – Awareness of consumer rights
- Section C – Expectations and perceptions of customer service
- Section D – Awareness of contractual relations with business
- Section E – Legal remedies and enforcement mechanisms

Closed questions are formulated with a set of fixed alternatives from which respondents choose the most appropriate answer whilst with open questions, the respondents are free to answer however they wish. Self-completion questionnaires often have fewer open questions because closed questions are easier for respondents to answer (Bryman 2012: 233). However, open-ended questions can

also be very advantageous to a study in that the respondents can answer freely in their own words and may provide views or perspectives that are different from the standard or fixed alternatives provided in the closed questions.

The questionnaire in this study contained both open-ended and closed questions. The closed questions were formulated to measure consumer expectations and perceptions of service quality and service delivery in relation to various retail business practices. In addition, various questions were formulated to establish whether consumers were aware of the law relating to purchase of goods and services and whether they understood various legal mechanisms for redress. This type of quantitative analysis has already proved successful in business research (De Jager and Van Zyl 2013: 752; Arunkumar, Manjunath and Shivashankar 2012: 167; Marx and Erasmus 2006: 56; Berndt 2009: 1).

The inclusion of open-ended questions in the questionnaire was important to elicit responses from consumers' of their personal experiences and opinions about retail business practices and consumer awareness. This kind of information is vital in establishing whether deceitful business practices are continuing after implementation of the CPA and whether consumers are aware of the legal consequences of these practices.

4.6.3 The pre-test

In terms of a statistical analysis, reliability and validity are the two most important aspects of precision. Pre-testing ensures that the questionnaire is designed to satisfy the objectives of the study and to test the relevance and accuracy of the data collected. A pre-test was administered with 20 respondents selected conveniently to complete the questionnaire. The purpose of the pre-test was to ensure that all questions and statements were easily understood and relevant to the study. In addition, it enabled the researcher to check for errors or inconsistencies in an attempt to establish the validity and reliability of the instrument. These 20 respondents were not included in the main study.

A reliability coefficient of 0.7 or higher is considered as “acceptable” for a newly developed construct (Bryman 2012: 170). The Cronbach’s alpha score was tabulated by the statistician for all the items that constituted the questionnaire. The reliability scores for all sections exceeded the recommended Cronbach’s alpha value. This indicated a degree of acceptable, consistent scoring for these sections of the research. Accordingly, reliabilities were very good.

4.7 Data analysis

The primary aim of collecting data during survey research is to formulate relevant conclusions about the problem or issue being investigated. Hence, the data must be analysed and interpreted so that the most pertinent and meaningful information can be taken from it (Wagner, Kawulich and Garner 2012: 176). Blumberg, Cooper and Schindler (2005: 70) define data analysis as a process that involves “reducing accumulated data to a manageable amount, developing summaries, looking for patterns and applying statistical techniques”.

Once the process of data collection and capturing of the data had been completed, the researcher analysed the responses to the open-ended questions whilst the statistician assisted in the analysis of the quantitative data. In respect of this study, the research instrument was analysed using appropriate computer software, in this case the SPSS version 24.0. SPSS actually means Statistical Package for the Social Sciences and is the most widely used computer software in the analysis of quantitative data (Bryman and Bell 2011: 312). The data, which were in the form of words derived from the respondents’ answers to open-ended questions in the questionnaire, were collected and captured quantitatively. Descriptive and inferential statistics were then extracted from the data.

4.7.1 Descriptive statistics

The aim of descriptive research is to answer specific research questions. Hence, in descriptive statistics, the researcher only describes the findings of the collected data. This analysis entails description in terms of frequencies, proportions, mean,

median, standard deviation and so on (Hussain 2012: 741). Tables and graphical presentation were used to present the analysis of data.

4.7.2 Inferential statistics

Omair (2012: 1255) suggests that when presenting inferential statistics, the researcher should present those results, both positive and negative, that are relevant to the specific objectives of the research study. The inferential analysis will correlate variables or compare groups of variables so that inferences can be drawn from the sample to a population. In this way, the researcher can formulate conclusions from the results for the research questions (Creswell 2014: 209).

In the case of cross-sectional research designs, data is used to identify associations and relationships rather than establishing causality between the variables. Therefore, the researcher must rely on common sense or make reference to theoretical explanations to make causal inferences from the data (Bryman and Bell 2011: 107).

4.7.3 Cronbach's alpha test

Cronbach's alpha test is commonly used to test internal reliability. It is not a statistical test but calculates the average of all possible split-half reliability coefficients. The coefficient may vary between 1 (reflects perfect internal reliability) and 0 (denotes no internal reliability). In most research studies, the figure 0.70 is used as a rule of thumb for an acceptable level of internal reliability (Bryman 2012: 170).

4.7.4 Chi-square test

According to Welman, Kruger and Mitchell (2005: 231), chi-square testing establishes whether the distinct classes into which the interval or ratio variable are grouped, are statistically or significantly related to another variable and that the relationship is not merely caused by chance. Hence, the chi-square test is used to establish whether there really is a relationship or association between two nominal

variables. This calculation is based on cross tabulations or contingency tables of the two variables concerned (Bryman and Bell 2011: 327).

4.8 Validity and reliability

The two most important aspects of precision are reliability and validity. The last step in the process of research methodology is to satisfy the requirements of validity and reliability. According to Bryman (2012: 45), the criteria used for testing the quality of the research study is reliability, replication and validity. Research instruments must be internally valid and reliable (Gray 2009: 155). Although validity and reliability are two separate terms, they are closely related because if the measure is not reliable, it cannot be valid (Bryman 2012: 173).

If the researcher can ensure the validity and reliability of the measure used for the data collection then the overall quality of the research process and the final result will be assured (Wagner, Kawulich and Garner 2012: 80). Creswell (2009: 190) argues that the researcher must indicate how the accuracy and credibility of the research findings will be established.

Zikmund, Babin, Carr and Griffin (2013: 303) defines validity as “the accuracy of a measure or the extent to which a score truthfully represents a concept”. Hence, the critical question here is - is the instrument measuring what it is supposed to be measuring? For example, the issue of validity will determine whether the UK’s or South Africa’s consumer price index (CPI) really does reflect inflation and the rise in the cost of living (Bryman and Bell 2015: 170). The questionnaire in this study achieves the requirement of validity because the questions were specifically designed to satisfy the objectives of the study. In this way, the questions covered all the major themes followed in the area of study, that is, consumer awareness of legal rights, customer satisfaction and service delivery, consumer protection, unfair business practices, enforcement mechanisms and business compliance with the CPA.

Sekaran and Bougie (2013: 228) maintain that the measure’s reliability shows the degree to which the instrument is without bias or error free. Reliability refers to the

instrument's internal consistency (Zikmund, Babin, Carr and Griffin 2013: 301). Therefore, reliability deals with whether the results of the study are repeatable or replicable. In other words, reliability is achieved when different attempts at measuring the same subjects achieves the same result.

Bryman and Bell (2015: 169) propose that when determining if a measure is reliable or not, there are three factors that must be considered. These are stability, internal reliability and external reliability. On the other hand, when determining the validity of the measure, there are a number of ways of testing such as face validity, concurrent validity, predictive validity, construct validity and convergent validity (Bryman and Bell 2015: 170).

4.9 Conclusion

This chapter provided a theoretical background on the research design and methodology implemented in this study. The research design and methodology were formulated in accordance with the aim and objectives of the study. The researcher chose to adopt the quantitative research method. A survey design was adopted to collect data from a large number of consumers through the use of questionnaires. The questionnaire consisted of closed and open-ended questions. With the use of convenience sampling, the questionnaires were administered to retail consumers. The quantitative data derived from the questionnaire was analysed using the SPSS computer software, version 24.0. The data from open-ended questions was also analysed by the researcher. The analysis of the results is presented in Chapter 5 of this study.

CHAPTER 5

DATA ANALYSIS AND DISCUSSION OF RESULTS

5.1 Introduction

In the previous chapter, the research design, methodology, population and sampling method adopted in this study were discussed. The reliability and validity of the study were also explained. This chapter presents the results and discusses the findings obtained from the questionnaires in this study.

The questionnaire was the primary tool that was used to collect data and was distributed to consumers in the greater Durban Metropolitan area. The data collected from the responses was analysed with SPSS version 24.0. The results presented the descriptive statistics in the form of graphs, cross tabulations and other figures for the quantitative data that was collected. Inferential techniques included the use of correlations and chi square test values, which are interpreted using the p-values. For the open-ended questions, descriptive statistics were used in the form of frequency tables to present these results.

The presentation of results and discussion of findings has been undertaken in two parts. In part 1, the results of the closed-ended questions were presented, and in part 2, the responses to the open-ended questions were presented.

5.2 The sample

In total, 400 questionnaires were dispatched to consumers who had purchased goods and services from retail businesses in the greater Durban area. As alluded to in the chapter on research methodology, this sample size was guided by Sekaran and Bougie (2013: 268) who suggest that for a population exceeding 1 million, a sample of 384 was sufficient for the researcher to draw inferences. Of the total questionnaires handed out, 351 were returned. However, only 337 were useable

questionnaires and formed the basis for the computing of the results. This gave an 84,25% response rate.

5.3 Reliability statistics

Reliability is computed by taking several measurements on the same subjects. A reliability coefficient of 0.70 or higher is considered as “acceptable”. Table 5.1 reflects the Cronbach’s alpha score for all the items that constituted the questionnaire. The Cronbach’s alpha, a measure of internal consistency, actually measures how closely related a set of variables or items are as a group. As indicted in Table 5.1, the reliability scores for all sections are high and exceed the recommended Cronbach’s alpha value. This indicates a degree of acceptable, consistent scoring for these sections of the research.

Table 5.1: Cronbach’s Alpha Score

	Critical Themes	Number of Items	Cronbach's Alpha
B9	Basic Consumer Rights	12 of 12	0.841
C12	Expectations of the Service Provided	9 of 9	0.906
C13	Perceptions of Retail Business Practices	11 of 11	0.726
C14	Perceptions of the Service Quality	11 of 11	0.849
F30	Confidence About Consumer Protection	3 of 3	0.813

PART 1: QUANTITATIVE ANALYSIS OF DATA

Part 1 entails a descriptive and inferential analysis of quantitative data for all independent and dependent variables in the study. Accordingly, the analysis would indicate the means, standard deviations, frequencies and range of scores for these variables. Results have been presented according to section analysis.

5.4 Section A: Demographic data and general information

5.4.1 Age

The composition of the sample in respect of age was categorized into five groups, namely, 18 – 29 years, 30 – 39 years, 40 – 49 years, 50 – 59 years and 60 + years. The majority of the respondents fell into the age category 18 – 29 years and accounted for 138 or 40,9% of the total respondents. There were 86 or 25,5% of respondents between the age of 30 – 39 years, whilst 56 or 16,6% of respondents fell into the 40 – 49 year age category and 39 of the respondents were between the age of 50 - 59 years, reflecting a percentage of 11,6%. The remaining respondents were over the age of 60 years, accounting for 18 or 5,3% of the total sample. These results are illustrated in Table 5.2.

Table 5.2: Composition of Respondents by Age

	AGE	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18 – 29	138	40.9	40.9	40.9
	30 – 39	86	25.5	25.5	66.5
	40 – 49	56	16.6	16.6	83.1
	50 – 59	39	11.6	11.6	94.7
	60 +	18	5.3	5.3	100.0
	Total	337	100.0	100.0	

5.4.2 Gender

The overall gender distribution by age is captured in Table 5.3. There were a greater number of female respondents than male respondents for this study. The female respondents accounted for 187 or 55,5% of the total sample, whilst the male respondents totalled 150 or 44,5%. There were just 30 more females than males who participated in the survey and hence, both sexes were more or less fairly represented in the sample. Overall, the ratio of males to females was approximately 1:1 (44.5% : 55.5%). This ratio is similar to the actual demographics in relation to the gender of the population in the EtheKwini region, which comprises of 48,54% males and 51,46% females (Census 2011). Within the largest represented age

category 18 to 29 years, 75 or 54,3% were females and 63 or 45,7% were males. Within the age category of 30 to 39 years, 39 or 45,3% were male and 47 or 54,7% were females. Within the category of males (only), 26% were between the ages of 30 to 39 years, representing 11,6% of the total sample.

Within the age category of 60 years and over, which constituted the smallest group of respondents, 12 or 66,7% were males whilst only 6 or 33,3% were females. The disparity in gender within this age group may be attributable to a general reluctance amongst older people to participate in the survey, particularly females.

Table 5.3: Results of Age/Gender Cross-tabulation

Age			Gender		Total
			Male	Female	
Age (years)	18 – 29	Count	63	75	138
		% within Age	45.7%	54.3%	100.0%
		% within Gender	42.0%	40.1%	40.9%
		% of Total	18.7%	22.3%	40.9%
	30 – 39	Count	39	47	86
		% within Age	45.3%	54.7%	100.0%
		% within Gender	26.0%	25.1%	25.5%
		% of Total	11.6%	13.9%	25.5%
	40 - 49	Count	19	37	56
		% within Age	33.9%	66.1%	100.0%
		% within Gender	12.7%	19.8%	16.6%
		% of Total	5.6%	11.0%	16.6%
	50 – 59	Count	17	22	39
		% within Age	43.6%	56.4%	100.0%
		% within Gender	11.3%	11.8%	11.6%
		% of Total	5.0%	6.5%	11.6%
	60 +	Count	12	6	18
		% within Age	66.7%	33.3%	100.0%
		% within Gender	8.0%	3.2%	5.3%
		% of Total	3.6%	1.8%	5.3%
Total		Count	150	187	337
		% within Age	44.5%	55.5%	100.0%
		% within Gender	100.0%	100.0%	100.0%
		% of Total	44.5%	55.5%	100.0%

5.4.3 Race

The demographic variable of race in this research study was represented by the following groups, namely; African 152 or 45,1%; followed by Indian 108 or 32%; thereafter Coloured 36 or 10,7% and lastly, White 41 or 12,2%. The majority of the respondents are of the African race. The majority of South Africans, and indeed the KwaZulu Natal population, as well, belong to the African race. It is interesting to note that the frequency rates for race of the respondents closely resembles the proportions of race in the province.

Apart from the large number of African or Black respondents that participated in the study, it is clear from Figure 5.1 that a fairly high percentage of Indians, that is, 32% of the total respondents, participated in the survey. Majority of the Indian population live in the province of KwaZulu Natal. More particularly, a large number of Indians, that is approximately 143 000, reside in and around the Durban area, and comprise 24% of the total population in this city. In fact, Durban is often referred to as the “largest Indian city outside of India” (Mukherji 2011). Hence, the distribution of respondents in this survey very closely represent the demographics of people living in the greater Durban area. Figure 5.1 indicates the racial composition of the sample.

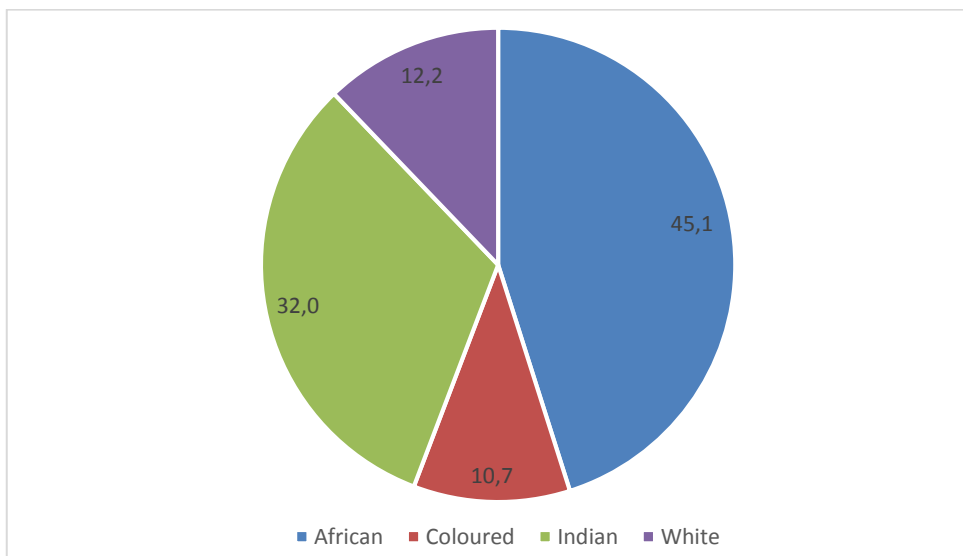


Figure 5.1: Racial Composition of Respondents

5.4.4 Educational levels

A large number of the respondents had reached the matric level at school. This comprised 113 or 33,5% of the total respondents. However, the majority of the respondents who participated in this survey were either in college or university or had already completed tertiary education. These respondents accounted for 183 or 54,3% of respondents which is a little more than half of the sample. Only 7 or 2,1% of respondents had no formal education whilst 4 or 1,2% of them had only primary school education. With the majority of respondents (54,3%) having a post school qualification and about a third (33,5%) having a school leaving certificate, it indicates that a fair proportion of the respondents have a higher qualification. This indicates that the responses gathered would have been from an informed or learned source. Hence, the responses would have been well thought out and reliable. Figure 5.2 indicates the education levels of the respondents.

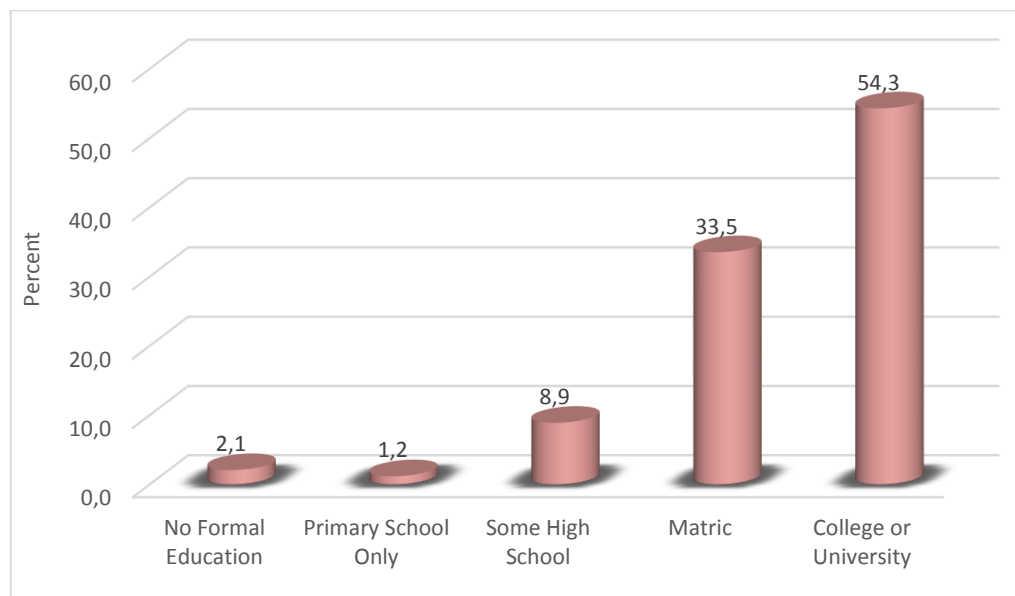


Figure 5.2: Educational Levels of Respondents

5.4.5 Types of retailers

This question was aimed at establishing the different types of retailers that are used by consumers, such as, supermarkets, furniture stores, clothing stores, appliance

stores, fast-food outlets, car sales dealerships and cellular phone stores to restaurants, hotel accommodation and banking services. The most frequently used retail stores were the supermarkets or hypermarkets in that 314 or 93,2% of respondents purchased from these stores. This was followed by clothing stores which also had a high frequency rate of 277 respondents or 82,2%. Banking services were also extensively used by respondents, accounting for 235 or 69,7% of respondents. This was followed by the use of fast-food outlets and restaurants, both of which were also commonly frequented by consumers and accounted for 230 or 68,2% of respondents each.

A total of 155 or 45,9% of respondents, which is slightly less than half of the total sample of respondents indicated that they had used cellular phone stores to make purchases. These stores are usually frequented by consumers who wish to purchase a cellular phone contract. A small number of respondents made use of hotel services, that is 97 or 28,8% and 94 or 27,9% of respondents bought from furniture stores in the last 24 months. The least used retailer amongst the sample of respondents was car sales dealerships, with only 59 or 17,5% of them using this retailer. Figure 5.3 indicates the frequency of purchases in the last 24 months.

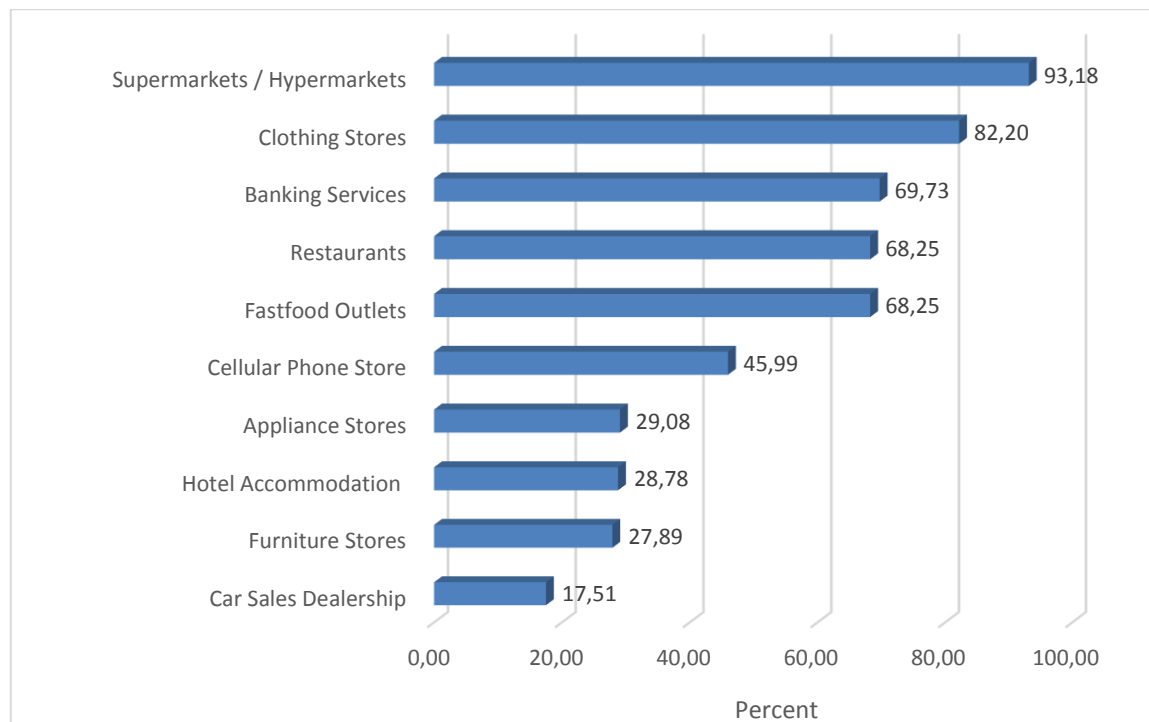


Figure 5.3: Frequency of Purchases from Different Retailers

5.4.6 Types of sales channels

The last question in section A was aimed at establishing the different sales channels that the respondents used when purchasing goods and services. Traditionally, retailing operated as open markets and brick-and-mortar stores. Today, retailing involves multi-channel sales giving consumers a variety of purchasing options for their convenience.

Almost all of the respondents had face-to-face contact by using direct or in-stores sales, meaning that 334 or 99,11% of the respondents go into the stores to make actual purchases. A third of the respondents, that is 114 or 33,83% of them purchased over the internet.

However, with the mail order or catalogue sales, only 50 or 14,84% of the respondents used this channel of sales. Direct marketing sales, which an ever-popular and growing sales trend in the present century, was a channel used by 99 or 29,38% of the respondents. Figure 5.4 indicates the types of sales channels used by respondents over the last 24 months, when buying goods and services.

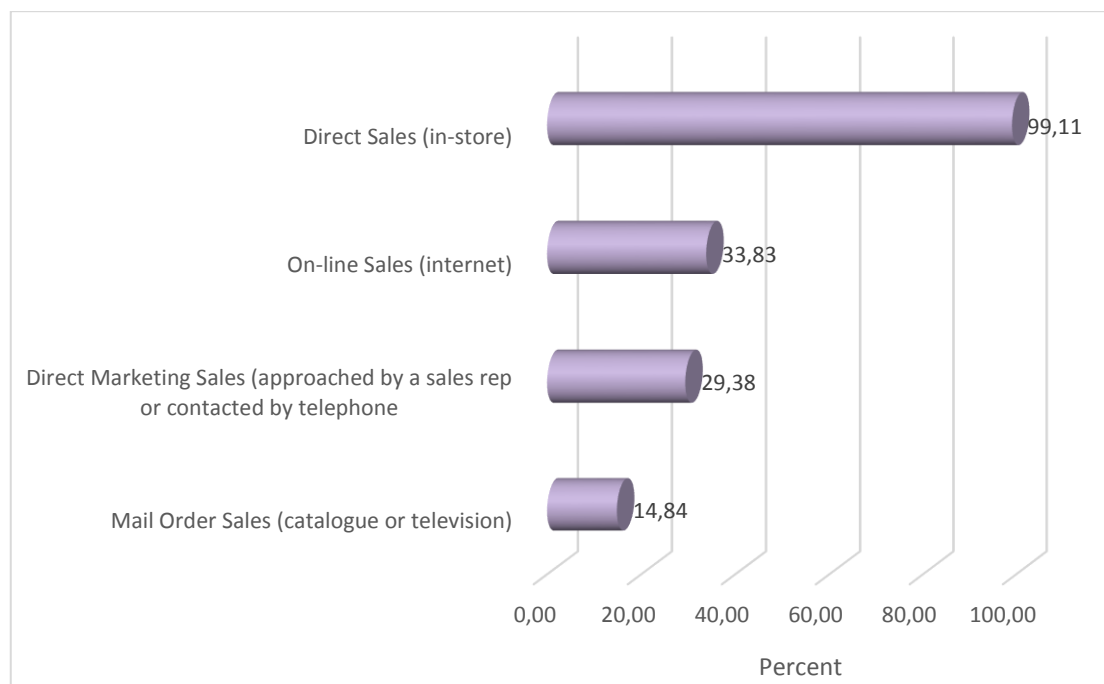


Figure 5.4: Types of Sales Channels

5.5 Factor analysis

Factor analysis is a statistical technique used to reduce the number of variables, by determining whether groups of indicators tend to form clusters. High loadings on each factor show inter-correlations between variables (Bryman 2012:180).

5.5.1 KMO and Bartlett's Test

The KMO and Bartlett's tests are commonly used to assess the suitability of the data for factor analysis. The matrix tables is preceded by a summarised table that reflects the results of KMO and Bartlett's Test. The requirement is that the Kaiser-Meyer-Olkin Measure of Sampling Adequacy should be greater than 0.50 and the Bartlett's Test of Sphericity should be less than 0.05 for factor analysis to be suitable.

In all instances in the present study, the conditions have been satisfied, thereby allowing for the factor analysis procedure. Factor analysis is done only for the Likert scale items. Certain components are divided into finer components. This is explained below in the rotated component matrix.

Table 5.4: Results of KMO and Bartlett's Test

		Kaiser-Meyer-Olkin Measure of Sampling Adequacy	Bartlett's Test of Sphericity		
			Approx. Chi-Square	Df	Sig.
B9	Basic Consumer Rights	0.852	1216.540	66	0.000
C12	Expectations of the Service Provided	0.911	1630.903	36	0.000
C13	Perceptions of Retail Business Practices	0.862	1905.669	55	0.000
C14	Perceptions of the Service Quality	0.873	1210.368	55	0.000
F30	Confidence About Consumer Protection	0.683	374.725	3	0.000

As illustrated in Table 5.4, all of the conditions are satisfied for factor analysis, that is, the Kaiser-Meyer-Olkin Measure of Sampling Adequacy value should be greater than 0.500 and the Bartlett's Test of Sphericity sig. value should be less than 0.05. The KMO values in each of the categories listed is very high, being greater than

0.800 in almost all cases and therefore significant. Although in respect of the consumer confidence the value was lower, that is, 0.683, it is still greater than 0.500 and therefore significant. The Bartlett's test had a significant value of 0.000 in all categories.

5.5.2 Rotated Component Matrix

The various rotated component matrix tables for each of the components that comprised multiple variables (items on a scale) are attached as appendices to this study. The principle component analysis was used as the extraction method, and the rotation method was Varimax with Kaiser Normalization.

The statements that constituted sections C12 (expectations of service delivery) and F30 (confidence about consumer protection) loaded perfectly along a single component. This implies that the statements that constituted these sections perfectly measured what it set out to measure. It is noted that the variables that constituted the remaining sections, loaded along 2 components or sub-themes. This means that respondents identified different trends within the section. Within the section, the sub-themes identified were:

- Rights relating to sale of goods; and
- Rights relating to customer service.

5.6 SECTION ANALYSIS

The section that follows analyses the scoring patterns of the respondents per variable per section. Where applicable, levels of disagreement (negative statements) were collapsed to show a single category of "Disagree". A similar procedure was followed for the levels of agreement (positive statements) into "Agree". The results are first presented using summarised percentages for the variables that constitute each section. Results are then further analysed according to the importance of the statements.

5.6.1 Section B: Awareness of consumer rights

This section deals with the extent or level of the respondents' understanding of the term "consumer rights" generally and then, more specifically, in respect of each of the fundamental consumer rights contained in the Consumer Protection Act (CPA). The tables and graphs that follow summarises the scoring patterns for each of the respective questions.

- **Understanding of the term "consumer rights"**

As reflected in Table 5.5, the majority of the respondents indicated that they had heard of the term "consumer rights". In terms of the frequency rates, 217 or 64,4% of respondents stated that they heard of the term and understood its meaning. On the other hand, 77 or 22,8% of respondents indicated that they heard of the term "consumer rights" but did not know what it means.

Those that indicated that they were uncertain about the term accounted for 43 or 12,8% of the respondents. Cumulatively however, those who were uncertain and did not know what the term means comprised 120 or 35,6% of the total sample.

Table 5.5: Respondents' Understanding of Consumer Rights

	Frequency	Percent
Heard of it but do not know what it means	77	22.8
Heard of it and understand what it means	217	64.4
Uncertain about the term	43	12.8
Total	337	100

- **Understanding of the fundamental rights contained in the Consumer Protection Act**

To determine whether the scoring patterns per statement were significantly different per option, a chi square test was done. The null hypothesis claims that similar numbers of respondents scored across each option for each statement (one

statement at a time). The alternate states that there is a significant difference between the levels of agreement and disagreement. As reflected in Table 5.6, the highlighted sig. values (p-values) are less than 0.05 (the level of significance).

As indicated in Table 5.6, the level of awareness and understanding of specific rights were extremely high in the case of rights relating to goods. For example, in respect of the right to return unsafe or defective goods, 86,1% of respondents understand the nature of this right. Even with the right to a refund or replacement in the case of defective goods, 84,6% of respondents understood the meaning of this right and 84.6 percent understood the right to receive good quality goods.

Table 5.6: Respondents' Understanding of the Consumer Protection Act

FUNDAMENTAL CONSUMER RIGHTS		Heard of it and understand what it means		Heard of it but do not understand what it means		Never heard of it		Chi Square
		Count	Row N %	Count	Row N %	Count	Row N %	p-value
Right of equality (not to be discriminated against by retail businesses based on race, etc.)	B9.1	249	73.9%	43	12.8%	45	13.4%	0.000
Right to privacy (to refuse to accept direct marketing)	B9.2	213	63.2%	67	19.9%	57	16.9%	0.000
Right to cancel a fixed-term contract	B9.3	148	43.9%	91	27.0%	98	29.1%	0.000
Right to cancel a contract within 5 days in the case of direct marketing sales	B9.4	151	44.8%	82	24.3%	104	30.9%	0.000
Right to choose and examine goods	B9.5	263	78.0%	52	15.4%	22	6.5%	0.000
Right to return unsafe or defective goods	B9.6	290	86.1%	33	9.8%	14	4.2%	0.000
Right to a refund or replacement in the case of defective goods	B9.7	285	84.6%	44	13.1%	8	2.4%	0.000
Right to information in plain and understandable language especially with written agreements	B9.8	223	66.2%	73	21.7%	41	12.2%	0.000
Right to fair and honest dealing (not to be misled or deceived by retail businesses)	B9.9	231	68.5%	69	20.5%	37	11.0%	0.000
Right to fair, just and reasonable terms in a contract	B9.10	204	60.7%	74	22.0%	58	17.3%	0.000
Right to receive safe, good quality goods	B9.11	285	84.6%	38	11.3%	14	4.2%	0.000
Right to take complaints to the consumer commission or court	B9.12	197	58.5%	69	20.5%	71	21.1%	0.000

It can be observed from Figure 5.5 that some statements show (significantly) higher levels of agreement (Heard of it) whilst other levels of agreement are lower (but still greater than levels of Never heard of it). There are no statements that have higher levels if "Never heard of it". The significance of the differences is tested and shown in Table 5.7.

As reflected in the Figure 5.5, a large majority of respondents, that is 249 or 73,9% of the total sample, indicated that they heard of the right to equality and understood the meaning of the right whilst 43 or 12,8% of them indicated that they heard of the right but did not know what it means and 45 or 13,4% of them claimed that they never heard of it. With regard to the right to information in plain and understandable language, 223 or 66,2% of respondents were aware of the right and its meaning. However, collectively, 114 or 33,8% of them either did not understand or never heard of the right.

Even in the case of the right to fair and honest dealing, 231 or 68,5% of respondents knew the meaning of the right and with regard to the right to fair, just and reasonable terms in a contract, 204 or 60,5% of respondents, indicated that they knew of the right and understood its meaning.

Only 151 or 44,8% of the respondents, which amounts of less than half of the total sample, were aware of the “cooling-off right” or the right to cancel the contract within 5 days, if it was a direct marketing sale. Of the remaining respondents, a cumulative total of 186 or 55,2% of them did not understand the or never even heard of the cooling-off right. This accounts for more than half of the respondents.

A total of 140 or 41,6% of respondents either did not understand the right to take complaints to the consumer commission or court or never heard of such a right at all. Such a high level of unawareness regarding redress is also of great concern.

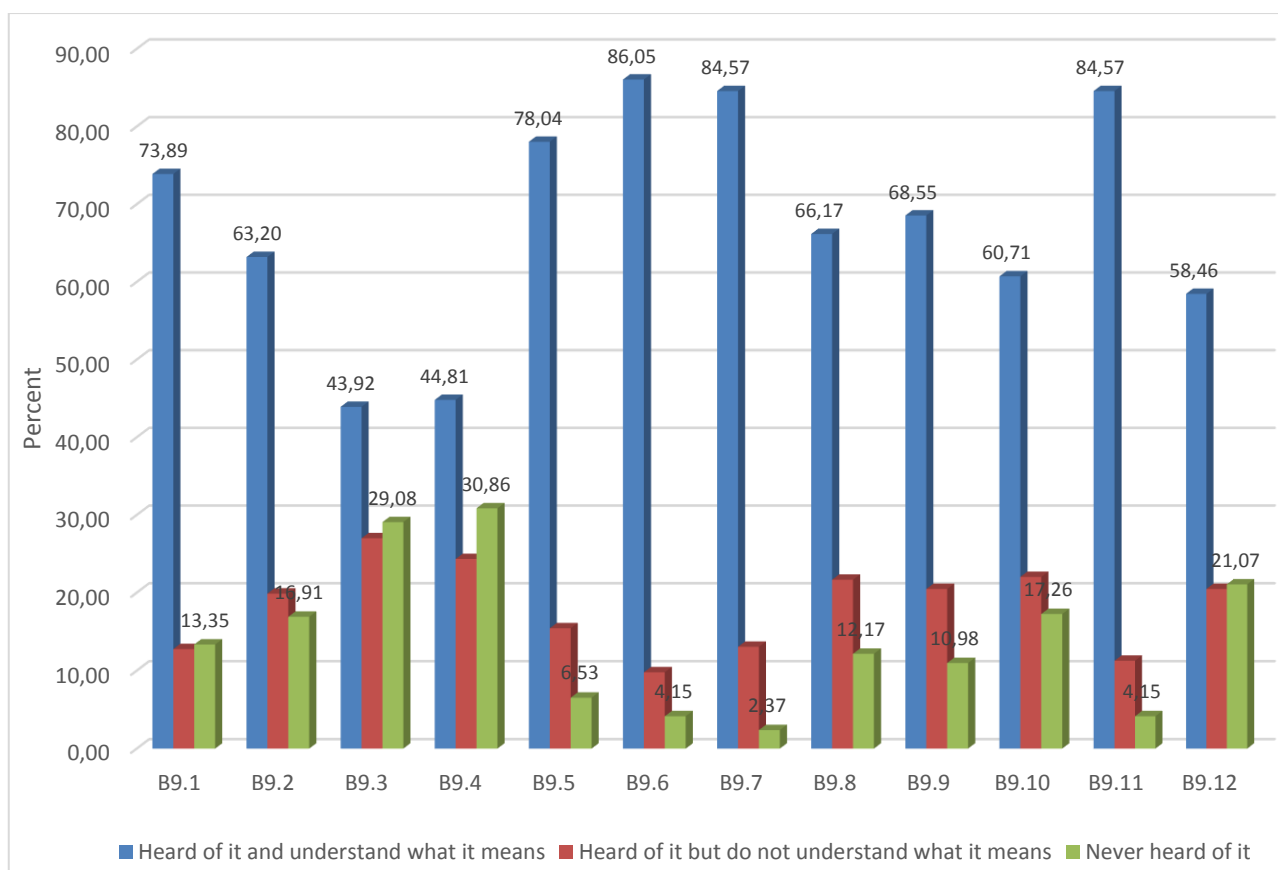


Figure 5.5: Patterns and Levels of Knowledge of CPA

- **Understanding of legal rights, as a consumer**

The understanding and awareness of legal rights in general also plays a crucial role in achieving consumer protection and preventing the exploitation of vulnerable consumers in the marketplace.

As shown in Table 5.7, only 88 or 26,1% of respondents indicated that they had an excellent understanding of their legal rights. Hence, 213 out of 337 respondents or 63,2% stated that they had some understanding of their legal rights, whilst 36 or 10,7% of them indicated that they had minimal or no understanding of their legal rights. This implies that a total of 73,9% of the respondents either have some understanding or no understanding at all with regard to the law. This cumulatively accounts for an extremely high percentage of uncertainty amongst the respondents.

Table 5.7: Results showing Understanding of Legal Rights

	Frequency	Percent
Excellent understanding	88	26.1
Some understanding	213	63.2
Minimal or no understanding	36	10.7

- **Importance of understanding legal rights, as a consumer**

The majority of the respondents answered “YES” to this question, as described in Table 5.8. All of the respondents, 333 or 98,8% who answered this question believed that an understanding of legal rights was necessary. This question also required the respondents to give reasons for their answers, irrespective of whether they answered “YES” or “NO”. These responses will be discussed in Part 2 of this section which analyses the open-ended questions.

Table 5.8: Respondents’ Views regarding Importance of Legal Rights

	Frequency	Percent
Yes	333	98.8

5.6.2 Section C: Expectations and perceptions of customer service

This section was designed to explore and establish how consumers generally feel about service delivery offered by retailers in Durban. By examining the expectations and perceptions of respondents, inferences can be drawn regarding service quality.

- **Expectations of the service provided by retail businesses in the greater Durban area**

A chi square test was conducted to establish whether the scoring patterns for each statement were significantly different per alternative. The sig. values (p-values) are all 0.000, that is, less than 0.05, which is the determined level of significance.

From Figure 5.6, it is evident that all statements in this question have significantly high levels of agreement with the highest score being 98,5% the lowest score being 89,6%. Hence, there was an extremely low percentage in respect of the levels of disagreement for all statements in this question. This implies that almost all of the respondents had the expectation that retail stores would provide for all of these dimensions.

The variables here related to product range, invoices, statements and written contracts, information about goods, knowledge of salespersons and treatment of customers and complaints, all of which fall into the established service quality dimensions. In respect of tangibility, an extremely large number of respondents, that is 302 or 89,6% agreed that a wide range of products must be available. Also, almost all the respondents in the sample, that is 332 or 98,5% agreed that invoices and statements must be easy to read and written contracts must be in simple language.

To satisfy the service quality dimension of assurance, a total of 326 or 96,7% of respondents felt that salespersons must have sufficient knowledge about products. On the other hand, 329 or 97,6% of respondents believed that salespersons and retailers must be honest with their customers regarding information. In respect of the element of empathy, 326 or 96,7% of respondents also indicated that they agreed that retailers must put the customer first.

It is quite evident from Figure 5.6, that a majority of the respondents “agreed” with all of the statements relating to their expectations of service quality, as compared to those who selected the option “neither agree nor disagree” and “disagree”. This clearly indicates that the respondents had the trust that the service will be met and hence all of the variables are essential in respect of service quality.

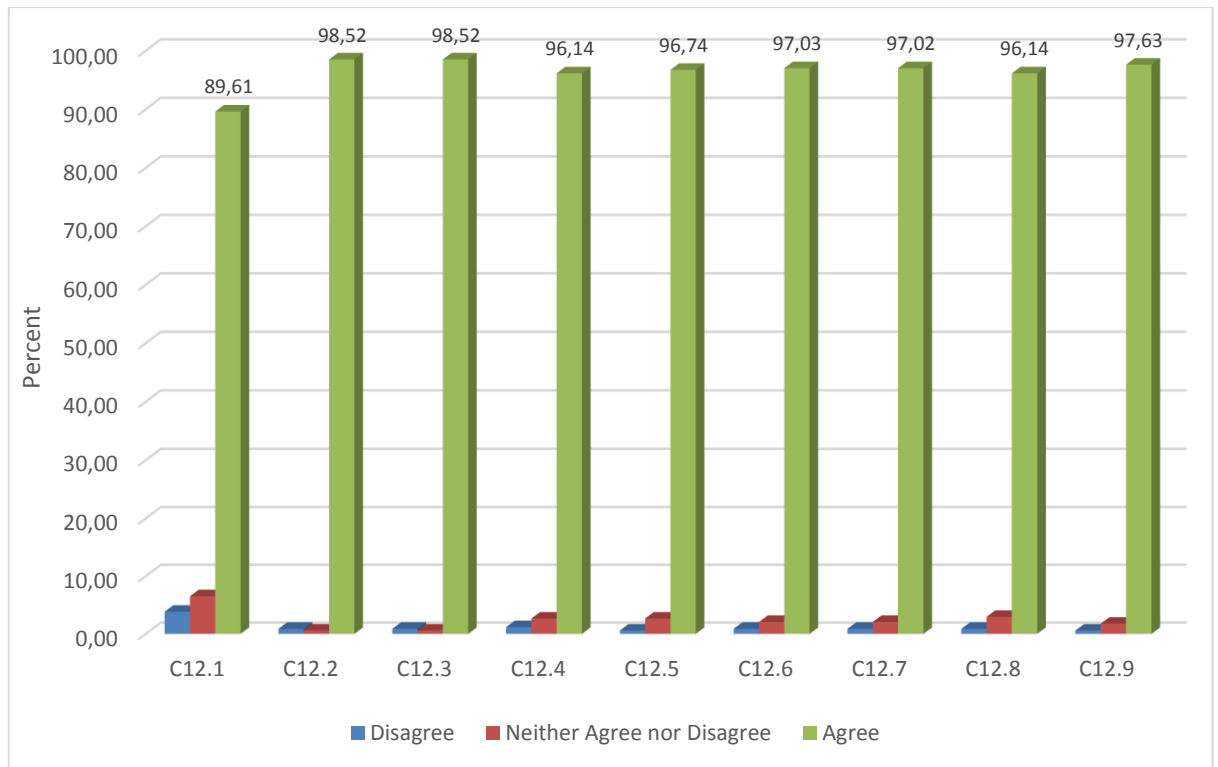


Figure 5.6: Expectations of Service Quality

- **Perceptions of the service quality provided by retail businesses in the greater Durban area**

As with the expectations element, a chi square test was also performed to determine whether the scoring patterns for each of the statements relating to perceptions were significantly different per alternative. The sig. values (p-values) are all 0.000, that is, less than 0.05 (determined level of significance).

The variables here related to product range, product quality, sales documents, advertised goods, knowledge of salespersons, treatment of customers and complaints, as well as refund policies. Respondents scored on their experiences of the various items on the scale. The results are presented in Figure 5.7.

In respect of the perceived quality, 212 or 62,9% of respondents agreed with the statement “a variety of products are available” at retail stores. Hence, 56 or 16,6% disagreed with this statement. However, this is in contrast to 302 or 89,6% of them

who had the expectation that a variety of goods must be available. This will be discussed in the following section.

Figure 5.7 gives a clear illustration of the highest and lowest percentages for the different statements. Figure 5.7 also shows that the other high levels of agreement were in respect of the statement “stores have refund and exchange policies”, where 197 or 58,5% of respondents agreed with this statement. Also, 190 or 56,4% of respondents agreed that “prices are highly competitive”.

With regard to the variable “products are of a good quality”, 160 or 47,6% of the respondents agreed with this statement. This means that less than half believed that goods were of a good quality. It is worth noting however, that 71 or 21,1% disagreed with this statement whilst 31,3% chose to remain neutral. When asked if sales documents were simple to read and understand, 124 or 36,8% of respondents agreed but 112 or 33,2% of respondents disagreed. Again, a high number of them (30%) chose to remain neutral.

When asked if staff are able to explain legal terms, to word it in the alternative, 202 or 59,9% of respondents felt that staff are not able to explain legal terms which is an essential requirement before concluding a contract. Also, 139 or 41,2% of respondents believed that the staff do not understand the needs of customers and in fact, 138 or 40,9% of them felt that the customer is not “put first”. These perceptions of respondents relate directly to the empathy provided by salespersons which impacts directly on service quality.

With regard to advertised products, only 114 or 33,8% of respondents agreed that these products were readily available. A slightly higher percentage of respondents, that is 124 or 36,8% disagreed that advertised goods were readily available. Of the remainder, 29,4% remained neutral. This area seems to be a point of concern.

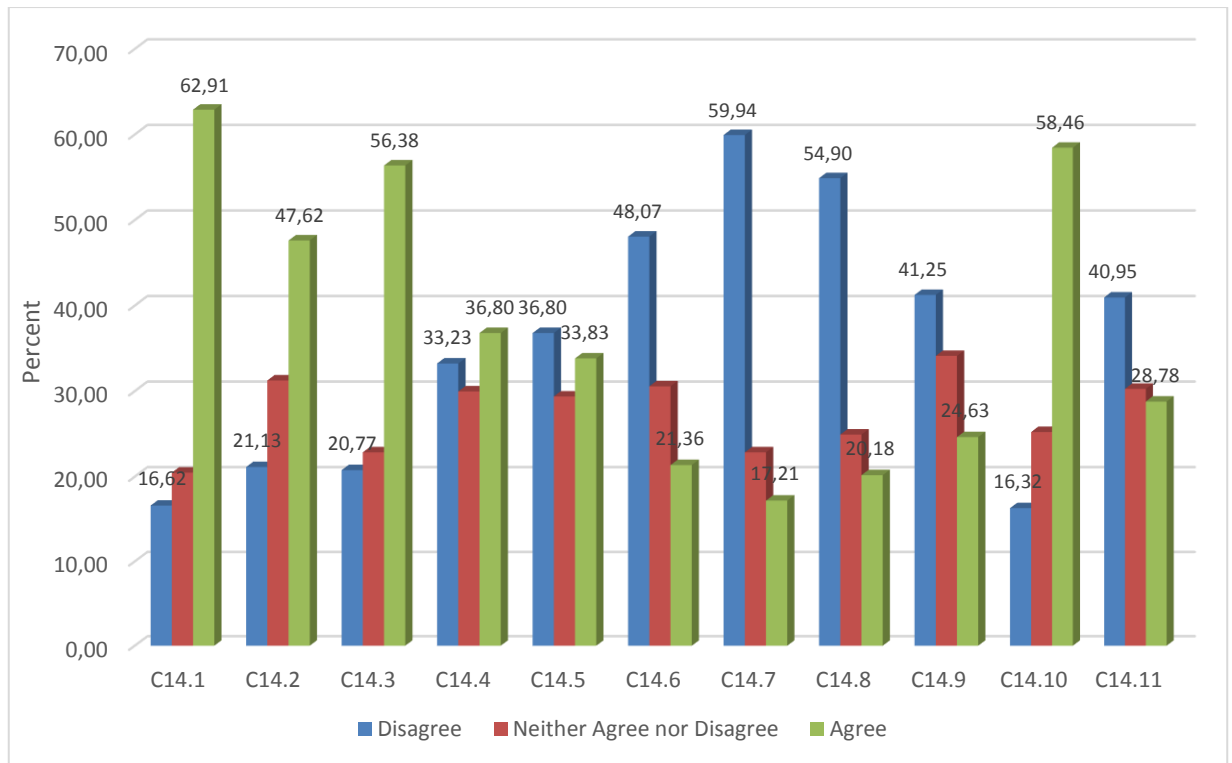


Figure 5.7: Perceptions of Service Quality

- Perceptions of retail business practices in the greater Durban area**

Figure 5.8 reflects the percentages for each of the statements relating to retail business practices. From the chi square test, the sig. values (p-values) for all statements were 0.000, that is, less than 0.05. The only exception was for “retailers put the customer first” which score was 0.002 (but still less than 0.05).

A very high percentage of respondents, that is 242 or 71,8% agreed that retailers are only concerned with making money. In addition, 237 or 70,3% of them agreed that retailers are quick to sell but give poor after-sales service. The levels of agreement were also high for the statements “retailers trick consumers with legal words”, with 224 or 66,5% accounting for this variable. When asked if retailers often use misleading advertising, 209 or 62% of respondents agreed with this statement whilst 204 or 60,5% of respondents agreed that retailers believe that they are always right.

Half of the respondents, that is 175 or 51,9%, believed that retailers often mislead customers. In respect of the variable “retailers handle customer complaints promptly”, 169 or 50,1% of respondents disagreed with this statement. On the other hand, 186 or 55,2% of respondents disagreed with the variable “retailers go the extra mile to help and solve the customers problem”. These figures do not augur well for retail businesses in the greater Durban area and portrays a negative image of retailers in general.

With regard to the perceptions of retail business practices (question 13) and service quality (question 14), it can be observed that in respect of all statements a fair number of people (ranging from 20 to 35 percent) chose the option “neither agree nor disagree”. Hence, it can be implied that if many respondents are neutral they are neither satisfied nor dissatisfied with the service provided by retailers. Being unsure indicates that retailers are inconsistent with the service delivery to consumers.

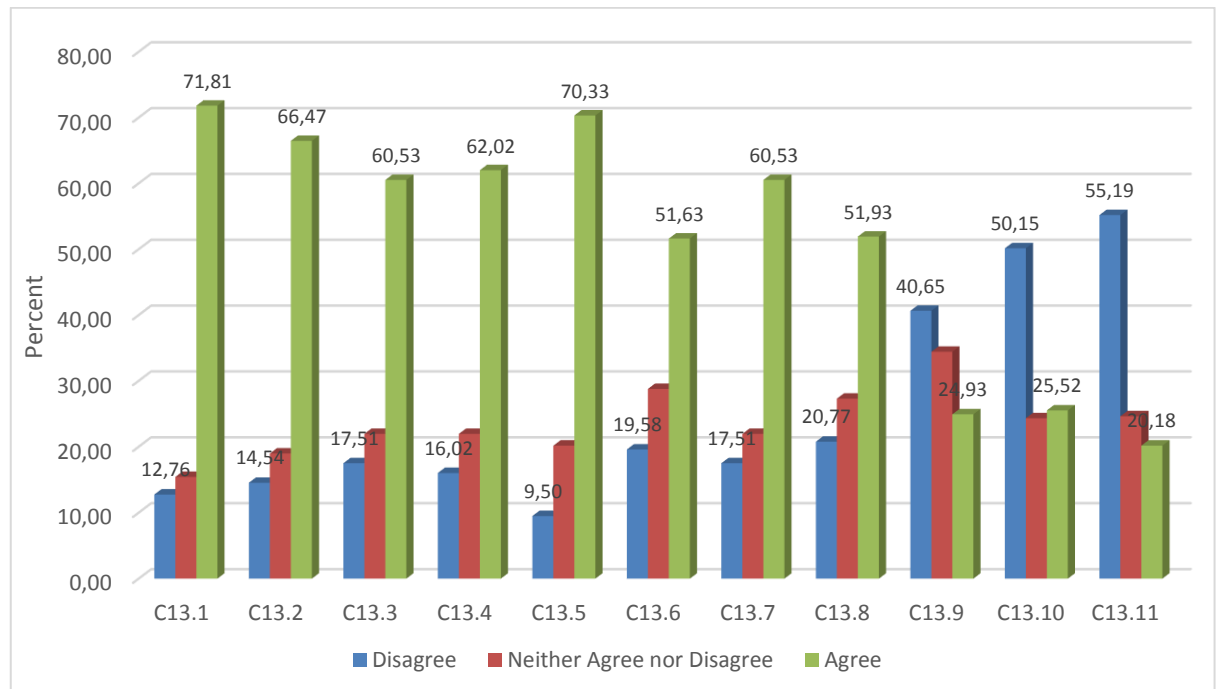


Figure 5.8: Perceptions of Retail Business Practices

- **Trustworthiness of retail businesses in the greater Durban area**

According to the figures captured in Table 5.9, of the total sample, 134 or 39,8% of respondents believed that retailers were “trustworthy”. Accordingly, the remainder of the respondents, that is 203 or 60,2% indicated that they do not consider retail businesses in the greater Durban area to be “trustworthy”. This is a very high percentage of consumers who have a negative perception of retail businesses which will impact on service quality and customer satisfaction. The respondents were also required to give a reason for their answers, which will be discussed in the section dealing with the analysis of open-ended questions.

Table 5.9: Respondents’ Views on Trustworthiness of Retail Businesses

TRUSTWORTHINESS OF RETAILERS		Frequency	Percent
Valid	Yes	134	39.8
	No	203	60.2

5.6.3 Dimensions analysis and gap score for service quality

This is a cross-disciplinary study between retailing and law. Accordingly, the accepted dimensions of service quality were not used in its established form but was modified to suit the specific provisions of the CPA. Table 5.10 and Figure 5.9 indicate the expected and perceived scores, as well as the gap scores for each of the variables under service quality. The differences between the expected (E) and the perceived (P) mean scores provided the gap scores for this analysis. As noted from Table 5.10, the differences between the E and P are significant ($p < 0.001$).

The discussion that follows satisfies the objective: “To determine from consumers their expectations and perceptions of service quality by the retail sector in relation to the provisions of the CPA”.

Table 5.10: Summary of Mean and Gap Scores for Service Quality Dimensions

	E	P	Gap	p-value
A variety of products are available	4.2	3.5	-0.7	0.000
Sales documents are simple to read and understand	4.6	3.0	-1.6	0.000
Staff have excellent product knowledge	4.5	2.7	-1.9	0.000
Staff attend to customer complaints immediately	4.6	2.6	-2.0	0.000
Customer always comes first	4.6	2.8	-1.7	0.000
Stores have refund and exchange policies	4.5	3.5	-1.1	0.000
Retailers do not mislead customers and always help	4.7	3.4	-1.3	0.000

Statement 1: A variety of products are available (Reliability)

The dimension of reliability means that goods and services must be provided, as undertaken or promised by the retail store (Berman and Evans 2013: 550). This entails the ability to deliver the goods and perform the services accurately and consistently (Goworek and McGoldrick 2015: 252). As indicated in Table 5.10, the expectation has a mean score of 4.2 while the perception's mean score is 3.5. This indicates that the expectations is slightly higher than the perceptions for this variable.

Accordingly, the mean gap score is -0.7. This finding shows that the gap is relatively small and the expectations of customers have been substantially met. Hence, the respondents, who are retail customers, are generally satisfied that a wide variety of products are available to satisfy their needs on a regular basis.

Statement 2: Sales documents are simple to read and understand (Tangibles)

According to Goworek and McGoldrick (2015: 252), tangibles refer to the appearance, physical attributes, equipment, facilities and more specific to this study, includes all communication materials. The materials associated with the relationship between the buyer and the seller must be visually appealing and suitable (Berman and Evans 2013: 551). This means that all documents that the customer receives,

such as till-slips, invoices and contracts, must be in simple language and easy to read. According to Table 5.10, the expectations has a mean score of 4.6 and the perceptions has a mean score of 3.0. Hence, the expectations is somewhat higher than the perceptions for this variable.

Hence, Figure 5.9 shows that the mean gap score for this variable is -1.6. This finding reveals that the gap is relatively large and therefore the expectations of the respondents have not been substantially met. In other words, the respondents in this sample were not satisfied that sales documents are simple to read and understand.

Statement 3: Staff have excellent product knowledge (Assurance)

Assurance refers to the knowledge and courtesy of salespersons in a retail store. Staff must have the ability to inspire their customers and create trust and confidence (Levy Weitz and Grewal 2014: 522). The expectations for this variable has a mean score of 4.5 and the perception's mean score is 2.7. The expectations in this instance is higher than the perceptions. The instances where the expectations greatly exceed that of the perceptions, can be easily observed in Figure 5.9. Accordingly, the mean gap score for this variable is -1.9. This finding reveals that the gap is quite large and so the expectations of the respondents have not been met. In other words, the respondents were not satisfied that sales staff had excellent knowledge about the products and goods that they sold.

Statement 4: Staff attend to customer complaints immediately (Responsiveness)

The dimension of responsiveness requires the retail store staff not only to render the service promptly but also to show true willingness to assist the customer (Machado and Diginnes 2012: 124). For this variable, the expected mean score is 4.6 and the received mean score is 2.6. Hence, in this case, the expectations was much higher than the perceptions. From Figure 5.9, the mean gap score for this variable is indicated as -2.0. This finding reveals that the gap is the largest as compared to the other variables measured. Accordingly, it implies that the retailer

has failed to adequately meet the expectations of the respondents. In other words, the respondents were not satisfied that sales staff had excellent knowledge about the products and goods that they sold.

Statement 5: Customer always comes first (Empathy)

Empathy refers to “the caring, individualised attention a firm gives its customers” (Brink and Berndt 2008: 66). Customers must be given personal attention and their needs and interests must be taken into account (East, Wright and Vanhuele 2013: 179). The expectations for the dimension of empathy has a mean score of 4.6 while the perception’s mean score is 2.8. The expectations in this instance is higher than the perceptions. The mean gap score for this variable is depicted in Figure 5.9 at -1.7. This finding reveals that the gap here is quite high in comparison to some of the other variables measured. Accordingly, it implies that the respondents were not satisfied that customers always come first in respect of the practices of retail businesses.

Statement 6: Stores have refund and exchange policies (Reliability and Responsiveness)

Reliability involves the retailer performing services efficiently, in other words, to perform the service right the first time (East, Wright and Vanhuele 2013: 179). The expectation in this instance has a mean score of 4.5 while the perception’s mean score is 3.5. This indicates that the expectations is slightly higher than the perceptions for this variable. From Table 5.10 and Figure 5.9, the mean gap score for this variable is indicated at -1.1. This finding reveals that the gap is not as large as the other variables measured. This means that the respondents were satisfied that most retail stores do have refund and exchange policies.

Statement 7: Retailers do not mislead customers and always help (Assurance)

Employees must be trustworthy and must convey correct information to the customer the first time when the sale is concluded. The expectation has a mean score of 4.7 while the perception’s mean score is 3.4. This indicates that the

expectations is higher than the perceptions for this variable. The mean gap score, as reflected in Figure 5.9, is -1.3. This result shows that the gap is large and would suggest that retailers often mislead customers and are not ready and willing to assist.

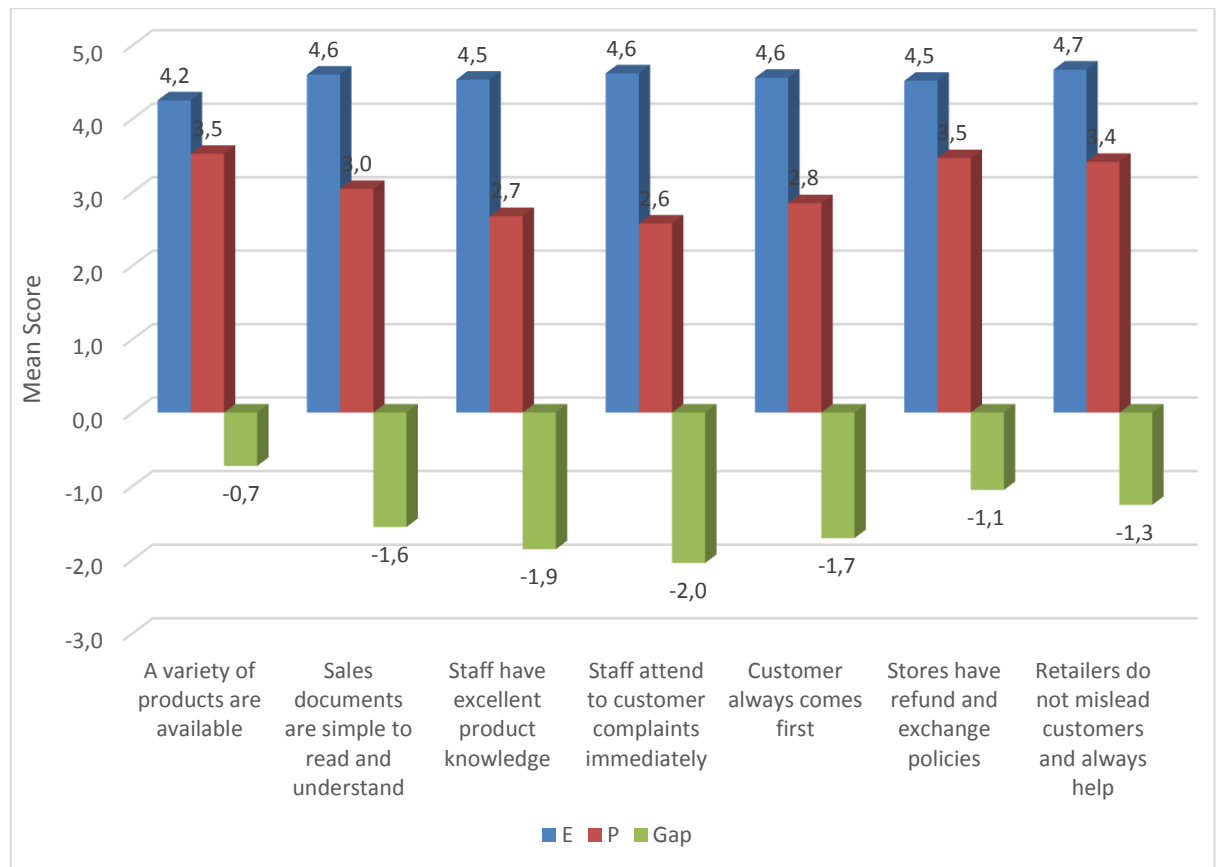


Figure 5.9: Expected and Perceived Scores for Service Quality Dimensions

5.6.4 Section D: Consumer experiences of retail business practices

The purpose of this section was firstly, to ascertain whether respondents had experienced problems either before or after making a purchase from a retailer, and how often, and secondly, to identify some of the consumer issues encountered by the respondents.

- **Frequency of problems encountered by respondents**

As shown in Table 5.11, the majority of respondents, that is 213 or 63,2% indicated that they had experienced problems with retail businesses occasionally over the last 24 months. From the remaining respondents, 65 or 19,3% said that they had experienced problems at least half the time whilst 18 or 5,3% stated that they had experienced problems almost all the time. Only 41 or 12,2% of respondents indicated that they had never encountered any problems. The cumulative percentage of respondents who had experienced problems amounted to 87,8%. This is a high rate of occurrence, given the fact that the CPA is already in operation for five years and its purpose is specifically to promote fair and honest business practices.

TABLE 5.11: Rate of Occurrence of Problems with Retail Purchases

RATE OF OCCURRENCE		Frequency	Percent
Valid	Almost all the time	18	5.3
	At least half the time	65	19.3
	Occasionally	213	63.2
	Never	41	12.2

- **Retail experiences of respondents**

Here, respondents indicated specific problems they had experienced over a 24 month period. Several variables were chosen for this question based on the literature review of unfair business practices and the provisions of the CPA.

From the frequency rates shown in Table 5.12, some important observations can be made. Of the 337 respondents, 123 or 36,5% indicated that they had an experience where goods were not delivered on time. Also, in respect of the variable “product was faulty, damaged or of poor quality”, 131 or 38,9% of the respondents had encountered this problem. These accounted for a very high rate of occurrence.

In addition, 91 or 27% of respondents also indicated that they had encountered poor responses from retail stores when a complaint was lodged. This impacts on the

provision of service delivery by the retail sector. Another problem experienced by a large number of respondents was that they were unable to get a refund or replacement for faulty goods, and this accounted for 80 or 23,7% of the respondents.

With regard to the variable, “advertising for the product was misleading”, 71 or 21,1% of respondents had experienced this problem. A large number of respondents, that is 76 or 22,6% of them indicated that they experienced delays with regard to repairs of damaged or faulty goods.

Table 5.12: Consumer Experiences with Retail Purchases

CONSUMER RETAIL EXPERIENCES	Frequency	Percentage
Product or service not delivered on time	123	36.5
Product was faulty, damaged or of poor quality	131	38.9
Salesperson gave false information about product	62	18.4
Terms and conditions in contract were unfair and unreasonable	41	12.2
Delays with getting faulty or damaged goods repaired	76	22.6
Warranty or guarantee not honoured by retailer	38	11.3
Unable to get a refund or replacement for faulty goods	80	23.7
Additional costs charged for repairs or replacement	36	10.7
Labelling or packaging was misleading	45	13.4
Advertising for the product was misleading	71	21.1
Poor response when retailer contacted about problem	91	27

- **Business policies implemented by retail stores since implementation of the CPA**

As indicated in Table 5.13, all the variables describing retail policies had been witnessed by the respondents, many also having witnessed more than one policy. A large number of respondents, that is 148 or 43,9% have purchased from stores which did not accept any complaints once the consumer left the store. The policy that was most commonly found at retail outlets was “no returns or replacements of goods bought during a promotion or sale”. Here, 181 or 53,7% of respondents chose this variable implying that it is quite prevalent in everyday business activities. Even

in respect of the policy that “the store will only repair defective goods – there will be no refunds”, 170 or 50,4% of respondents had experienced this policy in practice.

A smaller percentage of respondents, that is 83 or 24,6%, encountered the policy “the store will not be liable for any hidden defects in the goods” whilst 53 or 15,7% of the respondents experienced practices like “the store will not be liable because you agreed to an indemnity clause”. However, many more respondents, that is 110 or 32,6% of them, encountered the policy “goods were purchased *voetstoots* or as is – no refunds”.

Table 5.13: Consumer Experiences of Retail Policies

RETAIL BUSINESS POLICIES	Frequenc y	Percentag e
No complaints will be accepted once the customer leaves the store	148	43.9
The store will not be liable for any hidden defects in the goods	83	24.6
No returns or replacements of goods bought during a promotion or sale	181	53.7
Only repairs on defective goods – no refunds	170	50.4
The store is not liable because you agreed to an indemnity clause	53	15.7
Goods were purchased “voetstoots” or “as is” – no returns	110	32.6

- **Conduct of respondents in relation to misrepresentation, poor quality goods and bad service**

As shown in Table 5.14, 183 or 54,3% claimed that they would always go back to the retail store with their query. This indicates that consumers are becoming more pro-active. However, 68 or 20,2% of respondents indicated that they would only go back to the retail store if the transaction involves a large amount of money. This implies that consumers who spend smaller amounts will generally not go back with their query.

A small number of respondents, 31 or 9,2% claimed that they would not go back to the store because it is not worth the time involved or the cost incurred. Only 21 respondents or 6,2% of them indicated that they would not go back to the retail store

because the retailer is not sympathetic to the consumer. It is interesting to note that 33 or 10% of respondents chose several variables here indicating some uncertainty.

Table 5.14: Consumer Responses to Poor Service Delivery

RESPONSES TO SERVICE DELIVERY		Frequency	Percent
Valid	I always go back to the retail store with my query	183	54.3
	I only go back to the retail store if the transaction involves to a large amount of money	68	20.2
	I would not go back to the retail store because it is not worth the time involved or the cost incurred	31	9.2
	I would not go back to the retail store because the retailer is not sympathetic to the consumer	21	6.2

5.6.5 Section E: Awareness of contractual relations with business

The purpose of this section was to ascertain if the respondents understood the legal implications of entering into contracts, particularly the act of signing a written contract. Chapter 3 of the literature review discussed the implications of certain of the common law principles such as *caveat subscriptor* and *voetstoots*.

- **Understanding of contractual rights and duties**

It is clear from Table 5.15 that 68 or 20,2% indicated that they had an excellent understanding of their rights. Hence, a large number of respondents, totalling 234 or 69,4%, only have some understanding of their rights and duties when entering into a contract. Of the remainder, 34 or 10,1% claimed that they had minimal or no understanding of their contractual rights and obligations.

Collectively, those who had “some” understanding or “minimal or no understanding” of their contractual rights and duties, accounted for a total of 79,5% of the respondents. This constitutes a very high percentage of unawareness.

Table 5.15: Level of Understanding of Contractual Obligations

LEVEL OF UNDERSTANDING OF CONTRACTUAL RIGHTS AND DUTIES		Frequency	Percent
Valid	Excellent understanding	68	20.2
	Some understanding	234	69.4
	Minimal or no understanding	34	10.1

- **Conduct of respondents before signing the contract**

As described in Table 5. 16, 120 or 35,6% of respondents, which accounts for only one-third, indicated that they read the document properly. Of the remaining respondents, 40 or 11,9% picked out certain key points to read whilst 65 or 19,3% only skimmed through the document. Those who did not read the document at all accounted for 16 or 4,7%. Some of the respondents, 22 or 6,5%, allowed the salesperson to explain the document to them whilst only 3 or 0,9% allowed the salesperson to explain their legal rights to them. In addition, several respondents chose two or more of the variables indicating a combination of variables.

TABLE 5.16: Respondents' Conduct Before Signing Written Contracts

CONDUCT OF CONSUMER BEFORE SIGNING THE CONTRACT		Frequency	Percent
Valid	I read the document properly	120	35.6
	I picked out certain key points to read	40	11.9
	I only skimmed through the document	65	19.3
	I did not read the document at all	16	4.7
	The salesperson explained the document to me	22	6.5
	The salesperson explained my legal rights to me	3	0.9

- **Conduct of respondents after signing the contract**

As reflected in Table 5.17 below, 100 or 29,7% of the respondents signed because they understood all the terms, accounting for less than one-third of the total sample. Of the remainder, 92 or 27% of respondents indicated that although they signed, they only understood some of the terms. Whilst 35 or 10,4% of respondents indicated they signed because the salesperson was in a hurry, 39 or 11,6% of them stated that the salesperson explained the terms and legal rights to them. On the

other hand, 23 or 6,8% of them indicated that the salesperson never explained any terms or legal rights.

Table 5.17: Respondents' Conduct After Concluding Written Contracts

CONDUCT OF CONSUMER AFTER SIGNING THE CONTRACT		Frequency	Percent
Valid	I signed the contract because I understood all the terms	100	29.7
	I signed the contract but I only understood some of the terms	92	27.3
	I signed the contract because the salesperson was in a hurry to complete the sale	35	10.4
	I signed the contract because the salesperson clearly explained the terms and my legal rights to me	39	11.6
	I signed the contract but the salesperson never explained any terms or legal rights to me	23	6.8

- **Reasons for not reading or not fully understanding the contract**

According to the results in Table 5.18, a large number of respondents, that is 134 or 39,8% indicated that the contract was too long to read. Also, 116 or 34,4% of respondents felt that there were too many legal terms to understand. In addition, 77 or 22,8% believed that there is not enough time to read all of the terms.

Many respondents indicated that they signed the document because they believed that it was a standard contract. This accounted for 96 or 28,5% of the total sample. Of the remaining options, 62 or 18,4% of respondents felt that there was no opportunity to change any terms whilst 80 or 23,7% of respondents did not read because they trusted the retailer's reputation.

Table 5.18: Respondents' Responses for Failure to Read or Understand the Contract

REASONS FOR NOT READING CONTRACT	Frequency	Percentage
I thought it was a standard contract	96	28.5
The contract was too long to read	134	39.8
There are too many legal terms to understand	116	34.4
There is no opportunity to change any terms	62	18.4
There is not enough time to read all the terms	77	22.8
I trusted the retailer's reputation	80	23.7

- **Exploitation and unfair treatment of consumers when signing written contracts**

There was an overwhelming majority of respondents, that is 272 or 80,7% , who agreed that consumers are exploited or treated unfairly when they sign contracts. Only 65 or 19,3% out of the 337 respondents felt that consumers are not treated unfairly in this regard. Respondents were required to give reasons however these responses will be discussed under the analysis of the open questions.

Table 5.19: Respondents' Responses to Consumer Exploitation during Contracts

ARE CONSUMERS TREATED UNFAIRLY WHEN SIGNING CONTRACTS?		Frequency	Percent
Valid	Yes	272	80.7
	No	65	19.3

5.6.6 Section F: Legal remedies and enforcement mechanisms

The section was designed to establish whether consumers are aware of what to do and where to go to in the event of a dispute with a retailer. Also, respondents had to indicate their degree of confidence and trust in the legal system.

- **Consumer awareness of the legal remedies in the event of disputes**

From the Table 5.20, 137 or 40,7% of respondents indicated that they were aware of the legal remedies available to them in the event of a dispute with the retailer. However, 200 or 59,3% of respondents indicated that they were not aware of the legal remedies. This rate of unawareness is significantly high.

Table 5.20: Awareness of Legal Remedies in cases of Disputes

AWARENESS OF LEGAL REMEDIES		Frequency	Percent
Valid	Yes	137	40.7
	No	200	59.3

- **Conduct of consumers in the event of disputes with retailers**

From Table 5.21, about 110 or 32,6% of respondents indicated that they always seek legal advice irrespective of the nature of the transaction. On the other hand, 102 or 30,3% of them stated that they will only seek legal advice if the transaction involves a large amount of money. This implies that consumers who have spent a small of amount generally do not challenge the retailer when there is a problem.

There were also those respondents who indicated that they would not seek assistance because it was time-consuming and expensive. These respondents accounted for 41 or 12,2%. A point of concern is that 70 or 20,8% of respondents indicated that they would not know where to go to seek advice. Consumer protection begins with consumer awareness hence, it implies that if people do not know where to go to get help, they cannot be protected and consumer protections laws will have little purpose (Knowler 2012).

Table 5.21: Respondents' Responses to Disputes

CONSUMER CONDUCT IN THE EVENT OF A DISPUTE		Frequency	Percent
Valid	I always seek legal advice or assistance irrespective of the nature of the transaction	110	32.6
	I only seek legal advice or assistance if the transaction involves a large amount of money	102	30.3
	I would not know where to go to seek assistance	70	20.8
	I would not seek assistance because it is too time-consuming and expensive	41	12.2

- **Access to information, advice or assistance relating to consumer issues**

According to Table 5.22, of the total sample, only 33 or 9,8% said that it was extremely easy to get assistance or advice. However, 173 or 51,3% of respondents said it was moderately easy whilst 131 or 38,9% indicated that it was not at all easy. This lack of information presents an obstacle in the path of consumer justice.

Table 5.22: Accessibility of Consumer Information and Advice

ACCESS TO INFORMATION AND ADVICE ON CONSUMER ISSUES		Frequency	Percent
Valid	Extremely easy	33	9.8
	Moderately easy	173	51.3
	Not at all easy	131	38.9

- **Awareness of consumer bodies or organisations**

According to Table 5.23, 84 or 24,9% of respondents heard about the National Consumer Forum whilst 89 or 26,4% had heard of the National Consumer Commission. The lowest rate of awareness of consumer bodies was with regard to the National Consumer Tribunal with only 42 or 12,5% of respondents being aware. The highest level of awareness was in relation to the Financial Services Ombudsman with 101 or 30% of them being aware of this consumer body.

More importantly however, 130 or 38,6% of the respondents indicated that they had not heard of any of the listed consumer bodies. This is a very high rate of unawareness and is a matter of concern.

Table 5.23: Awareness of Consumer Organisations

	Frequency	Percentage
National Consumer Forum	84	24.9
National Consumer Commission	89	26.4
National Consumer Tribunal	42	12.5
Financial Services Ombudsman	101	30.0
None	130	38.6

- **Confidence about consumer protection**

The results showing consumer confidence are indicated in Figure 5.10. In respect of the statement “I am confident that the law adequately protects consumers from being exploited by business”, 170 or 50,4% of respondents agreed with this statement. This indicated that at least half of the sample was confident and trusted

the legal system. Although only 68 or 20,2% disagreed, almost one-third of respondents, that is 99 or 29,4% were neutral in respect of this variable.

On the other hand, according to the second variable, “the government provides adequate access to services that assist in resolving disputes”, only 99 or 29,5% of respondents agreed with this statement. However, 106 or 31,5% them believed that the government did not adequately assist in solving consumers issues. Of the remainder, 131 or 39% chose to remain neutral on this issue.

Lastly, in respect of the statement “the government has provided adequate information and advice on consumer rights”, 114 or 33,8% of respondents agreed whilst 97 or 28,8% of them disagreed. Here, 126 or 37,4% indicated “neither agree nor disagree”. The disparity in levels of confidence and uncertainty amongst the respondents can be easily observed in Figure 5.10.

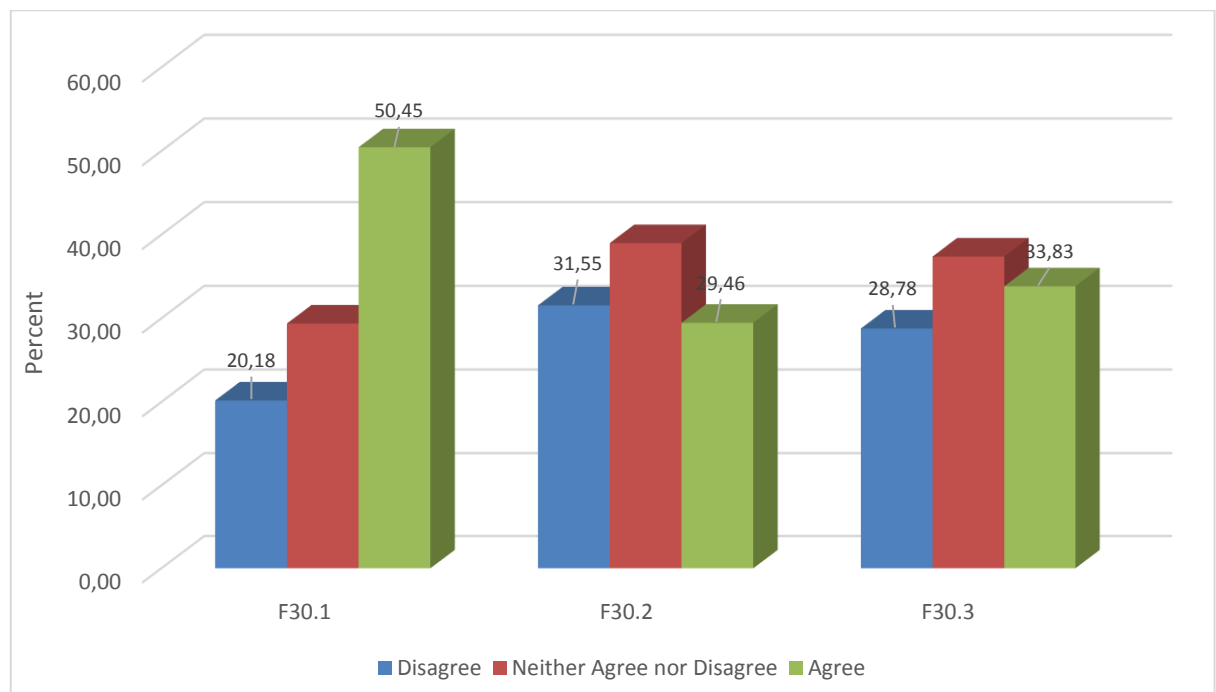


Figure 5.10: Levels of Consumer Confidence amongst Respondents

PART 2: ANALYSIS OF OPEN QUESTIONS

This section presents the results of the open-ended questions of the research study. These responses were also coded to facilitate the process of analysis. The results will be presented in terms of a question-by-question analysis.

5.7 Question analysis

Several open-ended questions were included in the self-completion questionnaire. These questions were formulated to elicit the views of respondents on the nature of consumer rights, their experiences of fair and unfair business practices, issues relating to written contracts and government's assistance in dealing with disputes.

- **Consumers' knowledge of the term "consumer rights"**

Consumer rights comprise those rights that are specifically contained in written legislation. This question was intended to test whether the respondents understood the term "consumer rights" or confused the legal term with ethical business practices.

According to Table 5.5, 217 or 64,4% indicated that they understood the meaning of the term "consumer rights". When requested to name some consumer rights, 95 or 28,2%, named "the right to returns, refunds or exchange on defective goods" as a consumer right. Also, 24 or 7,1% of respondents identified "the right to good quality and safe goods".

Some respondents, that is 17 or 5%, were also able to identify the right to information whilst 14 or 4,2% of them named the right to choose and examine goods. With regard to the right to guarantees and warranties on goods, 12 or 3,6% of respondents identified this right. The factor analysis also revealed high levels of correlation between these rights.

A few respondents, that is 10 or 3% identified the right to cancellation and 3 or 0,9% named the right to fair and reasonable terms. Of the remainder, 18 or 5,3% listed

the right to fair and honest dealing and 13 or 3,9% listed the right to equality as consumer rights. The factor analysis for these variables also showed a strong correlation between these rights.

Several respondents, that is 27 or 8%, identified “the consumer is always right” as a consumer’s legal right. This is not a consumer right but rather a principle of service delivery. Even “respect for the consumer” was named as a right by 6 or 1,8% of respondents. Again, this is not a right but a principle of ethical business practice. This indicates that many respondents have a misconception between rights and ethical rules. The results for these responses are shown in Table 5.24.

Table 5.24: Respondents’ Identification of Consumer Rights

CONSUMER RIGHTS	Frequency	Percentage
Right to returns, refunds or exchange on defective goods	95	28.2
The consumer is always right	27	8
Good quality and safety for goods	24	7.1
Right to privacy	21	6.2
Right to fair treatment and honest dealings	18	5.3
Right to receive information	17	5
Right to choose and examine goods	14	4.2
Right to equality	13	3.9
Guarantees and warranties on goods	12	3.6
Right to complain and be heard	12	3.6
Cancellation of contract and cooling-off period	10	3
To know what I am buying	10	3
Do not know or unsure of any rights	6	1.8
Poor customer service and respect for the customer	6	1.8

- **Importance of knowledge relating to legal rights**

As reflected in Table 5.8, a majority of 333 or 98,8% of respondents had already answered that they believed that an understanding of legal rights was important. The reasons are quite varied and reflected in Table 5.25.

A large number of respondents, that is, 59 or 17,5% felt that it was important to know their legal rights so that they are not taken advantage of. A fairly large number of them, that is 40 or 11,9% believed that they could protect themselves and their interests if they knew their legal rights. On the other hand, 53 or 15,7% of respondents indicated that knowledge of legal rights was important to prevent consumers from being exploited or misled by retailers. Some respondents, that is 35 or 10,4%, believed that awareness of rights was important so that they would know what to do or whether to pursue legal action against the retailer, in the event of a dispute. Also, 16 or 4,7% of respondents indicated that they would be able to understand written contracts better and know the meaning of legal words.

Table 5.25: Importance of Understanding Legal Rights

	Frequency	Percentage
Not to be taken advantage of and to stand up for my rights	59	17.5
To protect myself and my interests/ money	40	11.9
To avoid being exploited, misled or treated unfairly by retailers	53	15.7
To know what to do or whether to take legal action	35	10.4
Consumers need to know the law and their rights to buy	33	9.8
To understand written contracts and legal words	16	4.7

- **Consumer views on “trustworthiness or untrustworthiness of retailers**

According to Table 5.9, the majority of respondents, that is 203 or 60,2%, already indicated that they regard retail businesses as “untrustworthy”. Their reasons, which are based on customer service, quality of goods, advertising, and so on are reflected in Table 5.26.

A number of respondents, that is 40 or 11,9%, believed that retailers are generally dishonest, untrustworthy and mislead their customers. Many respondents, that is 31 or 9,2%, felt that retailers are only concerned with making money and have their own interests to protect. There was also a strong belief from 29 or 8,7% of respondents that many retailers engaged in false and misleading advertising and therefore, cannot be trusted.

There were 19 or 5,6% of the respondents who stated that retailers are untrustworthy because of the provision of poor quality goods at high prices. Some of the respondents, that is 18 or 5,3% felt that retailers cannot be trusted because of the poor after-sales responses to complaints. About 16 or 4,7% of them stated that retailers have unfair return policies.

However, 38 or 11,3% of the respondents indicated that the bigger retail stores are generally trustworthy and give good customer service. Of the remainder, 15 or 4,5% of respondents indicated that they had not experienced any problems with retail stores.

Table 5.26: Respondents' Views on Trustworthiness of Businesses

	Frequency	Percentage
Retailers engage in false & misleading advertising	29	8.7
Retailers are dishonest, untrustworthy and mislead customers	40	11.9
Retailers just want to make money & protect their own interests	31	9.2
Goods are of a poor quality but at high prices	19	5.6
Poor after-sales response to complaints & bad customer service	18	5.3
Unfair return policies	16	4.7
Big retail stores are generally trustworthy & give good service	38	11.3
Have not had any bad experiences or serious issues with retailers	15	4.5

- **Consumers experiences with purchases from retail stores in Durban**

The most common problems that were identified by the respondents are reflected in Table 5.27. The problems usually dealt with the goods sold or customer service.

The highest scoring problems were in relation to customer service and service delivery by retail staff. With regard to in-store sales and responses to after-sales complaints, a large number of respondents, that is 83 or 24,6%, stated that staff were very unhelpful and the service was bad. These respondents who commented on the general demeanour of sales staff, stated that staff had very poor knowledge

on the goods they sold and the layout of the store, were disrespectful and not willing to entertain consumers who return defective goods.

With regard to the quality of goods, several respondents, that is 32 or 9,5% complained about poor quality of goods such as clothing, shoes, furniture and appliances. Even expired food and consumables are still on the shelf for sale. There was a high number of respondents, 35 or 10,4% who also claimed that most retailers have unfair refund and replacement policies. At least 23 or 6,8% of respondents stated that there were long delays with delivery of goods and goods sent for repairs.

Table 5.27: Common Problems Experienced by Respondents

	Frequency	Percentage
Advertising is misleading: incorrect description of goods and pricing, advertised stock unavailable	27	8.0
Customer service is poor: after-sales and in-store service is bad, general attitude of staff is poor, staff are unhelpful and have poor knowledge on products	83	24.6
Poor quality goods: cars, cell-phones, furniture, clothing and shoes, expired food and consumables, appliances	32	9.5
Delays with delivery and/or repairs	23	6.8
Poor refund and replacement policies	35	10.4

- **Exploitation of consumers when signing written contracts**

As reflected in Table 5.28, the respondents provided a variety of opinions regarding the signing of contracts but many of them had similar views. The structure of the contract seemed to have presented the most amount of issues. Firstly, 24 or 7,1% of respondents stated that the contracts are generally too long to read and there is insufficient time to read the entire document. Secondly, a large number of respondents, that is 51 or 15%, stated that most contracts contain too many legal terms and “fine print” which contains important legal terms. These terms are not brought to their attention.

Thirdly, 63 or 18,7% of respondents claimed that they were rushed into signing the document by the sales person but they did not understand the terms. Fourthly, there were 40 or 11,9% of respondents who felt that staff do not explain the terms of the contract beforehand. Also, a small number of respondents, 7 or 2,1% believed that many illiterate and uninformed consumers do not understand the language used in documents. Lastly, there were 10 or 3% of the respondents who stated that contractual terms are meant to benefit the retail business only and not the consumer because there is very little opportunity to change any terms.

Table 5.28: Respondents' experiences with Written Contracts

	Frequency	Percentage
Contracts are too long and insufficient time to read	24	7.1
Too many legal terms and too much fine print which contains important terms (hidden and not explained)	51	15
Consumers are rushed into signing the contract but do not understand	63	18.7
Sales staff do not explain terms and conditions	40	11.9
Language in contracts cannot be understood by illiterate, indigent, ordinary, uninformed consumers	7	2.1
Contractual terms only benefit the business and no opportunity to change terms	10	3.0

- **Respondents' views on consumer issues**

These questions were included to elicit consumers' opinions and views on unfair retail practices, consumer protection afforded by the law and whether businesses are complying with the provisions of the CPA.

Consumer awareness

There were 60 (17,8%) respondents who stated that ordinary consumers are unaware of their consumer rights. But, 33 (9,8%) respondents indicated that it is important for all consumers to know their rights. Many of the respondents, that is 56 or 16,6% believed that people need to be educated on consumer rights and that more information must be provided to create awareness.

Consumer protection

Whilst 21 or 6,2% of the respondents believed consumers are protected by the CPA, 42 or 12,5% of them stated that consumers are not adequately protected in industry. Interestingly, 31 or 9,2% of respondents felt that consumers do not know how to protect themselves. Also, 17 or 5% of respondents stated that government must do more to empower consumers and 15 or 4,5% felt that consumer information must be made available through social media and NGO's.

Unfair retail business practices

Of those respondents who answered this section, 58 or 17,2%, believed that dishonest and unfair practices are rife amongst retailers. Whilst 3 or 0,9% stated that retailers are only concerned with making money, 9 or 2,7% believed that retailers use misleading advertising to lure consumers, give incorrect information about products and sell poor quality goods. However, several respondents, that is 43 or 12,8%, stated that dishonest businesses must not only be dealt with severely in terms of the law but also be publicly exposed. At least 10 or 3% of them stated that retailers must be monitored and disciplined by consumer bodies. Also, 8 or 2,4% claimed that consumers are treated unethically.

Business compliance

With regard to compliance, 26 or 7,7% of respondents believed that all businesses must comply with the CPA whilst 32 or 9,5% of them stated that although businesses know about the CPA, they choose not to comply. Some respondents, 3 or 0,9%, felt that retail staff are not aware of the provisions of the CPA.

Table 5.29: Respondents' Views on Consumer Issues

Consumer Awareness	Frequency	Percentage
All consumers must know their rights	33	9.8
Ordinary consumers in the public are not aware of their rights especially illiterate, poorly educated and older people	60	17.8
People need to be more educated on rights because information is not readily available	56	16.6
Consumer Protection	Frequency	Percentage
Consumers are protected in terms of the CPA	21	6.2
Consumers are not adequately protected in industry	42	12.5
Consumers do not know how to protect themselves	31	9.2
Government must do more to empower and protect consumers	17	5
Consumers must receive information through social media, NGO's and consumer bodies that are accessible	15	4.5
Unfair Retail Business Practices	Frequency	Percentage
Businesses that are unfair and dishonest must be dealt with severely and publicly exposed	43	12.8
Dishonest and unfair practices are rife and common amongst retailers	58	17.2
Retailers are only concerned with making money	3	0.9
Retailers use misleading advertising, give incorrect information and deliver poor quality goods	9	2.7
Consumers are treated badly, unethically and with no respect	8	2.4
Retailers must be monitored and disciplined by consumer bodies	10	3.0
Retailers are not transparent and have hidden agendas	7	2.1
Business Compliance	Frequency	Percentage
All businesses must comply with the CPA	26	7.7
Most retail businesses are aware of CPA but choose not to comply	32	9.5
Businesses must be audited and monitored to ensure compliance and action taken for non-compliance	21	6.2
Most big retail stores do comply with CPA	18	5.3
Sales staff are not aware of the provisions of the CPA	3	0.9

5.8 Conclusion

In this chapter, the results of the empirical study was presented and analysed, through a section analysis of the research instrument. The results were presented in the form of tables, graphs and pie-charts which provided a detailed analysis of the data.

The CPA introduced several fundamental consumer rights which are aimed at protecting consumers from exploitation by businesses. Accordingly, the aim of the Act is to prevent unfair and dishonest business practices so as to afford protection to consumers. Generally however, consumers cannot protect themselves if they are unaware of their legal rights. Hence, the results of the data collected through the questionnaire revealed some crucial findings in this regard.

Of the total sample of 337 respondents, the majority were aged between 18 – 29 years, with 55,5% of them being female and 45,1% of the total belonging to the African race. Whilst the majority of respondents knew about the rights relating to the purchasing of goods and services, more than half of the respondents did not understand the rights relating to direct marketing sales. Also, almost three-quarter of the respondents indicated that they had some or no understanding of their legal rights and two-thirds of them indicated that they were unaware of what legal procedures to follow in a case of a dispute. A large number of respondents actually lack confidence in the justice system and its redress mechanisms.

An analysis of the modified service quality dimensions was performed in respect of the expectations and perceptions of the respondents. The expectations and perceptions were compared and a gap score was identified. This process identified the service quality dimensions that needed attention in the retail industry.

The test for reliability was undertaken and the Cronbach Alpha scores were presented in Table 5.1. The reliability for all sections exceeded the recommended value and this suggested that all items presented consistent scoring. The next chapter, that is the concluding chapter, presents a discussion of the analysis of the results and provides recommendations in regard thereto.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

In chapter 5, the results of the data from the sample of 337 respondents, were presented and analysed, with the aid of descriptive and inferential statistics. The study aimed to research consumer rights, consumer protection and service delivery in the retail business sector with specific reference to the provisions of the CPA, as well as the expectations and perceptions of consumers in relation thereto.

As a summary of the study, this chapter discusses the results and findings of the empirical study in relation to the objectives of the study. Thereafter, the limitations of this research and key recommendations for improving consumer awareness, consumer protection and service quality in the retail sector are presented. Finally, the conclusion to this research study is presented.

6.2 Conclusions for themes and objectives of the study

This survey provided a comprehensive view, not only on consumers' perceptions of the service quality provided by retail businesses in the greater Durban area, but also whether consumers' understood their legal rights which is fundamental to business transactions. The conclusions drawn from these responses are set out hereunder.

6.2.1 Expectations and perceptions of service quality

Chapter 2 provided a literature review of the principles of retailing and customer service. It highlighted the five dimensions of service quality and the assessment of expectations and perceptions of consumers. Businesses have to regularly establish whether their customers are satisfied with the standard of service provided. This is achieved when customers evaluate the service delivered by comparing their actual experience (perceptions) with their expectations of that particular retailer

(Terblanche 2013: 272). If customers' expectations are not met, they will not return to the same retailer. Therefore, customer satisfaction is essential for the sustainability of the retail business. The objective of the study relating to this theme was to determine from consumers their expectations and perceptions of service quality by retail businesses.

In determining how the consumers feel about service quality by retail businesses in the greater Durban area, their expectations and perceptions were established through different variables relating to the service quality dimensions. These results are reflected in Figure 5.6 and Figure 5.7. With regard to their expectations of service quality, the analysis revealed extremely high levels of agreement with all the variables. Hence, there was an extremely high expectation that retail stores would deliver the required service and meet the expectations of their customers.

However, with regard to the perceptions of the customers regarding service quality, there were varied levels of agreement across the different dimensions, the results of which are reflected in Table 5.10. It was observed that there was a much lower level of agreement across the different variables tested and hence, it can be implied that the expectations were not adequately met by retail stores. Therefore, this is a concern for retailers and must be addressed to ensure customer loyalty.

The perceptions appeared to be much lower for the variables, "staff attend to consumer complaints immediately", "staff have excellent product knowledge", "customer always comes first", and "sales documents are simple to read and understand". The conduct of staff is closely linked to service delivery. Hence, low perceptions implies poor service delivery. These gaps will be discussed in the next section. Hence, this objective has been satisfied.

6.2.2 Awareness of consumer rights

Chapter 3 provided a literature review of the CPA and its effect on consumer awareness and protection. Consumer awareness is essential for the purchaser since it allows him to receive the most from his purchasing transaction. This means that if the consumer is aware of his legal rights and takes steps to uphold his rights,

then he cannot be exploited by retailers (Sharma 2013: 83). The objectives of the study relating to this theme was firstly, to ascertain whether consumers understood their legal rights and contractual obligations as consumers, and secondly, to determine whether they know and understand the various provisions of the CPA.

The results for these objectives were reflected in Table 5.5, Table 5.6 and Table 5.7. Cumulatively, those who were uncertain and did not know what the term “consumer rights” means comprised over one-third of the respondents and is of concern because if consumers do not understand what “consumer rights” entail, they cannot and will not take steps to protect themselves. Also, three-quarters of the respondents had only some or no understanding at all regarding their legal rights as a consumer. This extremely high percentage of uncertainty implies that these respondents do not understand the legal implications when buying goods or what is required of them as consumers and may only face that predicament in the event of a dispute. Even in the event of a dispute, such respondents will not know what procedures to follow to protect themselves or seek redress. Accordingly, this objective was achieved.

Consumer awareness is fundamental in ensuring protection against deceitful retailers. When consumers show that they are aware of their rights and act upon it, retailers will stop engaging in unethical and unfair business practices (Mason 2007: 28).

6.2.3 Consumer experiences of retail business practices

The literature review in chapter 2 revealed that customers are the backbone of any business and are instrumental in ensuring that businesses survive. When consumers complain or communicate their dissatisfaction to the retailer, the retailer must handle these complaints efficiently and effectively in terms of redress policies. This in turn will improve the consumer’s in-store experience and improve service quality (Donoghue and De Klerk 2009: 457). The objective of the study relating to this theme was to determine consumers’ expectations and perceptions in relation to various business practices and its implications for service quality.

The results for this objective is captured in Figure 5.8 and Table 5.12, and was analysed in Chapter 5. An overwhelming majority of respondents indicated that they had experienced problems with retailers, with only a small percentage of them (12,2 percent) never having experienced any problems over a 24 month period. It is quite interesting to note that all eleven different problems were experienced by the respondents, albeit in varying rates of frequency.

The retailer's primary function is selling goods and services. Yet the highest frequency of problems was for "faulty, damaged or poor quality goods", "goods or services not delivered on time" and "delays with getting damaged goods repaired". Another huge problem is that consumers are "unable to get a refund or replacement on faulty goods". It must be noted that these particular problems are now provided for in terms of the provisions of the CPA, that is, in terms of the right to safe, good quality goods and the right to choose. Accordingly, compliance with these provisions is mandatory and therefore, these problems should not be so prevalent in the retail business sector, as has been reflected in the present study.

It is also clear that many retailers are not conforming to the provisions of the CPA because retail policies that have become ineffective by the Act, are still in existence. Examples of these are "no complaints will be accepted once the customer leaves the store", "no returns or replacements of goods bought during a sale", and "only repairs on defective goods – no returns", which are shown in Table 5.13. These and other such policies are no longer valid and retailers should therefore not be imposing such policies on consumers.

The issues discussed under this theme clearly constitute unfair business practices and hence, this is an area for concern. Accordingly, this objective has been achieved.

6.2.4 Awareness of contractual relations with business

In Chapter 3 of the literature review, the common law principles of *caveat subscriptor* and *voetsoots* and its implications for the CPA was critically analysed. It was highlighted that, in view of new provisions created by the CPA, these principles

cannot be implemented by retail businesses. In addition, the role of the retailer in ensuring that the consumer knows and understands the terms contained in the written contract was also discussed. The objective of the study in respect of this theme was to determine whether consumers are aware of the nature of their contractual relations with business.

People enter into retailing transactions on a daily basis and often take these transactions for granted (Levy and Weitz 2014: 5). Accordingly, many consumers enter into transactions ignorantly, without understanding that by buying goods and services, one becomes liable to perform.

Collectively, there was a large majority of respondents who had only some understanding, or minimal or no understanding of their contractual rights and duties, as shown in Table 5.15. This constitutes a very high percentage of respondents who are unsure of the law and its consequences when buying goods and services. Awareness of the rights and duties that flow from a contract is essential to reach consensus because agreement implies that the party will be legally bound to perform.

A large number of respondents also indicated that they may not have understood fully the consequences of signing but relied upon or trusted the salesperson to explain the consequences of all the terms contained therein. Further, it means that there are many consumers who are confused when signing contracts and sign the written document as a mere formality. They only skim through the document looking at certain terms such as price, payment plan, interest rates and date of delivery.

A fair number of respondents signed the documents but did not understand the terms contained therein because it was too long to read. This means that such consumers are already prejudiced in that they are bound to terms contained in the written document they signed.

It cannot be disputed that retailers still use contracts that contain pre-formulated terms and legal jargon. In fact, a third of the respondents indicated that they only signed the contract because they thought it was a standard contract. But standard

contracts also contain “fine print” which is not brought to the consumers’ attention when signing. However, in light of the provisions of the CPA, all suppliers have to amend their written documents so that it contains simple language. Hence, this objective has been satisfied.

6.2.5 Legal remedies and enforcement mechanisms

This important element of the justice system was discussed in chapter 2. A consumer redressal system allows for consumers to file complaints through established consumer authorities, ombudsman or the consumer courts. The purpose of this mechanism is for consumers to seek justice against cheating and deceitful retailers (Sharma 2013: 85). However, most consumers would only take up a dispute with a retailer if they knew where to go and what to do. This implies that they must be able to receive information and advice quickly and efficiently. The objective of the study in respect of this theme was to determine whether consumers were satisfied with regard to consumer laws and consumer protection.

According to the analysis in chapter 5, more than 90 percent of respondents said it was either moderately easy or not at all easy to find information. These results are reflected in Table 5.22. This reality presents an obstacle in the path of consumer justice because consumers cannot seek redress for problems unless they have information or advice that guides them on procedures.

As reflected in Table 5.23, more than a third of the respondents also indicated that they had not heard of any of the listed consumer bodies. This is a high rate of unawareness and is a matter of concern because if consumers do not know where to go to take their complaints, they will become disillusioned. Often, the majority of consumers will then ignore the issue or complaint which results in unfair business practices continuing to erode the marketplace.

Whilst half the respondents were confident that the law does afford them protection, only a small percentage was confident in the steps that the government has taken to provide access to services that can assist them or provide adequate information and guidance on consumer issues.

There is no doubt that the government has made substantial progress in promulgating consumer protection laws to protect the most vulnerable members of the South African nation. However, if these laws are not being implemented in an appropriate and efficient manner, it fails to serve the needs of the people. This objective has therefore been achieved.

6.3 Conclusions for service quality dimensions of the study

Chapter 2 researched the literature and provided an understanding of the essential characteristics of retailing and the dimensions of service quality. Chapter 3 focused on the provisions of the CPA insofar as they relate to retail practices and the delivery of service quality. The literature review highlighted the impact of apartheid on retailing and its consequences for consumers today. It is from this perspective that the study aimed to determine the expectations and perceptions of consumers with regard to the service delivered by retail businesses in the greater Durban area and their compliance with the CPA. This section is discussed with regard to the service quality dimensions tested in this study.

The five service quality dimensions, as developed by Parasuraman, Zeithaml and Berry (1998: 23), have been widely accepted and comprise reliability, responsiveness, assurance, empathy and tangibles. The gap model of service quality is the gap between customer perceptions and customer expectation and is identified as Gap 5. By diminishing the gap, service quality can be maximised (Bruhn and Georgi 2006: 50).

6.3.1 Reliability: Stores have refunds and exchange policies

Reliability refers to the ability of the retailer to perform their functions and the promised service dependably and accurately. This entails delivering on the promises of the retailer, resolving of consumer problems and providing the required service. The empirical study for this dimension revealed a gap but not as high as the other dimensions. This is due to some retail stores having refund and exchange policies whilst others do not.

6.3.2 Responsiveness: Staff attend to consumer complaints immediately

Responsiveness entails the willingness of retail staff to assist customers and provide service promptly. This entails not only attending to the customer's needs quickly, but also resolving complaints quickly and efficiently. The empirical study revealed that the difference between the expectations and perceptions of consumers for this dimension was the highest. This is due to retail staff not being willing to attend to complaints immediately because of a general lack of patience to deal with consumers.

6.3.3 Assurance: Staff have excellent product knowledge

This refers to the knowledge possessed by retail staff and their ability to be courteous and instil confidence in the customer. This dimension is extremely important for service quality because if customers trust the retail staff then they will be loyal to the company. The empirical study revealed that an extremely huge gap between the perceptions and expectations of consumers for this dimension. This is due to the fact that consumers will always want to be sure that they are purchasing the best and most suitable product for their needs. Consumers will require the assurance of retail staff in this regard. Hence, staff that are not knowledgeable cannot deliver on these needs.

6.3.4 Empathy: Customers always come first and retailers are always willing to help

This dimension entails treating customers individually in terms of their specific needs and doing so in a caring manner. Hence, retail staff must communicate with consumers in a manner that makes them feel special and understood. There were two aspects to this dimension. Firstly, in respect of "customer always comes first", the empirical study revealed that there was an extremely large gap between the expectations and perceptions of consumers. This is due to a poor understanding of the needs and the plight of vulnerable consumers. Also, retail staff treat consumers with disrespect and a lack of sympathy.

Secondly, in respect of “retailers are always willing to help”, the empirical study revealed a large gap, as well. This is due to the fact that the consumers feel that retail staff are always in a hurry to complete the sale, have no patience when dealing with customers and are not sympathetic when dealing with customer complaints.

6.3.5 Tangibility: A wide variety of products are available and sales documents are simple to read and understand

Tangibles refers to the appearance of physical facilities, equipment, personnel, availability of goods and communication materials. There were two aspects to this dimension. Firstly, in respect of “a wide variety of goods are available”, the empirical study showed that this was the smallest gap between the expectations and perceptions. This implies that the respondents were quite satisfied that they had a variety of products to choose from when shopping. Therefore, retailers are meeting the needs of their customers in respect of the different brands and competitive prices of goods.

Secondly, in respect of “sales documents are simple to read and understand”, the empirical study showed that there is a relatively large gap between the expectations and perceptions of the respondents. This could be due to the fact that consumers are often required to sign documentation in respect of the sale of goods, receive invoices and receipts which contain terms and conditions that the consumers cannot comprehend. Therefore, retail staff must explain terms and conditions to consumers and ensure that they understand before signing the documents. This will prevent complaints and legal actions and assist in reducing this gap.

6.4 Key recommendations to improve service quality

- To close the reliability gaps, stores need to have effective refunds and exchange policies. These policies must be clearly communicated to consumers, at the point of sale. Further, the refunds and exchange policies must be applied consistently. Staff must be adequately trained and be knowledgeable on the application of the policies so that consumers do not become frustrated.

- To close the responsiveness gaps, retail staff must undergo training on ethics and good business practices. This will enhance their ability and willingness to deal with consumer complaints. They must be more sympathetic and understanding of consumers and their problems.
- To close the assurance gaps, retail staff must be educated about the characteristics and qualities of all the products they sell. In addition, they have to be able to instil confidence and trust in their customers so as to retain their loyal customers.
- To close the empathy gaps, the retail staff must ensure that the customer is always “central” to their business activities. Staff must treat their customers with respect, dignity, patience and care. They must display a real passion to please and help the customer. Hence, the customer must be “put first”.
- To close the tangibility gaps, retail stores must ensure that they make good on their promises. Therefore, if goods are advertised on a promotion or sale, then they must ensure that there is sufficient stock available during the period of promotion or sale. Most importantly, all written documents and communications associated with the sale, must be clear, well-presented and drafted in simple language.

6.5 Key recommendation for improvements in relation to themes of the study

Based on the various themes of this study, the key issues for review that have been identified are consumer awareness of the rights in the CPA; awareness of legal rights and duties relating to a contract; an understanding of specific contractual terms; awareness of legal procedures for complaints and redress; and poor customer service relating to unfair business practices.

The purpose of the CPA (Section 3), is to improve consumer awareness and information; encourage responsible and informed consumer choice and behaviour; and to promote consumer confidence and empowerment. In light of these objectives, the following recommendations are suggested to improve these issues:

- Government must ensure that consumer knowledge is easily accessible to all consumers, both urban and rural consumers.
- Consumer information must be communicated through consumer education programs, awareness workshops and media exposure of consumer protections laws.
- All stakeholders must become involved in consumer awareness and protection such as, the private sector, the public sector, trade unions, non-governmental organisations (NGO's), schools and academic institutions.
- Consumer advocacy groups and governmental bodies must hold community engagements and workshops to educate consumers on consumer protection laws and its consequences, basic financial literacy skills, redress mechanisms and so on.
- Due to the low levels of literacy in the country and high levels of unemployment and poverty, specific strategies must be developed to address the needs of vulnerable groups of consumers in the South African society.
- Consumer awareness programs must be implemented on an on-going basis.
- Retail businesses must implement new strategies in the management of their businesses which ensures legal and ethical compliance with consumer laws.
- Governmental authorities must establish an effective system of business review to monitor unfair businesses practices and eradicate the exploitation of consumers.

6.6 Limitations

As with all empirical studies, the present research also has certain limitations. These are summarised as follows:

- This study focused on all consumers in the greater Durban area. However, the results of the study may not have been representative of the whole population, due to the fact that a convenience sampling method was used to collect the data, and consumers from outer-lying areas were inaccessible to the researcher.

- As a result of the convenience sampling method, the sample comprised of respondents who were available and willing to participate. Accordingly, the study may not have been truly representative of consumers of all age groups.
- There is very little publications on the implications of the CPA for retail business practices and service quality in South Africa.
- In order to fully assess the provisions of the CPA in relation to the levels of service quality, all stakeholders must be included in the study, that is, government agencies, consumer bodies and consumers from all over KZN.

6.7 Contributions of the study

This research study has provided an in-depth analysis of the implementation of the provisions of the Consumer Protection Act in the retail industry. Further, it has provided information on the levels of consumer awareness, the nature of consumer protection afforded to consumers and the extent of legal compliance by retailers in the greater Durban area. The results obtained from this study has established that consumers are generally unaware of what constitutes consumer rights and what legal processes to follow if their rights were violated by retail businesses. In the circumstances, it is clear that further consumer education is required and must be entrenched at all levels of society. In addition, consumers must have easy access to the justice system, failing which, the CPA will not achieve its intended purpose.

6.8 Recommendations for further research

It is recommended that a similar study of this nature be undertaken on a larger scale for the province of KZN. The study should also seek to include both literate and illiterate consumers, with assistance being provided to complete questionnaires for illiterate or indigent consumers. Any further study should also include interviews to elicit the perspectives of retail managers, judicial officers, consumer advocacy groups, and so on.

6.9 Conclusion

This study has highlighted the plight of consumers in South Africa and the various forms of unfair and dishonest business practices that they are exposed to on a daily basis. This study further highlighted consumers' expectations and perceptions of service quality in the retail sector and analysed the identified gaps.

More importantly, this study investigated the implications of the CPA for retail businesses and ascertained that businesses are not complying with all of the provisions of the CPA in a consistent manner. Therefore, it implies that if there is little or no compliance with the law, this will result in poor service delivery as well. Consumer awareness and consumer protection is central to a developing economy like South Africa. Hence, consumer rights are fundamental for achieving social justice and upholding the constitutional values of human dignity, equality and freedom.

The researcher, in conclusion, would like to conclude with an excerpt from the words of Indian civil rights leader, Mahatma Gandhi, as quoted in (Arora, Chawla and Sachdeva 2014: 138):

"A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so" – Mahatma Gandhi.

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APPENDICES

Appendix A



MANAGEMENT SCIENCES: FACULTY RESEARCH ETHICS COMMITTEE (FREC)

18 July 2016
Student No: 21449397
FREC No: 28/13FREC

Dear Ms V Govender

MASTER OF MANAGEMENT SCIENCES: MARKETING

TITLE: CONSUMER PROTECTION AND SERVICE DELIVERY BY THE RETAIL INDUSTRY IN THE GREATER DURBAN AREA: THE LEGAL IMPLICATIONS OF THE CONSUMER PROTECTION ACT 68 OF 2008

Please be advised that the FREC Committee has reviewed your proposal and the following decision was made: Ethical Level 1 -Full Approval

Approval has been granted for a period of two year, after which you are required to apply for safety monitoring and annual recertification. Please use the form located at the Faculty. This form must be submitted to the FREC at least 3 months before the ethics approval for the study expires.

Any adverse events [serious or minor] which occur in connection with this study and/or which may alter its ethical consideration must be reported to the FREC according to the FREC SOP's.

Please note that ANY amendments in the approved proposal require the approval of the FREC as outlined in the FREC SOP's.

Yours Sincerely

Prof JP Govender
FREC: Deputy Chairperson

Appendix B

CONFIRMATION OF EDITING

To Whom it may concern

This serves to confirm that I had edited the below mentioned students thesis for grammatical and factual errors.

Student Name : VASANTHA GOVENDER

Student N : 21449397

Course : MTECH : MARKETING

Date : 12 January 2017

Quantity :: 260 PAGES

Total : R3750

Thank You



N Govender (cell no : 0837938908)



LETTER OF INFORMATION

Title of the Research Study: Consumer protection and service delivery by the retail industry in the greater Durban area: The legal implications of the Consumer Protection Act 68 of 2008

Principal Investigator/s/researcher: Vasantha Govender (BA LAW, LLB)

Supervisor: Professor J P Govender (B Paed, B Com (Hons), M Com, PhD)

Brief Introduction and Purpose of the Study: In fulfilment of the Master's Degree in Management Sciences (Business Law), the researcher is investigating the implications of the Consumer Protection Act (CPA) for consumers and retail businesses. The study is multi-faceted: Firstly, it seeks to determine consumer experiences within the retail industry insofar as they relate to service delivery. Secondly, it seeks to determine consumer expectations and perceptions of service delivery by retail businesses. Thirdly, it seeks to explore consumer awareness and understanding of the provisions of the CPA and the impact of these provisions for service delivery in the greater Durban area.

Accordingly, the study focuses on:

- the provisions of the CPA that impact on retail businesses (small to medium) in the greater Durban area;
- determining customer awareness and understanding of the provisions of the CPA;
- determining the influence of the CPA on customer service and service quality offered by retail businesses in the greater Durban area; and
- whether businesses are complying with provisions of the CPA.

Outline of the Procedures: You have been selected as a voluntary participant for this study. Your participation and co-operation in providing relevant information based on your experiences as a consumer will enable the researcher and consumer bodies to address the shortfalls and challenges faced by consumers and retail businesses on a daily basis.

Risks or Discomforts to the Participant: There are no anticipated risks or discomforts to the participants or respondents however, a respondent may withdraw from the survey, at any time, if he or she should feel uncomfortable with continuing.

Benefits: The information gathered from this survey will assist in highlighting challenges that consumers face, promote consumer awareness and assist in developing further mechanisms to address these challenges and provide protection to consumers, particularly vulnerable consumers. It is hoped that the results of this study will materialize in journal publications.

Reason/s why the Participant May Be Withdrawn from the Study: Participation in the survey is entirely voluntary and there will be no adverse consequences for the participant should they choose to withdraw. The questionnaire will remain anonymous and information obtained will be treated confidentially and used for research purposes only.

Remuneration: None

Costs of the Study: None

Confidentiality: Confidentiality will be maintained throughout this survey. Names and any form of identification will be omitted.

Research-related Injury: Not applicable to this study.

Persons to Contact in the Event of Any Problems or Queries:

Professor J P Govender (Supervisor)

Tel.: 031 – 3735396

Email: govendej@dut.ac.za

Mr M A Pillay (Co – supervisor)

Tel.: 031 - 3736894

Email: nadp@dut.ac.za

Ms Vasantha Govender (Researcher)

Tel.: 031 – 3736849 / 0834401590

Email: govenv@dut.ac.za

CONSENT

Statement of Agreement to Participate in the Research Study:

- I hereby confirm that I have been informed by the researcher, Ms Vasantha Govender, about the nature, conduct, benefits and risks of this study - Research Ethics Clearance Number: 28/13FREC.
- I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.
- I am aware that the results of the study, including personal details regarding my sex, age, date of birth, initials and diagnosis will be anonymously processed into a study report.
- In view of the requirements of research, I agree that the data collected during this study can be processed in a computerised system by the researcher.
- I may, at any stage, without prejudice, withdraw my consent and participation in the study.
- I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.
- I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

Full Name of Participant

Date

Time

Signature

I, **Vasantha Govender**, herewith confirm that the above participant has been fully informed about the nature, conduct and risks of the above study.

Full Name of Researcher

Date

Signature

CONSUMER QUESTIONNAIRE

Survey of Consumers in the Retail Industry

The Consumer Protection Act 68 of 2008 (CPA) came into full operation on 1 April 2011. The purpose of the CPA is to promote fair business practices and to ensure that all consumers are protected from exploitation and harm. The purpose of this questionnaire is to explore the experiences of consumers in the retail (buying and selling of goods and services) industry, and to determine consumer awareness and understanding of the provisions of the CPA. The information obtained will be used for research purposes and will be treated with the strictest confidence. However, your right to participate or not will be respected. Your anonymity is guaranteed as the results from this survey will not refer to any particular participant.

Please read each question carefully and then cross (x) the box with the most appropriate answer.

SECTION A: DEMOGRAPHIC DATA AND GENERAL INFORMATION

1. Age (in years):

18 – 29	
30 – 39	
40 – 49	
50 – 59	
60 +	

2. Gender:

Male	
Female	

3. Race:

African	
Coloured	
Indian	
White	

4. Educational level:

No Formal Education	
Primary School Only	
Some High School	
Matric	
College or University	

1

5. There are different types of retailers operating in the greater Durban area. Which of the following retailers have you purchased from in the last 24 months?

Supermarkets / Hypermarkets	
Furniture Stores	
Clothing Stores	
Appliance Stores	
Fast-food Outlets	
Car Sales Dealership	
Cellular Phone Store	
Restaurants	
Hotel Accommodation	
Banking Services	

6. Over the last 24 months, which of the following sales channels have you used when buying goods and services?

Direct Sales (in-store)	
On-line Sales (internet)	
Mail Order Sales (catalogue or television)	
Direct Marketing Sales (approached by a sales rep or contacted by telephone)	

SECTION B: AWARENESS OF CONSUMER RIGHTS

7. Which of the following best describes your understanding of the term "consumer rights"?

Heard of it but do not know what it means	
Heard of it and understand what it means	
Uncertain about the term	

8. Name some "consumer rights" which you may have heard about.

2

9. The Consumer Protection Act introduced various basic consumer rights relating to consumer protection. How would you describe your understanding of the following rights?

NAME OF CONSUMER RIGHT	Heard of it and understand what it means	Heard of it but do not understand what it means	Never heard of it
Right of equality (not to be discriminated against by retail businesses based on race, etc.)			
Right to privacy (to refuse to accept direct marketing)			
Right to cancel a fixed-term contract			
Right to cancel a contract within 5 days in the case of direct marketing sales			
Right to choose and examine goods			
Right to return unsafe or defective goods			
Right to a refund or replacement in the case of defective goods			
Right to information in plain and understandable language especially with written agreements			
Right to fair and honest dealing (not to be misled or deceived by retail businesses)			
Right to fair, just and reasonable terms in a contract			
Right to receive safe, good quality goods			
Right to take complaints to the consumer commission or court			

10. When purchasing goods and/or services, I rate my understanding of my legal rights, as a consumer, as follows:

1	Excellent understanding	
2	Some understanding	
3	Minimal or no understanding	

11. Do you think that it is important to know and understand your legal rights?

YES ☐ NO ☐
Why?

3

SECTION C: EXPECTATIONS AND PERCEPTIONS OF CUSTOMER SERVICE

12. How would you describe your expectations (what you hope to see) of the service provided by retail businesses in the greater Durban area?

CONSUMER EXPECTATIONS OF RETAIL BUSINESSES	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
A wide range of product brands must be available					
Invoices and statements must be easy to understand					
Contracts must be in simple language and easy to read and understand					
Price and information about goods must be clearly displayed					
Salespersons must have excellent knowledge about different products					
Customer complaints must be handled promptly					
Retailers must put the customer's interests first					
Retailers must be willing to handle return and exchange of goods					
Retailers must be honest with consumers					

13. How would you describe your perceptions (what you have experienced) of retail business practices in the greater Durban area?

CONSUMER PERCEPTIONS OF RETAIL BUSINESSES	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
Retailers are only concerned with making money					
Retailers often trick consumers with legal words					
Salespersons rush the customer when buying					
Retailers often use false or misleading advertising					
Retailers are quick to sell but give poor after-sales service					

4

Retail stores have unfair return policies					
Retailers believe that they are always right					
Retailers often mislead customers					
Retailers put the customer first					
Retailers handle customer complaints promptly					
Retailers go the extra mile to help and solve the customers problem					

14. Which of the following best describes your perceptions (your experience) of the service quality provided by retail businesses in the greater Durban area?

ATTRIBUTES OF SERVICE QUALITY	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
A variety of products are available					
Products are of a good quality					
Prices are highly competitive					
Sales documents are simple to read and understand					
Advertised products are readily available					
Staff have excellent product knowledge					
Staff are able to explain legal terms					
Staff attend to customer complaints immediately					
Staff understand the needs of customers					
Stores have refund and exchange policies					
Customer always comes first					

15. Would you describe retail business practices in the greater Durban area as "trustworthy"? Give reasons for your answer.

YES ☐ NO ☐

5

SECTION D: CONSUMER EXPERIENCES OF RETAIL BUSINESS PRACTICES

16. In the last 24 months, how often have you experienced problems either before or after making a purchase from a retailer?

1	Almost all the time	
2	At least half the time	
3	Occasionally	
4	Never	

17. In the last 24 months, which of the following problems have you experienced with retail businesses?

TYPE OF PROBLEM EXPERIENCED	X	Comment on your problem
Product or service not delivered on time		
Product was faulty, damaged or of poor quality		
Salesperson gave false information about product		
Terms and conditions in contract were unfair and unreasonable		
Delays with getting faulty or damaged goods repaired		
Warranty or guarantee not honoured by retailer		
Unable to get a refund or replacement for faulty goods		
Additional costs charged for repairs or replacement		
Labelling or packaging was misleading		
Advertising for the product was misleading		
Poor response when retailer contacted about problem		

6

18. Briefly explain 2 problems that you consider **serious**, that you have experienced with retail stores.

19. Which of the following common business policies have you witnessed at any retail store since implementation of the Act in 2011?

RETAIL BUSINESS POLICIES		X
1	No complaints will be accepted once the customer leaves the store	
2	The store will not be liable for any hidden defects in the goods	
3	No returns or replacements of goods bought during a promotion or sale	
4	Only repairs on defective goods – no refunds	
5	The store is not liable because you agreed to an indemnity clause	
6	Goods were purchased "voetschoots" or "as is" – no returns	

20. Which of the following would best describe your conduct, if you thought that you had been misled by a retailer, received poor quality goods or bad service?

CONSUMER CONDUCT IN THE EVENT OF POOR SERVICE		X
1	I always go back to the retail store with my query	
2	I only go back to the retail store if the transaction involves to a large amount of money	
3	I would not go back to the retail store because it is not worth the time involved or the cost incurred	
4	I would not go back to the retail store because the retailer is not sympathetic to the consumer	

SECTION E: AWARENESS OF CONTRACTUAL RELATIONS WITH BUSINESS

21. When purchasing goods and/or services, I rate my understanding of my contractual rights and duties, in terms of the law, as follows:

1	Excellent understanding
2	Some understanding
3	Minimal or no understanding

7

22. With reference to recent contracts that you were required to sign, which of the following best describes your conduct **before signing** the contract?

CONDUCT OF CONSUMER BEFORE CONTRACT		X
1	I read the document properly	
2	I picked out certain key points to read	
3	I only skimmed through the document	
4	I did not read the document at all	
5	The salesperson explained the document to me	
6	The salesperson explained my legal rights to me	

23. With reference to recent contracts that you were required to sign, which of the following best describes your conduct **after signing** the contract?

CONDUCT OF CONSUMER AFTER CONTRACT		X
1	I signed the contract because I understood all the terms	
2	I signed the contract but I only understood some of the terms	
3	I signed the contract because the salesperson was in a hurry to complete the sale	
4	I signed the contract because the salesperson clearly explained the terms and my legal rights to me	
5	I signed the contract but the salesperson never explained any terms or legal rights to me	

24. Which of the following best describes your reasons for signing the contract but not reading or not fully understanding the contract?

REASONS FOR NOT READING		X
1	I thought it was a standard contract	
2	The contract was too long to read	
3	There are too many legal terms to understand	
4	There is no opportunity to change any terms	
5	There is not enough time to read all the terms	
6	I trusted the retailer's reputation	

25. Do you think that consumers are exploited or treated unfairly when signing written contracts? Explain your answer.

YES ☐ NO ☐

SECTION F: LEGAL REMEDIES AND ENFORCEMENT MECHANISMS

26. If you had a dispute with a retail store and were unable to solve the problem, are you aware of the legal remedies available to you?

YES ☐ NO ☐

8

27. Which of the following would best describe your conduct, if you had a dispute with a retailer and were **unable** to resolve the dispute?

	CONSUMER CONDUCT IN THE EVENT OF DISPUTE	X
1	I always seek legal advice or assistance irrespective of the nature of the transaction	
2	I only seek legal advice or assistance if the transaction involves a large amount of money	
3	I would not know where to go to seek assistance	
4	I would not seek assistance because it is too time-consuming and expensive	

28. How easy would you say it is to find information, advice or assistance on consumer issues?

1	Extremely easy	
2	Moderately easy	
3	Not at all easy	

29. Which of the following South African consumer bodies are you aware of?

National Consumer Forum	
National Consumer Commission	
National Consumer Tribunal	
Financial Services Ombudsman	
None	

30. As a consumer, how would you describe your confidence about consumer protection?

ATTRIBUTES OF CUSTOMER CONFIDENCE	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
I am confident that the law adequately protects consumers from being exploited by businesses					
The government provides adequate access to services that assist in resolving disputes					
The government has provided adequate information and advice on consumer rights					

31. This study deals with issues relating to awareness of consumer rights, consumer protection, unfair and dishonest retail business practices and business compliance with the Consumer Protection Act. Explain your views and concerns on each of these issues.

- Awareness of consumer rights

- Consumer protection

- Unfair and dishonest retail business practices

- Business compliance with the Consumer Protection Act

IMPORTANT NOTICE:

If you would like to be interviewed by the researcher about your experiences with retail businesses, so that the researcher can get a more detailed understanding, kindly provide your contact details below so that the researcher can contact you.

Name: _____
Email: _____
Telephone: _____

Appendix E

Rotated Component Matrix

For basic consumer rights (B9), the extraction method used was the Principal Component Analysis and the rotation method was Varimax with Kaiser Normalization. The rotation converged in 3 iterations. For expectations of service delivery (C12), the Principal Component Analysis extracted only one component. All of these variables related to customer service and service delivery.

For perceptions of retail business practices (C13), the extraction method used was the Principal Component Analysis and the rotation method was Varimax with Kaiser Normalization. The rotation converged in 3 iterations. For perceptions of service quality (C14), the extraction method used was the Principal Component Analysis and the rotation method was Varimax with Kaiser Normalization. The rotation converged in 3 iterations. For confidence about consumer protection (F30), the Principal Component Analysis extracted only one component.

Rotated Component Matrix^a		
B9 Basic Consumer Rights	Component	
	1	2
Right of equality (not to be discriminated against by retail businesses based on race, etc.)	0.559	0.134
Right to privacy (to refuse to accept direct marketing)	0.687	0.217
Right to cancel a fixed-term contract	0.746	-0.068
Right to cancel a contract within 5 days in the case of direct marketing sales	0.732	0.048
Right to choose and examine goods	0.246	0.444
Right to return unsafe or defective goods	0.061	0.708
Right to a refund or replacement in the case of defective goods	-0.045	0.775
Right to information in plain and understandable language especially with written agreements	0.510	0.475
Right to fair and honest dealing (not to be misled or deceived by retail businesses)	0.597	0.428
Right to fair, just and reasonable terms in a contract	0.666	0.410
Right to receive safe, good quality goods	0.312	0.544
Right to take complaints to the consumer commission or court	0.565	0.366
F30	Component	
	1	
I am confident that the law adequately protects consumers from being exploited by businesses	0.796	
The government provides adequate access to services that assist in resolving disputes	0.896	
The government has provided adequate information and advice on consumer rights	0.871	

Component Matrix ^a		
C12	Component	
	1	
A wide range of product brands must be available	0.673	
Invoices and statements must be easy to understand	0.793	
Contracts must be in simple language and easy to read and understand	0.789	
Price and information about goods must be clearly displayed	0.742	
Salespersons must have excellent knowledge about different products	0.721	
Customer complaints must be handled promptly	0.782	
Retailers must put the customer's interests first	0.764	
Retailers must be willing to handle return and exchange of goods	0.784	
Retailers must be honest with consumers	0.788	
C13	Component	
	1	2
Retailers are only concerned with making money	0.695	-0.114
Retailers often trick consumers with legal words	0.820	-0.078
Salespersons rush the customer when buying	0.767	-0.131
Retailers often use false or misleading advertising	0.830	-0.059
Retailers are quick to sell but give poor after-sales service	0.746	-0.059
Retail stores have unfair return policies	0.694	-0.222
Retailers believe that they are always right	0.630	-0.328
Retailers do not mislead customers and always help	0.757	-0.145
Retailers put the customer first	-0.150	0.842
Retailers handle customer complaints promptly	-0.124	0.907
Retailers go the extra mile to solve the customers problem	-0.137	0.859
C14	Component	
	1	2
A variety of products are available	0.152	0.794
Products are of a good quality	0.245	0.754
Prices are highly competitive	0.099	0.708
Sales documents are simple to read and understand	0.422	0.338
Advertised products are readily available	0.545	0.318
Staff have excellent product knowledge	0.748	0.222
Staff are able to explain legal terms	0.708	0.076
Staff attend to customer complaints immediately	0.841	0.061
Staff understand the needs of customers	0.822	0.118
Stores have refund and exchange policies	0.459	0.263
Customer always comes first	0.627	0.333