

Original Research Article

The Protection of Consumers of Drinks in Cameroon: A Legal Appraisal

Enow Godwill Baiye

Abstract

Ph.D in English Private Law, University
of Dschang - Cameroon

E-mail:

enowgodwillbaiyebaiye@gmail.com

Tel.: 237672872007

The drink's industry is considered as one of the most dynamic and growing ones in the world today. As a result of this, consumers of drinks may be exposed to the consumption of defective and substandard drinks. In this light, the principal objective of this research is to evaluate the extent to which consumer protection laws in Cameroon safeguard consumers against the consumption of adulterated and contaminated drinks produced not only by the drinks industries but also those produced locally. The methodology utilised to attain this main objective and to address the problem is the critical analyses of the existing legal initiatives and institutional frame-works that regulates the production of drinks in Cameroon. The work reveals that in spite of the existence of a plethora of legislations that regulate this sector of the economy, consumers of drinks have not been fully accorded the full protection they deserve as the courts have been lukewarm to grant judgments in their favour coupled with the inadequacies of the laws in this domain. As a result of this, the study puts forth a set of recommendations but focusing on the revision of the existing legal initiatives especially 2011 legal framework on consumer protection that regulates consumer protection in Cameroon.

Keywords: Consumer, Appraisal, Drinks, Protection

INTRODUCTION

Consumption is the essence of production of goods and services. The process of production would be worthless if the products of that process are not consumed. The consumption of goods and services is a fundamental part of everyone's everyday life, because everyone has 'the role of the consumer' (Kanyip (2010). A consumer is broadly defined as a person who buys or uses goods and services Ukweze (2006). This definition imports contractual nexus into the concept of consumer. It presupposes that the consumer retains his freedom; freedom to choose what and where to buy and freedom to choose to use or not to use a particular product or service. The consumer is therefore someone who acts freely and is not in any way coerced or forced into the relation (The deeply rooted maxim of caveat emptor no longer applies strictly to consumer transactions as it has been whittled down by decisions of the court. On the contrary, it is the seller who must be cautious and ensure

that goods and services provided meet up with the reasonable standards required by law).

Further, the Cameroon's Consumers Protection Law defines a consumer as 'any person who uses products to meet his own needs and those of his dependents rather than to resell, process or use them within the context of his profession, or any person enjoying the services provided' (Section 2 of Law no 2011/012 of 6 May 2011 on the Framework on Consumer Protection in Cameroon. This statutory definition of a consumer which excludes persons who acquire goods or services for business or professional purposes is evocative of the definition of a consumer under the English 1987 Consumer Protection Act.). Thus, the wheel of commerce grinds when the consumer is active. When the consumer meets his needs, suppliers of goods and services are activated, and in the producers bid to meet the ever increasing needs of the consumer commerce thrives with

a consequential flourishing effect on the economy (Etefia (2011)). This way, the consumer is projected as the king, he activates the course of commerce, the producer and service provider would only be ready to produce goods and provide services when the consumer is ready to pay for them. This also means that goods should be satisfactorily tailored to meet the needs of the consumer. As a result, rights accrue to consumers which they can enforce through criminal or civil actions in the event of breach or violation of those rights (Numa, 2014).

A typical legal rationale for protecting the consumer is thus based on the notion of policing market failures, dishonesty and inefficiencies, such as inequalities of bargaining power between a consumer and a business (Mickleburgh, 2010). The need for the consumer to be protected therefore arises. This explains why this contemporary era is marked as the era of consumers. No country can knowingly or unknowingly disregard the interest of the consumers. This can be argued on the basis of fast enactments of consumer protection laws in almost all parts of the world including Cameroon (Aman, 2009). In Cameroon, a plethora of laws exist for the purpose of protecting consumer rights (Examples of such laws include: Law no 2011/012 of 6 May 2011 on the Framework on Consumer Protection, 2006 Advertisement Law and even the Penal Code). The concept of consumer protection although old, has gain significant development in the area of law today (Fuah C., (2021)). The reason for such growth in consumer issues arises as a result of globalisation of trade, market dominated economy, information revolution and emergence of e-commerce (*Ibid*). Modern day consumer protection laws must be broad based and dynamic enough to safeguard against the increased risks that consumers are exposed to. Consumer dissatisfaction is prevalent where sellers are reluctant to resolve justified consumer grievances and government fails to stand up to defend the interests of buyers (Chatterjee et al., 2011).

The drink's industry is considered as one of the most dynamic and growing ones in the world today (Armira A. et al., 2016). Drinks especially beverages are integral to daily life. Drinks like alcohol have been consumed since prehistoric periods. Most cultures throughout the world have traditionally consumed some form of alcoholic beverages for thousands of years, and local specialty alcoholic beverages and this still account for the majority of all those that exist. However, with the advent of technology, there have been an increasing number with the production of refined alcoholic brewages in the form of beer, wine and spirits (WHO (2016)). The consumption of drinks today has been on the rise in the globe. The demand for drinks in the world whether imported or exported, manufactured or locally produced, largely depends on consumers' habits and preferences.

Cameroon like any other country in the world is involved in the consumption of drinks. In 2021, the breweries in Cameroon sold 1981 million creates of

bears, besides other spirited drinks, wine and other imported alcoholic beverages (Elvis et al., 2020). Similarly in 2016, consumption increased. In 2020, Cameroonians consumed over 660 million liters of beer (*Ibid*). According to a recent statistics revealed by the World Health Organisation in 2019, Cameroon is ranked 2nd largest consumer of drinks (alcohol) in Africa (WHO, 2019). In addition, on average in Cameroon, 9 liters of alcoholic beverages are drank per person (*Ibid*).

The Cameroon Brewery Corporation estimated that in 2021, overall beer sales was about 6.5million hectoliters (650million liters), including imports. According to the distribution of the beer market in Cameroon, the Cameroon Brewery Corporation is the leader with 74 percent of the shares Guinness 15 percent UCB, 10 percent and 1 percent for the other brewery industries. One of the fundamental principles that protects consumers under the Consumers Protection Law in Cameroon is that of protection according to which consumers have the right to the preservation of life, health, safety and environment in the consumption of technology, goods or services (Section 2 of Law No. 2011/012 of 6 May 2011 on the Framework on Consumer Protection in Cameroon). Similarly, consumers have the right to satisfy their basic or essential needs in the health, food, water, housing, education, energy, transport and communication. In this light, consumers have the freedom to consume alcoholic drinks so long as it is within the prescription of the law. Thus, the 2011 Law on the Framework on Consumer Protection in Cameroon is seen as the first piece of legislation entirely consecrated to consumer protection in Cameroon (Atanga, An Appraisal of Law No 2011/012 of 6 May 2011 on the Framework on Consumer Protection in Cameroon Martindale, (2012), P.1. Available at https://www.Martindale.com/business-law/article_Atanga-Law-Office-1533598.htm (Lastly accessed on 13th March, 2022). Up till now, consumer protection was regulated by Part IV of the 1990 law on commercial activity in Cameroon (Samgena D. Galega, (2000)). Similarly, to adequately protect consumer's rights in Cameroon, the National Consumer's Council was created as an institution in 2016 by a Prime Ministerial Decree (Decree no 2016/0003 PM of 13 January 2016 on the Protection of Consumers Rights in Cameroon.). Drinks in Cameroon are produced by brewery industries as well as those produced locally. This poses a problem to the protection of consumers in the sense that it is difficult to control some of the locally made drinks in Cameroon.

Drinks ranging from water to beer, whisky and locally produced are consumed by more 82 percent of the population in Cameroon. These drinks are however produced from various sources some of which the safety and hygienic are doubtful. Hence many consumers on a daily basis become victims. This too has led the incidence of fake, sub-standard, defective and adulterated drinks in Country. These problems stem from

the fact that the legal frameworks which have been put in place to address these consumer problems have been ineffective in their implementation. As a result, most Cameroonian consumers of drinks aren't able to receive adequate remedy for injuries suffered due to manufacturer's products or services. Therefore, it may be concluded that the profusion of legal framework is not reflected in the protection afforded to consumers (Enanga, 2016). Although recent efforts have been made by consumer protection agencies to strengthen the enforcement of consumer rights and promotion of their interests, Cameroonian consumers are still deemed to be weaker than manufacturers/producers. The current paradigm calls for a balance of the competing interests of both sides.

Furthermore, the court which is generally seen as the last resort of the common man has not been very active in providing remedy to the legally injured persons in the area of consumer's protection. In the power relation between the consumer and the producer, the consumer is seen as a weeping child, the common man. He therefore looks up to the court for protection from the antics and vagaries of unscrupulous businessmen, who would usually resort to sharp and unfair trade practices to maximize profits at the consumer's expense (Samgena, 2004). The incidences of the supply of deficient and adulterated goods in the market place have assumed an alarming situation in Cameroon (*Ibid*). However, the courts have done very little to award appropriate remedies to aggrieved consumers of drinks in Cameroon who have been victims in the consumption of adulterated drinks. This is justifiable in the case of *NkehNapoleonv. Forelepia Thomas and Guinness Cameroon S.A (Suit No.BA/52/99-2000 (unreported)*, where despite the fact that the consumer consumed a contaminated Guinness drink which caused him to have severe stomach disorder and eventually other health complications, the Bamenda court of First Instance has been lukewarm to give verdict to the case and presently the case is still pending in court. Similarly, the case of *Ntum George Nde v. Brasseriesdu Cameroun (Suit No.CASWP/5/2005(unreported)*., has also exposed the delay exhibited by our courts in the dispensation of justice with respect to products contaminated by foreign materials.

The core problem therefore stems from the fact that the legal initiatives and the institutional frame works to protect consumers of drinks in Cameroon have been ineffective to protect consumers. As a matter of fact such delays only amount to serious denial of justice and evidences that the court on its part has failed woefully to protect the poor and helpless consumer. The principal aim of this research paper is to evaluate the relevant extent of consumer protection laws in Cameroon to safeguard consumers against the consumption of adulterated and contaminated drinks produced not only by the drinks industries but also those produced locally.

Literature Review

The contextual review of this research paper will be focused on the empirical studies that have been carried out by different authors in the area of consumer's protection.

To writ with, Egute M. in his book (Egute, 2018) dealt extensively on the principles of product liability in Cameroon. The learned author discuss on the inequality of consumers in Cameroon. This inequality to the author comes as a result of ignorance on consumers on their own parts of their rights coupled with the luck warmness of the judiciary to handle claims brought to them by consumers on time. This has thus made many consumers to lost fate in the judiciary which is often seen as the hope to the hopeless. This work affirms to the author's idea as consumers of drinks in Cameroon are often are ill-served majorly due to lack of information. This, coupled with the lack of awareness and the literacy levels amongst majority of the Cameroonian populace, serves to fetter the enforcement of consumer rights. As a result, most consumers are unable to successfully assert their rights coupled too with the luck warmness of the Cameroonian judiciary.

Similarly, Egute M. in his article (*Ibid*, (2020) dealt on the subject matter of fool proof of production process evidence as a shield or sword to consumers of defective products in Cameroon. The learned author held that the "foolproof production process evidence" pre-supposes that the production process is free of errors. He opined that it is a "production process defense" claimed by many producers in Cameroon, particularly producers within the brewery industry. It was first established under English law, and became a rule of law in England but unfortunately, it did not enjoy a long judicial standing because of the many criticisms levied against it and it died a natural death. The rising recognition of this principle by the Cameroonian courts puts the consumers of drinks at a disadvantageous position as the court may rely on it and pass judgment in favour of the defendant rather the consumer who has suffered injuries from the consumption of such product. The researcher in this work affirms with the learned author's idea as the court had to rely on this principle and gave judgment against drinks as was seen in the *Elange Ndua v. Brasseries du Cameroun* and *Ntum George Nde v. Brasseries du Cameroun* since they could not proof before the honorable court that the injuries they suffered came as a result of the consumption of the defective Brasseries products.

Galega and Fuah in their book (Galega et al (2018) focused their attention on pharmaceutical product liability in Cameroon. They opined that even though medicines have greatly improved the quality of human life, a flipside to this is that most pharmaceutical products are in fact poisons that are often responsible for silently maiming and inflicting long term sufferings on consumers. To the

authors, the reasons why the sell of substandard pharmaceutical products to consumers is the weak institutional mechanisms in place in the country to effectively control the production of the pharmaceutical products produced in Cameroon and even though imported from other countries. This is equally compounded by the unethical practices where most of the manufacturers and wholesalers/retailers of pharmaceutical products will not mind selling expired products at the detriment of the health of innocent consumers. Though their book is not directly linked to drinks, the practice that goes on in the domain of pharmaceutical products is not different from that in the drink industry in Cameroon. Most drinks produced or locally made are not safe to consume. This has exposed consumers to different held challenges and most at times, when consumers seek redress before the competent courts, they go dissatisfied as judgment will be giving in favour of the manufactures and often times, such cases are been adjourn on several occasions making consumers to lose hope on our judiciary which is considered as the hope to the hopeless.

Fuah C. (2017), in her article focused on the subject-matter of claim settlement in insurance contract as an aspect of consumer protection. The learned author opined that the end product of insurance contract is claim settlement. The author clearly establishes that a consumer's claim in an insurance contract in Cameroon can be lost because of high level of illiteracy on the part of the consumer and as well as consumer apathy. The author proposed proper education on claim procedures as one of the ways to help consumers not losing their claim settlement. Although drinks was not the centre of the authors work, this work takes into consideration the authors ideas on the basis that the end product of consumers of defective/ adulterated drinks is the payment of damages but this only becomes possible if the consumers are educated on the appropriate claim procedures and are interested also to take the matter to the appropriate jurisdiction. The researcher in this work recommends sensitization of consumers to help them know their rights and the various remedy that avails if their rights are been violated by drinks producers who may have produced sub- standard or defective drinks in Cameroon.

Bello, Suleiman, and Danjuma, in their article (Bello, K. et al., 2012) posit that in Nigeria, like other parts of the world, consumer protection is the concept designed to protect consumers from unscrupulous producers and service providers. It denotes the attempt by government to provide regulatory framework to protect and enforce the rights of people who pay for goods and services. To the authors, consumer protection on the one hand, protects the interest, rights and safety of end users of products and services; and on the other hand, to the extent that it derives from and relates to contractual transactions, consumer protection can be said to be a

means by which private law relationships are regulated. It is the view of the authors that the enactment of Consumer Protection Law in Nigeria is only an attempt at consumer protection, stating that the level of consumer awareness in Nigeria is still very low, thus culminating in the near absence of consumerism or action against unwholesome business practices. In their view, the ability to enforce the laws relating to consumer protection will provide the necessary impetus for safeguarding the rights and safety of consumers in Nigeria (*Ibid*). Though the focus was in Nigeria, this research adopts the view of the authors of the foregoing article especially as it relates to the low level of awareness of consumers in Cameroon of their rights and the existence of the regulatory agencies, especially the National Consumer Council of Cameroon (NCC) created by the prime ministerial decree in 2016 (Decree No. 2016/0003/PM of 13th January 2016.). The work evaluates the specific functions of the NCC and makes a strong case for an enhanced public enlightenment and awareness of its roles and responsibilities in resolving the plight of consumers, especially in the context of drinks.

Gordon (2000) devoted his text to the study of the development of consumer law in Europe, and the policy thrust of the law at its developmental stages. He concentrated his text on the role of the courts in the articulation and protection of the basic rights of the consumer. These basic rights he identified to include the right to information and the right to choose amongst others. This work also takes the same view as the learned author but extend it scope in Cameroon by examining the effectiveness of Cameroonian courts in granting remedy to consumers of sub-standard and defective drinks in Cameroon.

RESEARCH METHODOLOGY

The methodology used in this research is doctrinal. The primary sources of materials for this research were essentially gotten through interviews. The secondary sources are textbooks, journals and annual reports from brewery industries. The rationale for reading these books is to glean on both past and current issues within the topic and to understand the research context. This activity is a desk exercise. Related websites were equally consulted through internet. Administrative policy documents of various agencies such as the National Consumer Council and court decisions also form the basis for the collection of data for this work.

In analysing the data collected, the qualitative method was used. In analysing qualitative findings, the thematic content analysis will be employed. This will be done through critical analyses of statutory instruments in force to see the extent to which they turn to protect consumers of alcoholic drinks in Cameroon. The research will also utilised the institutional systematic approach in order to

find out how institutional plans and strategies are utilised in an attempt to ensure effective implementation of the laws that protect consumers of defective alcoholic drinks in Cameroon.

Consumers Protection Mechanisms in the Drinks Industry in Cameroon

The protection of consumers in Cameroon has been made possible through pieces of national legislations that has been enacted and promulgated over the years by the Cameroonian government. These regulatory measures put by the Cameroonian government are so timely given that fact that Cameroonians have been exposed to defective and substandard drinks. This has also been accompanied by the creation of several institutions to enhanced effective implementations of the measures that have been put in place. This chapter thus takes a close look into the different measures that the Cameroonian government has put in place to minimize consumer's abuse in Cameroon as well as the hurdles encountered in enforcing these measures to fight against consumer's abuse of defective drinks in Cameroon.

Regulatory Mechanisms

The regulatory mechanisms that have been put in place by the Cameroonian government are aimed at minimising and sanctioning consumer's abuses in Cameroon. These measures stem from administrative, criminal and civil.

Administrative Mechanisms

Administrative regulatory measures are those enforced by the agency charged with administering a particular provision which may be empowered to pursue certain laid down remedial process since it is not every matter that must be settled in court. For example, since the National Council on Consumers protection exists, in Cameroon this body can be empowered to carry out administrative measures. The chief advantage of administrative remedial measures to the consumer is that their costs are shouldered by the State while the resultant beneficial effect of their application can attend consumers. Examples of administrative measures in this area of the work may include suspension of licenses, replacement of defective products with new ones.

The administrative sanctions can come from the courts of First Instance or High Court depending on the amount of money in question. With the 2006/015 of 29 December, 2006 as amended and supplemented by Law no. 2011/027 of 14th December, 2011 on Judicial Organisation, These courts have been empowered under their administrative benches to issue administrative

sanctions and this extends to the area of consumers protection.

Criminal Law Mechanisms

Criminal regulatory measures stem from criminal law which is punitive in nature. A convenient starting point to examine the criminal law mechanisms is the Penal Code. The Penal Code of Cameroon is divided into two books: book I deals with the fundamental rules governing the whole of criminal law and book II deals with particular crimes. This Code caters the protection in some manner. This is seen in the areas of fraud, mis-description, falsification and adulteration of food products, safety of consumer goods, safety and quality food, misleading indications about the goods and the carrying out of dangerous activities. The Penal Code punishes whoever fails properly to provide against risk of bodily harm to any person from his dangerous activities with imprisonment for from six days to six months (Section 228 of the 2016Cameroonian Penal Code.).

In relation to drinks, Section 258 (1) provides that: *Whoever either adulterates any food stuff, whether for human or animal consumption, or beverage or medical substance intended to be sold, or keeps any substance designed or fit only for the purpose of effecting such adulteration, shall be punished with imprisonment for rom three months to three years and with fine from of from five thousand to five hundred thousands francs.*

The aforementioned provision shows the commitment of the Cameroonian government to protect Cameroonians against sub- standard goods as it instituted the quantum of punitive remedy. The aforementioned provision also frowns at producers, including corporations that put onto the markets productions not suitable for human consumption in the nature of food stuff, medical substance and beverages. The justification for punishing a corporation comes from the word "whoever". For the interpretation of word will definitely not exclude a corporate body involved in the adulteration of such food stuff, beverages or medical substance, whether for human or animal consumption. While criminal liability of corporate bodies generally according to Section 74 (1) (a) of the Penal Code, may also extend to situations of product adulterations.

Similarly, the advertisement law is another measure that the Cameroonian legislators enacted to protect consumers against product abuse. In this light, the promotion of sales is not to be done on products that can cause harm or injury to people. This explains this law seriously punishes anyone who advertises a defective product to the public as an attempt to protect consumers. The said law provides that:

Every advertisement or publicity involving medical and pharmaceutical products must be done in accordance with the conditions laid down by the Minister of Public

Health in accordance with Order of the National Council of Pharmaceutical and medical products (Section 42 of the 2006 Cameroonian Advertisement Law.).

In this light, misleading statements are considered as hybrid concept of consumer protection. The relationship between the parties even though civil not be contractual. It's simply a means by which defective and low standard products are sold, by convincing consumers and the public at large that the products are of high quality and thus fit for the purpose. In connection to this, section 56 of the same law also punishes any person who diffuses false information or allegations on a product that is of a nature to induce consumers to errors. Similarly, the Penal Code gives as punishment one to five years imprisonment and a fine of 20,000 to 10,000,000 francs to those who publish or spread by any means whatever, without a new power or report the truth or justify that he had good reasons to believe in the truth of that news (Section 240 of the Cameroonian Penal Code.)

The law further goes ahead to punish anybody that sends out false information on illegal counterfeit or banned products. It punishes with an imprisonment term of five to six years and fine of 500, 000 to 10, 000, 000francs or any of the two. This sanction applies to those dealing with both intentional and unintentional activities that causes harm to consumers. The main law in the area of consumer protection that tries to harmonise the other laws to an extent is the - Law No 2011/022 of 14th May 201. This law replaces part IV of the 1990 law governing commercial activity in Cameroon which only dealt with criminal liability.

The legal framework on consumer protection has been widely acclaimed by all for it is believed it will guarantee the rights of consumers according to international principles notably;

- The principles according to which the consumer have a right to protection of life, health, safety, and protection of the environment in the consumption of goods and services,
- The principle of satisfaction where consumers have a right to satisfaction of their primary and essential needs in the domain of water, health , food ,education , energy , transport, communications and in other areas of technology , goods and services
- The principle of participation where consumers have a right to form consumer associations or organisations that is autonomous and independent in order to participate in the promotion and defense of their rights.

This law through its several provisions has demonstrated the willingness of the Cameroonian legislators to protect consumers. The law imposes on vendors, supplier or provider of technology to provide or deliver to consumers a product, technology, good or service the meets the minimum requirements of sustainability, utilization and reliability and guarantees his legitimate satisfaction (Section 10(1) of the 2011 Law on Consumer Protection) .

Similarly the law punishes anyone who provides false information as to the nature of his goods. In this light, Section 32(1) of the law provides that:

Whoever gives false information on the quality of technology, goods or services supplied to a consumer shall be punished with imprisonment of from six months to two years or with a fine of from 200,000 to 1. 000. 000francs, or with both such imprisonment and fine.

Section 33 of the 2011 law has added more bite by doubling the punishment provided in section 32(1) where the false information about the quality of a product, service or technology is given by the executives or employees of corporate bodies. According to section 33:

Corporate bodies, may without prejudice to the criminal liability of the executives or employees of sale, supply or service, technology or commodity companies, be sentenced to double the fine provided for in section 32 above, if their executives or employees committed offences during or in the exercise of their functions within the structure.

The 2011 Cameroonian Consumer Protection Law also frowns at any one that attempts to limit liability by any contractual terms when it provides:

Contractual clauses that exempt, exclude, reduce or limit the liability of suppliers or service providers for effects, deficiencies or shortages of any kind of technology, the good supplied or service rendered shall be Void (Section 5(1) of the 2011 Law on Consumer Protection.).

To further protect consumers, the law provides remedies to consumers who have suffered injuries from the consumption of drinks. Section 3(c) of the law enshrined the principle of redress. It makes it possible for consumers to seek redress making it possible as a right for consumers to seek full compensation for wrongs or losses suffered though it attributes such to suppliers or providers of the goods.

It gives the consumer the possibility to request for the cancellation of the contract or the revision of the contract but still reserves the right to be compensated even if the contract is cancelled or revised. The consumer can request for cancellation based on hidden defects or faults affecting the quality of the technology, good or service under contract (*Ibid*, Section 7.). In this light, the consumer may request the replacement or repair of technology, good or service at the expense of the vendor, supplier or service provider, without prejudice to his right to compensate for damage suffered (*Ibid*, Section 31(3).). During the period of repair by supplier, which is not supposed to exceed 15 days within effect from the date of return of the good or discovery of a defective technology or service, the vendor, supplier or service provider must provide the consumer with an alternative good, technology or service in order not to inconvenience him.

Section 10(1) of the 2011 Law which provides that:

The vendor, suppliers or provider of a technology should provide or deliver to the consumer a product, technology, good or service that meets the minimum requirements of sustainability, utilization and reliability and guarantees his legitimate satisfaction.

It thus suffice to say that the aforementioned provision has put an end to the challenge of many consumers of their right to ask for refund of their money if they buy defective drinks or even replacement of it which usually existed as an illusion.

Civil Law Mechanisms

Actions brought by consumers of drinks usually carries civil claim. In this regards, civil remedies has been instituted to protect consumers of drinks in Cameroon. The civil law measure usually carries the payment of damages as opposed to the criminal measures that may results to both payments of fines and imprisonment. The Civil Code makes it obligatory for anyone who causes harm directly to be able to remedy it. In this light, Section 1382 of the Civil Code provides that:

Any act whatever of man, which causes damages to another, obliges the one by whose fault it occurred, to compensate it. Similarly everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or his imprudence (Section 1383 of the Cameroonian Civil Code.)

In direct relation to liability for defective products, section 1386(1-17) are very instrumental. Section 1386(1), provides that: a producer is liable for damages caused by a defect in his product, whether he was bound by a contract with the injured person or not. This tie with section 1384 which holds that:

a person is liable not only for damages he causes by his own act, but also for that which is caused by the acts of persons for whom he is responsible, or by things which are in his custody.

A product is defective within the meaning of the Civil Code where it does not provide the safety which a person or to a property other than the defective product. In Case of damage caused by a product incorporated into another, the producer of the component part and the one who has effected the incorporation are jointly and severally liable (*Ibid.* Section 1386(8)).

The Civil Code however lays the burden of proof on the consumer of the defective drink to proof the damage, the defect and the causal relationship between defect of the goods and the damage he might have suffered from the consumption of the defective drink. The producers of drinks are also given the opportunity to exonerate themselves from liability arising from their defective products if they can prove that: he did not put the product into circulation; that the product was not for the purpose of sale or of any other form of distribution, the drinks produced was in compliance with relevant Statute and

that the state of scientific and technical knowledge, at the time when he put into circulation was not such as to enable the existence of the defect to be discovered.

The OHADA (OHADA stands for the Organisation for the Harmonization of Business Law in Africa) Uniform Act on General Commercial Law though did not define a consumer, is however is also very instrumental in the protection of consumers in Cameroon. Section V of the law is delegated to commercial Sale contracts (The English Sale of Goods Act 1893 as amended in its Section 1 (1) defines a contract of sale goods as a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called price. Similarly, section 1583 of the Civil Code provides that a sale agreement is complete between parties, and ownership is acquired as of right by the buyer with respect to the seller, as soon as the thing and the price have been agreed upon, although the thing have not yet been delivered or price paid.). This Law makes it obligatory for the seller to deliver goods according to quantity, quality, specification and packaging provided for in the contract (Section 224 of the UAGCL). The seller will be held liable for any defect of merchantability that exists at the time risks were transferred to the buyer, even where the defects appear subsequently (Section 225 of the UAGCL.). The buyer /consumer has the right to petition the competent court to terminate the contract where the seller has failed to comply with his obligations that constitute an essential breach of the contract (Section 254 UAGCL.). From the forgoing, the consumer has the right to reject goods, service and technology and treat the contract as repudiated. In this light, in the case of *John Mokake Elali v. Brasseries du Cameroun* (Suit No.HCSW/35/75 (1975) unreported, Cited by Egute M. (2018), *Op.cit*, note 47, p. 106.), the plaintiff who claimed to have been injured as a result of consuming a defective beer manufactured and distributed by the defendants brought his action against the latter for breach of his duty of merchantability. On hearing, the court held that the defendant had breach his obligation of merchantability.

Institutional Framework to Protect Consumers against Abuse in Cameroon

'Institutional' is the adjectival form of institution, which within the context of this work is an established organization or body especially one of a public nature or character (Garner, B.A., (2007) Black's Law Dictionary, 8th Ed, West Publishing Co.). Thus, institutional framework within the context of consumer protection means the institutions or bodies of public nature set up under the statutes on consumer protection and the activities or functions of which are based on the legal principles, ideas, rules or provisions geared towards or aimed at the objective of promoting and

achieving the protection of the consumer within the legal framework of consumer protection.

Institutional framework connotes the scheme under which the law made for the protection of the consumer sets up a statutory body and assigns responsibilities to it with the requisite authority and power for the purpose of ensuring and achieving the implementation of the provisions of the law towards protecting the consumer in such ways as have been duly provided for under the law. There are several institutions that have been put into place to help fight against consumers abuse in Cameroon. The legal regime as aforementioned is made up of the statutes, that is the laws relating to the protection of the consumer while the institutional framework refers to the core institutions set up under these or other statutes and empowered to apply the provisions of those statutes for the purpose of achieving the objectives for the enactment of such statutes. Within the sphere of the law of consumer protection, these two constitute the consumer policy framework.

The enacted laws cannot exist in vacuo. Every law enacted must have a corresponding body or agency to carry the letters into effect. Without such a body the enactment of such a law would be a fruitless exercise and its existence a non-issue. This tallies with the view that the legislative provisions are mere declarations of policy, attitudes and intentions because the actual execution of such provisions depends on the human institutions established for that purpose (Badatunde, 2000). Consequently the success or otherwise of a legislation in achieving the purpose of its enactment depends to a very large extent on the effectiveness of the institutional or administrative framework set up by it or available to it. It's therefore imperative to examine these institutions and the roles it plays to curb consumers abuses under this section of the work.

The National Consumer Council

This body was created by Decree No. 2016/0003/PM of 13th January 2016. The National Consumers Council is a consultative organ placed under the stewardship of the Ministry in charge of Protection of consumers. The National Consumers Council has four principal objectives:

- To encourage a three way exchange of ideas between the State, consumers and supervisory body;
- To facilitate consultations between representatives of consumers and delegates from the supervisory organ on issues relating to the protection of consumers;
- To facilitate information flow on all legislative and regulating draft projects, having an impact on the consumption of goods and services all with the intention to protect consumers;

- To examine all issues regarding the consumption of goods and services or protection of the consumer submitted by the government (Section 25(1) of the 2011 Law on Consumer Protection).

It therefore means that this body listens to consumer complaints; make decisions and recommendations on the violation of consumer rights. This council has the status of administrative tribunal and an alternative dispute resolution mechanism. The council is made of twenty members drawn from government institutions. The members will be designated by the government and institutions in which they belong. The president and members will sit in the council for a period of three years renewable once.

Other members of the council include:

- One representative from the Ministry in charge of the Protection of consumers;
- One representative from the Ministry of Public Health;
- One representative from the Ministry of Livestock, Fisheries and Animal Industry;
- One representative from the Ministry of Transport;
- One representative from the Ministry of Territorial Administration;
- One representative from the Ministry of Post and Telecommunication;
- The director of the Agency of Standards and Quality Control.

The National Courts

Ceaseure of competent jurisdiction for the resolution of consumer dispute is also not different from that of other disputes. This has been organized by law of 2006 modified by law of 2011 (Law No. 2006/015 of 29 December 2006 on the Judicial Organisation in Cameroon as Modified by Law No. 2011/027 of 14 December 2011). This can be based on the Material jurisdiction (Courts will be with regards to their material competence in civil and commercial matters as provided by the judicial organisation law of 2006. In this respect, the 2006 Ordinance states that where in a civil and commercial matter the amount of money claimed as damages is lower than ten million (10.000.000) francs CFA, it is the Court of First Instance that shall be competent to handle such a claim but if the claim is above ten million (10.000.000) Francs CFA, then the competent court shall be the high court) and territorial jurisdiction (The territorial jurisdiction depends on the courts. For courts of first Instance, the territorial competence will be the sub division and for High Courts, the territorial jurisdiction is the division). With the material jurisdiction that is based on amount of the demand, the problem that is asked is to know when a demand does not make mention of any amount. The law has said nothing to this regards. In practice, such demands are submitted to the high court. This is to avoid cases where

the amount will be superior to the competence of the court of First Instance. The second reason is that the High Court has full jurisdiction powers to handle all matters no matter the nature or amount except in special cases brought out by texts. As such actions for annulment, resolution, revision or rescission of contracts without any amount mentioned has to be handled by the High Court.

As to what concern the territorial jurisdiction, the choice of the legislator of not choosing the jurisdiction of the consumer as it is the case with a dismissed worker poses a problem, for it is believed the consumer and worker are all at a weak bargaining position as opposed to those that employ them or those that sell them products. The courts have been very instrumental in settling consumer's disputes in Cameroon. There are a quite a number of cases to demonstrate the willingness of the courts to protect consumers from defective and sub-standard drinks.

In the case of *Che Tanu George Nkimbeng v. U.C.B (Suit No.HCK/54/98-99)*, the plaintiff bought a large U.C.B. Pamplamous from an off-licence bar manufactured by the defendants, a brewery company carrying out the business of manufacturing drinks in the Republic of Cameroon. The plaintiff drinking out of the bottle took two sips. He realised that the taste was usual. He shook the bottle and took the third sip. On gulping this third sip, he realized some particles got into his mouth. He unconsciously swallowed some of these particles. He struggled to cough out some of the particles to no avail. He spat out some of them. He examined them and raised an alarm that drew the attention of the barmaid.

When the bottle of Pamplamous was lifted it was discovered that it contained a lump of something therein. It was a twisted cork with some hair-like black materials around it. Other customers rushed to the plaintiff to see what was amiss. They remarked that they had seen dirt in some of the drinks. The plaintiff who felt nauseous started vomiting and was subsequently admitted in the Bamenda General Hospital. He was treated of food poisoning that led to the excretion of blood and mucus. The barmaid who was called as a witness by the plaintiff testified in court that she actually saw foreign particles in the drink which the plaintiff had consumed on that fateful day. She continued that even after the day the plaintiff consumed the contaminated drinks, she had come across some U.C.B, Pamplamous drinks containing strange particles in the course of selling. At hearing, the court had to give judgment in favour of the plaintiff and the U.C.B. Company was held liable for selling defective drinks. Similarly, in a civil court judgment between *Maître NnomekongObam v. Guinness Cameroon* (Judgment No. 293.civ/2003, Cited by Gelega et al (2018), *The Law of Pharmaceutical Product Liability in Context*, P.283.) damages were awarded for the medical and pharmaceutical bills resulting from consuming a product of the defendant. However, the courts (The Cameroonian

courts have shown their reluctance to uphold claims of consumers on the basis of the 'fool-proof system' submitted by manufacturers and producers and this have seemed to form a trend/pattern. In such cases, the principle of *res ipsa loquitur* is usually rejected. As a result, the consumer is faced with great difficulty in discharging the onus of proof placed on him) have been lukewarm in handling cases of consumers' abuses in many instances as demonstrated in the cases below.

In Cameroonian case, *NkehNapoleonv. Forlepia Thomas and Guinness Cameroon S. A (Suit No. BA/52/99-2000* (unreported), sometimes in early March 2000, the plaintiff bought two bottles of Satzenbrau beer and one was opened by the salesman and owner of the Golden Gate off license at mile 12, Akum in the North West province (region). As soon as he started consuming the same, the lights suddenly went out. He however continued drinking and felt hard particles hit his lips: thus he stopped and waited till the lights were re-established to check. The plaintiff lost appetite and his mouth was filled with saliva and thereafter had queasy feelings, resulting in inability to eat and uneasiness. He was admitted for 72 hours for food poisoning with severe stomach disorder at the Santa District hospital. After treatment the plaintiff took the contaminated bottle of drink and the quantity that was still in the glass to the company's representative but he was not received. All attempt to have the second defendant with proposal of inspection of the beer bottle and the glass content failed.

It is rather sad that for so many years, a case of this nature is yet to be decided. This delay has orchestrated injustice some times suffered by the customers even with glaring case of nature. Thus, the willingness of the court in Anglophone Cameroon to protect customers of defensive products must also be manifested through quick dispensation of the cases brought before them. This will alleviate the suffering of the plaintiff since justice delayed is justice denied.

The case of *Ntum George Nde v.Brasseriesdu Cameroun (Suit No. CASWP/52005* (unreported), Cited by Egute M. (2018), *Op.cit, note 47, p. 38.*), has also exposed the delayed exhibited by the court in dispensation of justice with respect to the product contaminated by foreign materials. A case that was initiated at the High Court of Limbe in 2001 is still undecided till date. In that case, the plaintiff went drinking with his friends in Limbe, specifically at Animal Farm Hotel. He ordered for a bottle of 33 exports and in the course of drinking the beer, he noticed a strange object inside the bottle stuck on the inner wall and it was effervescing. The plaintiff started vomiting and sweated profusely. He went to various hospitals including Centre Jamot Yaounde, where it was established that the drink he took at the animal farm hotel in Limbe was the actual cause of his illness. He then seized the High Court of Fako claiming damages, wherein the trial judge in a seasoned and sound water tight judgment found in his

favour and made the following award: FCFA 2.693.355 as special damages and the sum of FCFA 10.000.000 as general damages plus cost of FCFA 400.000.

Aggrieved, Brasseries du Cameroon (respondents) filed an appeal at the Court of Appeal of the then southwest province (Now South West Region.). At the end of the hearing, the honorable judge of the court of appeal passed judgment against the Appellants, setting aside the judgment of the lower court. In fact, the facts of this case are very interesting as they fall on all the fours of *Donoghue v. Stevenson*. It is thus clear that the bottle of “33 Export” drink contained foreign materials whose presence in the bottle could only be explained by Brasseries du Cameroun. It is doubtful why the judgment of the High Court was set aside by the Court of Appeal, when the plaintiff had even pleaded “res ipsa loquitur”. It is also interesting to note that the Court of Appeal did not take cognizance of s. 258 (See the New Penal Code – Law No. 2016/007 of 12 July 2016.) of the Penal Code of Cameroon which punishes adulteration of foodstuffs and beverages.

Similarly, in the case of *John Mokake v. Brasseriesdu Cameroon*, the Buea Court of Appeal found drinks allegedly supplied by the appellants to be defective, but nevertheless set aside the judgment of Justice Njamsi in the lower court because the respondent could not show that he actually consumed the product and that his injuries were in fact not caused by the product.

Similar difficulties were faced by the plaintiff in the case of *MaxebongHopeSone v. Ikoie Esoe David and Guinness Cameroon S.A* (Suit No. HCK/12/97, (unreported)). The facts of this case equally justify the argument that the courts in Cameroon are reluctant to protect consumers of drinks in Cameroon. In that case, the plaintiff claimed 15 000 000 FCFA as special and general damages for personal injuries suffered as a result of consuming Malta Guinness drink produced and sold by the defendants. After consuming a good quantity, the drink was discovered to be contaminated with putrefied cockroaches. On noticing dirt in his drink, the plaintiff drew the attention of the barman who immediately went to the same crate and brought another bottle of Malta Guinness. This was opened and found to be equally contaminated with decomposed insects. The plaintiff claimed he suffered severe illness as a result and thus brought this action against the defendants for breach of their duty of care according to the principles laid down in *Donoghue v. Stevenson*. The action failed as the allegation against the defendants could not be proved. In the opinion of the court, the plaintiff did not establish a nexus between the putrefied cockroaches in the bottle of Malta Guinness which he consumed and the ailment.

Hurdles in Enforcing Consumers Rights of Defective Drinks in Cameroon

It is disturbing that despite the existence of various legislative and control measures put in place to combat defective products and ensure quality control, the circulation of defective drinks continues unabated. The reason advanced for ranges from untrained and corrupt officials; ineffective enforcement of existing laws, ignorance of consumers and the Luke warmness of the courts.

Ignorance and illiteracy of consumers of existing laws

Many consumers particularly those in the rural areas are ignorant of the existence of the law regulating consumer’s protection in Cameroon. This ignorance is due partly to illiteracy and partly of lack of critical awareness, as regards the illiterate consumer. He is not only ignorant of the existing laws but also lacks expertise to differentiate between fake and genuine drinks. For the literate and enlightened consumer, reluctance is due mainly to the huge expenses involved in litigation coupled with attendant delays. Again, most consumers do not actually know the procedure to follow in order to take their actions in court. They may also be wary of fighting with big companies which have the financial might.

The Luke warmness of the Courts

The courts over the years have been instrumental in granting verdicts to consumers for defective drinks in Cameroon. However, the courts have been so lukewarm in granting speedy judgments to consumers who brings their cases to courts. This has been evidenced by series of cases where the court has delayed in granting judgment as was in the case of *Nkeh Napoleonv. Forlepia Thomas and Guinness Cameroon S.A* (Suit No. BA/52/99-2000 (unreported).

Ineffective enforcement of existing law

In Cameroon, like in most developing countries, there exist a host of legislations in place pertaining to the protection of consumers against sub-standard and defective products but the legislations are inadequately applied, not well-defined and do not actually meet with the needs of the modern day society. Some of them are overlapping and sometimes conflicting and not well understood by those charged with their application. This makes conflicting judgments to be given as was seen in

the case of *Ntum George Nde v. Brasseries du Cameroon*.

General Conclusion

The study has unraveled significant issues concerning the statutory enforcement that lie at the bane of the current predicament of protecting consumers of both locally produced and manufactured drinks in Cameroon. The forgoing discussion of this study has shown that the Cameroonian government has made laudable efforts to put in place adequate legal and institutional framework to protect consumers of drinks in Cameroon. However in spite of all these, the consumers of drinks are far from being protected. Except steps are taken to increase the efficiency in enforcing consumer rights, consumers will continue to be shortchanged.

The courts on their own part have not been in unison neither have they been consistent in their decisions and interpretations of the rule of law in relation to law of consumer protection in the domain of drinks as was seen in the *Elange Ndua v. Brasseries du Cameroun* and *Ntum George Nde v. Brasseries du Cameroun* and many others. According to the researcher, some of the challenges preventing consumers of drinks from receiving adequate remedy for infringements of their consumer rights include: Ignorance and illiteracy of consumers of existing laws that protect their rights in this domain. Consumers of drinks need to be aware of their rights and insist on the respect of these rights. Luke warmness of the court and ineffective enforcement of the existing legislations as they are inadequately applied, not well-defined and do not actually meet with the needs of the modern day society are equally challenges faced by consumers of drinks in Cameroon. These factors have been addressed thoroughly in previous chapters. There is therefore a need for reform of the integral components which make up the current framework. It follows, therefore, that in order for the existing framework for consumer protection to develop, amendments must be made to the existing legal structure. Also, extra-legal mechanisms must be put in place to support such legal structure.

This study has revealed the incoherency of the framework of consumer protection law in Cameroon in the domain of the drinks. In this light the researcher has proposed underlining recommendations which will go a long way to ameliorate the problems if carefully studied and implemented will solve the problems consumers in the drink industry in Cameroon are plagued with. The recommendations proposed in this chapter will be grouped into two categories, namely: Legal and Statutory and Extra-Legal.

Legal and Statutory

This section of the work will examine the legal and statutory recommendations which consist of the review of pecuniary penalties and sanctions, judicial activism, review of the statutory framework and encouraging compensation.

Review of Pecuniary Penalties and Sanctions

Fines imposed under various consumer protection legislations in Cameroon have been discussed in chapter three of this work. The penalty sums prescribed in most Statutory instruments related to consumer protection in Cameroon are insufficient compared to the modern day value of such currency. As a result, the fines prescribed are not sufficient to deter offenders. For example, Section 258 (1) provides that: *Whoever either adulterates any food stuff, whether for human or animal consumption, or beverage or medical substance intended to be sold, or keeps any substance designed or fit only for the purpose of effecting such adulteration, shall be punished with imprisonment for from three months to three years and with fine from of from five thousand to five hundred thousands francs.*

Similarly, Section 32(1) of the 2011 on Consumers protection law provides that: *Whoever gives false information on the quality of technology, goods or services supplied to a consumer shall be punished with imprisonment of from six months to two years or with a fine of from 200,000 to 1. 000. 000 francs, or with both such imprisonment and fine.* There is a pressing need for review of the statutory framework in order to ensure that the punishment is somewhat equivalent to the pain caused.

The insufficiency of these outdated penalty sums can be resolved by judicial activism to some extent. The courts in awarding damages to aggrieved consumers or imposing fines on erring manufacturers may use their discretion and consider the inflation in the value of currency. In conclusion, judges should consider the realities of modern markets in awarding damages. Although they cannot act outside the ambit of the law, where the law permits, they should use their discretion.

Judicial Activism

The need for judicial activism by the courts cannot be over-emphasised. Consumer protection is a relatively modern and ever-growing aspect of law. As a result, there is a need for the courts to pronounce on relevant laws in a way that is not only contemporary, but also pragmatic. Such pronouncements must reflect a synergy

between modern realities, the local environment in which such market forces are at play, and the law. Whether the basis of liability is strict liability, reasonability of conduct under claims in negligence, or some other form of action, the Cameroonian courts must employ an approach that promotes purposeful development.

Review of the Statutory Framework

There is a need for amendment in relation to certain provisions of principal consumer legislations. For example, under the legal framework of Consumer Protection a consumer is defined as 'Any person who uses products to meet his own needs and those of his dependents rather than to resell, process or use them within the context of his profession, or any person enjoying the services provided'. This statutory definition of a consumer excludes persons who acquire goods or services for business or professional purposes. It is pertinent that this section is amended to include and cover persons who acquire goods or services for business or professional purposes and equally juristic persons. Also, the law limits the initiation of preventive actions only to consumer protection associations as per Section 27 (3). There is no good reason to think that an individual cannot or should not initiate a preventive action. Consumer rights are still to be well known by the general public so to form powerful associations shall take more time than to have certain enlightened individuals who can initiate such actions for the benefit of the majority uninformed populace (Atanga An Appraisal Of Law No 2011/012 Of 6 May 2011 On The Framework On Consumer Protection In Cameroon, P. 15.).

Compensation

Majority of the consumer protection legislation in Cameroon focus on punishing the offender as opposed to compensating the victim. There is a need for such statutes to facilitate justice to the general public and the individual victim. Thus, it is suggested that the statutory framework for consumer protection is amended to include compensation mechanisms for defective or harmful products and services. The effect of this is that aggrieved victims will not need to incur extra costs in instituting civil suits; and any strain on the judicial process (and the offender) will be avoided by preventing multiple actions for the same matter.

Extra-Legal

The extra legal recommendations put forth by the researcher will consist of the following:

Consumer Awareness and Education

The consumer protection regime in Cameroon is primarily plagued by illiteracy amongst most Nigerian consumers and lack of awareness of their consumer rights. Even amongst the educated class, the level of awareness of consumer rights is considerably low. Furthermore, very few individuals have the slightest clue as to the best and proper steps to take to enforce consumer claims. The age long proverb that 'knowledge is power' goes without saying. The need for awareness amongst consumers is further amplified certain factors. First, the advent of aggressive, and sometimes misleading, advertising by manufacturers (Every advertisement or publicity involving medical and pharmaceutical products must be done in accordance with the conditions laid down by the Minister of Public Health in accordance with Order of the National Council of Pharmaceutical and medical products.) which results in consumers not getting what they bargained for. A consumer who is well informed about product qualities and his consumer rights, is less likely to be susceptible to deception and exploitation. Secondly, capitalism, which is characterised by a free competitive market and motivation by profit, inclines manufacturers to focus more on profit than protection of consumer interests.

Cameroonian consumers have already been subjected to a harsh economy which has led to a reduction in their purchasing power. It is pertinent to ensure that they are aware of their rights to prevent any further injustice. Relevant government agencies have a duty to sensitize the public on consumer rights. Such campaigns should employ the use of use consistent, catchy, easily comprehensible adverts, slogans, and other mediums. Furthermore, local sensitization schemes by government agencies can be followed by cooperative activities with international consumer organizations. The observance of global consumer events (Such as the World Consumer Rights Day (WCRD) which holds on the 15th of March every year.) may raise awareness of consumer rights. This will provide consumers with adequate knowledge and exposure to their consumer rights and help them make informed decisions with regard to products and services. It is additionally suggested that consumer rights are taught to students from the secondary school level that is forming part of the academic syllabus, so as to imbibe in them the general ideas of consumer rights at such a formative stage.

Legal assistance to the less privileged

As earlier noted in this work, the cost of litigation is one of the reasons for the lethargy displayed by many consumers of defective and sub-standard drinks in Cameroon. To lessen this burden, the Government

should establish a legal assistance body which could be extended to consumers-victims of defective products. This should be done when all attempts to extra-judicial settlement have failed. This is necessary as the cost of litigation is very high in Cameroon and only few victims can actually secure services of lawyers to defend or advance their claims. Most at times consumers abandoned their cases because they can afford the services of a legal counsel. The problem is further compounded by the fact that the victim themselves are not knowledgeable in the techniques involved and often insisted upon the courts. Even victims who resort to make use the legal Assistance department in our courts tends to abandon it because of the many procedures to follow before having access to it. As a result of this, consumers of defective drinks tend to let go of their rights and continue in their sufferings. The researcher strongly recommends the government that the government lessens the procedure of seeking the legal assistance department and if possible even creates a legal aid council that can assist consumers.

Encouraging the use of ADR

One of the extra-judicial methods the researcher also recommends is the use of ADR. This will help reduced the rate at which consumers leaves the court dissatisfied with claims which are constantly adjourned or unsatisfied with the verdicts rendered. Consumers of drinks should be encouraged to use this method of resolving their disputes as it is less time consuming and costly compared to the adjudicative method of resolving dispute. This method usually involves the use of impartial intervenors who are referred to as third parties or neutrals (Goldberg et al (1997), Dispute Resolution, 2nd Edition, Little, Brown and Co.).

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