

REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

CONSUMER PROTECTION & LEMON LAW

Source: ReSA Lecture (Atty. Nicko) and REO Live (Atty. Liangco)

Topics Covered:

3. Consumer Protection
 - 3.1. Consumer Product Quality and Safety
 - 3.2. Deceptive Sales Acts and Practices
 - 3.3. Product Service and Warranty
 - 3.4. Labelling and Packaging
 - 3.5. Consumer Rights
 - 3.5.1. Price Tag Act
 - 3.5.2. Lemon Law

Declaration of Policy and Relevant Terms

RA 7394 - Consumer Protection Act

- To protect the consumer interest, promote consumer general welfare, and establish standards of business and industry conduct by attaining the following objectives:
 - Protection from health and safety hazards
 - Protection **from deceptive, unfair, and unconscionable** sales acts and practices
 - Provision of **information and education for informed and sound decision** and proper exercise of consumer rights
 - Availability of consumer rights and proper remedies
 - Involvement of consumer representatives in policy-making

RA 10462 - Philippine Lemon Law

- To promote full protection to consumer rights **in the sale of motor vehicles against deceptive, unfair, and inimical business and trade practices**

(The State recognizes that a purchase of motor vehicle is a major investment by the consumer)

Relevant Definition of Terms

Closing Out Sale	Consumer sale wherein the seller uses the announcement to <u>create the impression that he is willing to give large discounts or merchandise in order to reduce, dispose, or close out his inventory and business</u>
Consumer Products and Services	Goods, services and credits, debts or obligations which are primarily for personal, family, household or agricultural purposes , which shall include but not limited to food, drugs, cosmetics, and devices
Motor Vehicles	Any self-propelled, four-wheeled road vehicle designed to carry passengers, excluding: Motorcycles, delivery trucks, dump trucks, buses, road rollers, trolley cars, street sweepers, sprinklers, lawn mowers, heavy equipment like bulldozers, graders, forklift and cranes, vehicles running only on rails or tracks, and tractors, trailers and traction engines exclusively used in agriculture
Stockpiling	Manufacturing or importing a product between the date of promulgation of its consumer products safety rules and its effective date, at a significantly greater rate than the rate at which such product was produced or imported during a base period ending before the date of promulgation of consumer product safety rule

- In case of ambiguity of the Act's provisions, the **best interest of the consumer** is considered

Deceptive, Unfair, and Unconscionable Sales Acts or Practices

- Implementing Agency: **DTI**

Deceptive Sales Acts or Practices

- **Concealment, false representation, or fraudulent manipulation** by a seller, producer, manufacturer, or supplier to induce a consumer to enter into a sale or lease transaction of any consumer product or service
- Whether it occurs before, during, or after the transaction

- **Deviation from the truth** (falsity) either in the product itself or due to the seller

- 1) False claims of product or service sponsorship, approval, performance, characteristics, ingredients, accessories, uses, or benefits
- 2) Misrepresentation of product or service's standard, quality, grade, style, or model
- 3) Falsely presenting reconditioned, altered, or second-hand product as new, original, or unused
- 4) Misleading or different reason for product or service availability
- 5) False claim that the product or service has been supplied in accordance with previous representations
- 6) False claim or **limiting availability of supply** (Could've been supplied in greater quantity)
- 7) Claiming **unnecessary service or repairs**
- 8) Fake or **inexistent price advantage**
- 9) Lacking or false information as to product warranties and its terms or the consumer rights and remedies
- 10) False claim of sponsorship, approval, or affiliation by the seller or supplier

Unfair or Unconscionable Sales Acts or Practices

- **Taking advantage of consumer's physical or mental infirmity, ignorance, illiteracy, lack of time, or general environment conditions** by a seller, producer, manufacturer, or supplier to induce a consumer to enter into a sale or lease transaction of any consumer product or service that is **grossly inimical to the consumer interest** (Grossly one-sided against the consumer)
- Whether it occurs before, during, or after the transaction
- Consumer **did not get the value for his money**
 - 1) Taking advantage of consumer's inability to protect his interest due to inability to understand language and other similar factors
 - 2) Charging **excessively higher** (grossly exceeding) **prices than similar transactions by like consumers**
 - 3) Consumer was **unable to receive substantial benefit** (only little to no real benefit) from the product or service
 - 4) Seller or supplier is aware at the time of transaction **that the consumer has no reasonable probability to fully** (Ex. Sales agents just to reach sale quota)
 - 5) Transaction is **excessively one-sided in favor of the seller or supplier**

Chain Distribution Plans, Home Solicitation, and Referral Sales

	Chain Distribution Plans (Pyramid Sales Schemes)	Home Solicitation Sale	Referral Sales
Definition	Profits are primarily derived from recruitment of other persons into the plan rather than from sale of consumer products or services	Sales made personally by telephone, person-to-person contact, or written or printed communication consummated at the buyer's residence or away from the seller's regular place of business	Sales device by sellers representing to the buyers a promised benefit (rebate, commission, etc.) for referring others by submitting names of potential customers or <u>helping the seller enter into other sales</u>
Nature	Prohibited	Regulated	Regulated
When Allowed?	Never	After obtaining DTI Permit	When a written undertaking is made granting and <u>specifying the benefits that the referrer-buyer will receive</u>

Specific Rules as to Home Solicitation Sale

- Must be conducted **only from 9AM to 7PM of a Working Day**
 - XPN: With prior agreement with the person solicited
- Must be **made by a person with proper identification and authority** from his principal
- Must be **properly receipted**
- Must **not represent any of the following**:
 - That the buyer has been specially selected
 - That the seller is making a special offer to few persons only for limited time
 - That a survey, test, or research is being conducted

Penalties

The court may impose any or a combination of the following:

- Fine of 5,000 to 10,000
- Imprisonment for not more than 1 year
- Injunction to restrain the conduct
- Payment for actual damages
- Other orders fit to redress the injury

Labelling and Fair Packaging

- Implementing Agencies: **DTI, DOH, and DA**

Persons Covered

- Labelers**
(Those engaged in labelling or packaging any consumer product, either as a principal or agent)
- Wholesalers, Retailers, and Distributors ONLY IF either:**
 - They are **engaged in the packaging or labelling** of such products
 - They **prescribe or specify the manners of packaging or labelling** such products
 - Having knowledge but refused to disclose the source** of mislabeled or mispackages products (accomplice)

Minimum Labeling Requirements for Consumer Products

- Applies to **domestically sold products, whether locally manufactured or imported**
- Must appear on the label **with such conspicuousness** to render it **likely to be read and understood by ordinary individuals under customary conditions** of purchase or use
- Must form an **integral part of the label without danger of being erased or detached under ordinary handling**
 - Registered Trade Name or Brand Name
 - Registered Trademark
 - Registered Business Name
 - Manufacturer, Importer, or Repacker's Address in PH
 - General Make or Active Ingredients
 - Net Quality of Contents
(Weight, Measure, or Numerical Counts rounded to Nearest Tenths in the Metric System)
 - If imported, the Country of Manufacture
 - The fact that the product is manufactured, refilled, or repacked under license from a principal, if ever

Any concerned department may issue additional rules and regulations for labelling and packaging to:

- Establish and define standards for characterization of the size of a package** enclosing any consumer product
(Not the size itself but the characterization of the size such as in grams, liters, etc.)
- Regulate placement of a price advantage label** in the product
(Not the promo or price advantage itself but only as to where it should be placed in the product)
- Prevent nonfunctional slack-fill of packages or containers**
When are slack-fill **functional** (thus allowed)?
In **any** of the following instances:
 - For **protection of the contents**
 - As a **machine requirement** for enclosing the contents
 - Due to the **inherent characteristics of package material** or construction be used

Any concerned department may also establish standards for special packaging of any consumer product if the degree or nature of the hazard to children is required to protect them from serious personal injury or illness from handling and use of such product

- Must be **technically feasible, practicable, and appropriate** for such product
- Must consider the following:
 - Standards' **reasonableness**
 - Available **scientific, medical, and engineering data**
 - Industries' **manufacturing practices**
 - Nature and use** of consumer products

Additional Labelling Requirements for Food, Cosmetics, Drugs, and Cigarettes

Foods	Expiration Date - Whether it is semi-processed, full-processed, ready-to-cook, ready-to-eat, prepared food, or just plain mixture Nutritive Value (Nutrition Facts) - Whether ingredients are natural or synthetic - Other labeling requirements deemed necessary
Cosmetics	Expiration Date Irritants Precautions or Contra-Indications - Other labeling requirements deemed necessary
Drugs	Those provided by in the Generics Act

Cigarettes	- The following statement or its equivalent in Filipino: "Warning" Cigarette Smoking is Dangerous to Your Health - Must be located in conspicuous place - Must be legible type in contrast by typography, layout or color with other printed matter on the package
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Mislabeled Foods, Cosmetics, and Drugs and Devices

Commonalities among Mislabeled Foods, Cosmetics, and Drugs and Devices

- False or misleading labeling or advertising** in any way
- Its **container** is made, formed, or filled to be **misleading**
- It is **in package form**
(XPN: It bears a label conforming to the Act, and reasonable variations are allowed)
- Any **word, statement, or other information required by the Act or any authority to appear on principal display panel of the label is not prominently placed thereon with such conspicuousness**

Other Mislabeled Foods

- It is offered for sale **under the name of another food**
- It is an **imitation** of another food
(XPN: Its label **bears in with size and prominence the word "Imitation"** immediately after the name of food imitated)
- It purports to be or represented **as food with a prescribed standard or definition**
(XPN: It **conforms to such standard** and definition and its label bears the name of the food specified in the standards)
- It purports to be or represented **as food with a prescribed quality standard or fill of container, and it falls below such standard**
(XPN: Its label **bears a statement that it fails below the standard** as compliant to regulations)
- It is **not subject to any prescribed standards**
XPNs:
 - Its label **bears the common or usual name of the food**
 - Its label **bears the common or usual name of the ingredients** if the food is manufactured from two or more ingredient, except the spices, flavorings, and colorings used
 - In cases of **butter, cheese, and ice cream**
- It purports to be or represented **as food for special dietary uses**
(XPN: Its label bears such information as to its vitamin, mineral, or other dietary properties necessary to fully inform purchasers)
- It bears or **contains any artificial flavoring, artificial coloring, or chemical preservative**
(XPNs: Its **label states that fact** or in cases of **butter, cheese, and ice cream**)

Other Mislabeled Cosmetics

- Its label **does not state the common or usual name of its ingredients**

Other Mislabeled Drugs and Devices

- It is **for use by man and contains habit forming substances** in any quantity such as narcotic or hypnotic substance alpha-eucaine, beta-eucaine, barbituric acid, cannabis, cocaine, heroin, marijuana, etc.
(XPN: Its label **bears the name and quantity** or proportion of such substance or derivative, **with the statement "Warning - May be habit forming"** in juxtaposition therewith)
- Its **label does not bear adequate directions for use** that are necessary for the protection of the users
- It **purports to be a drug name recognized in an official compendium**
(XPN: It is **packaged and labeled as prescribed therein**, as modified by the concerned department)
- It is found to be **liable for deterioration**
(XPN: It is **packaged in such form and manner**, and its **label bears a statement of such precautions**)
- It is an **imitation of another drug**
- It is **dangerous to health when used in the dosage** or with the frequency or duration prescribed or **suggested in its labeling**
- It **purports to be or represented as a drug composed of insulin or any kind of penicillin, streptomycin, or any other antibiotic drug**
(XPN: It is **from a batch with a Certificate of Release** issued that is in effect with respect to such drug)

Mislabeled Hazardous Substances

- Its **packaging or labeling is in violation of the special packaging regulations**, having been intended or packaged in a form suitable for household and children use

2) Its label does not state conspicuously nor is located prominently in bright red and orange color with a black symbol in contrast typography, layout, or color with other printed matters on the label, the following:

- Name and place of business of the manufacturer, packer, distributor, or seller
- Common, usual, or chemical name of the hazardous substance, unless concerned department permits or requires use of recognized generic name
- Clear statement of the possible injury it may cause if used improperly
- Precautionary measures describing the action to be followed or avoided
- Instructions for first-aid treatment
- Instructions for handling and storage of packages requires special care
- The statement "Keep Out of Children" or its practical equivalent, with adequate directions for protection of children from the hazard involved, if not intended for children use
- The following signal words:

"Poison"	For substances defined as Highly Toxic
"Danger"	For substances which are Extremely Flammable, Corrosive, or Highly Toxic
"Warning" or "Caution" (In bright red or orange color with a black symbol)	For all other hazardous substances

Seizure and Condemnation of Mislabeled Hazardous Substances

- Liable to be proceeded against and condemned XPN:
 - Hazardous substance intended for export if (1) actually exported, and (2) in a package labeled outside of it to show that it is intended for export, that is (3) in accordance with the foreign purchaser's specification and the applicable foreign law

After an entry of order of condemnation, any condemned hazardous substance must be disposed either by:

- Destruction
- Sale (Proceeds - Legal Cost & Charges are paid to the Bureau of Treasury)
- Delivery or Retention of Owner Thereof for Destruction or Alteration to comply with the Act, under supervision of a duly designated officer or employee
(Expenses are paid by persons obtaining release through a bond)

Penalties:

Food, Cosmetics, Drugs and Devices, or Hazardous Substance	Fine of 500 to 20,000 pesos and/or Imprisonment of 3 months to 2 years
All Others	Fine of 200 to 5,000 pesos and/or Imprisonment of 1 month to 1 year

Consumer Product and Service Warranty

- Implementing Agency: DTI
- A contract of sale with conditions and warranties shall be governed primarily by the Civil Code, with additional provisions by the Consumer Protection Act

Express Warranties

Operative from the moment of sale

Rules as to the Terms of an Express Warranty

- Must set forth the warranty terms in a clear and readily understandable language
- Must clearly identify himself as the warrantor
- Must identify the party to whom the warranty is extended (Not necessarily to be the buyer himself)
- Must state the products or parts covered
- Must state warrantor's actions in case of defect, malfunction, or failure to conform to the written warranty (and as to whose expense)
- Must state the consumer's procedures to avail of his warranty rights
- Must stipulate the period covered by the warranty

Parties' Responsibilities as to Express Warranty of Goods

Any stipulation contrary herewith is null and void

Consumer	Must present ALL of the following: - Warranty Card or Official Receipt - Product to be Serviced or Returned
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Manufacturer, Producer, or Importer	- With Ultimate Responsibility for the Warranty - If the immediate seller, must honor the warranty immediately
Distributor, Dealer, or Wholesaler	- Must make Sales Report, to be reported to the manufacturer within 30 Days from purchase, equivalent to a warranty registration, containing of the following: - Date of purchase - Product's model and serial number - Buyer's name and address - Failure to make or send the report shall relieve the manufacturer of responsibility to the warranty, thus making the distributor, dealer, or wholesaler with Ultimately Responsibility for the Warranty (Personally Liable) Thus, the manufacturer shall still honor the warranty, but will be at the distributor's expense - If the immediate seller, must honor the warranty immediately
Retailer	- With Subsidiary Liability for the Warranty, in case both the manufacturer and distributor fail to honor the warranty (in such case, retailer shoulder the expenses but is reimbursable against the manufacturer or distributor) - If the immediate seller, shall take responsibility of presenting warranty claim to the distributor at no cost to the buyer

Record of Purchases

Must be kept at the same duration or during the lifetime of the product's respective warranties or guarantees

Minimum Standards for Warranties

- Shall remedy the product within a reasonable time and without charge in case of defect, malfunction, or failure inherent to the product (Not due to unreasonable use thereof)
- If after reasonable attempts to remedy, the product continues to have the defect or malfunction, shall permit the consumer to elect whether to ask for a refund or replacement without charge

Duration of Warranties

Express Warranty	Period Stipulated
Implied Warranty of Merchantability	Equal Duration of Express Warranty
Other Implied Warranty	60 Days to 1 Year from Sale

Breach of Warranties by the Warrantor

Express Warranty	At the consumer's option, either: - Have the goods repaired Must be made within 30 days, unless due to conditions beyond the warrantor's control - Refund of purchase price The amount directly attributable to the use of consumer prior to discovery of non-conformity shall be deducted
Implied Warranty	At the consumer's option, either: - Retain the goods and recover damages - Reject the goods, cancel the contract, and recover purchase price including damages

Warranty in Supply of Services

- Implied warranty that the service will be rendered with due care and skill, and that any material supplied in connection therewith will be reasonably fit for the purpose (General)
- Implied warranty that the services supplied and any material supplied in connection therewith is reasonably fit for the specific purpose, if the consumer made known to the seller the particular purpose for which the services are required
- Does not apply to professional services

Prohibited Acts Regarding Warranties

- Refusal without valid legal cause to honor a warranty or guaranty issued
- Unreasonable delay in honoring the warranty
- Removal of a product's warranty card to evade warranty obligation
- Any false representation in an advertisement as to the existence of a warranty or guarantee

Guaranty of Service Firms

As to workmanship and replacement of spare parts **for not less than 90 days**, to be indicated in the pertinent invoices

Penalties:

Without prejudice to any liability incurred under the warranty or guarantee

Prohibited Acts	Fine of 1,000 to 50,000 and/or Imprisonment for 1 to 5 years
Violation of Article 67	Fine of 500 to 5,000 and/or Imprisonment for 3 months to 2 years

Price Tag Act

Prohibited Acts

- 1) To offer any consumer product for retail sale to the public **without an appropriate price tag, label, or marking publicly displayed** to indicate the price of each article
- 2) To **sell any product at a price higher than what was stated in the price tag**
- 3) To **sell any product at a price with discrimination to buyers**

Requirements for the Price Tag

- Must be written clearly, indicating the **price per unit in pesos and centavos**
- Must have **no erasures or alterations** of any sort

Special Rules:

- If products are too small or impractical to place a price tag thereon, a **price list** must be placed **at the nearest point where the products are displayed**
- If the product is a lumber, price tag must indicate **both the price and official name of the wood**

Penalties:

First Conviction	Fine of 200 to 5,000 and/or Imprisonment for 1 to 6 months
Second Conviction	The same with First Conviction + Revocation of Business Permit and License

Philippine Lemon Law

Essential Requisites to Non-Conformity

- Defect or condition that **substantially impairs the use, value, or safety of a brand-new motor vehicle**, preventing from conforming to the manufacturer or distributor's standards or specifications
- Which **cannot be repaired**

Non-Conformity excludes the following:

- Those from **consumer's noncompliance of his obligations under the warranty**
- Unauthorized modifications
- Abuse or neglect
- Damage due to **accident or force majeure**

Lemon Law Rights Period

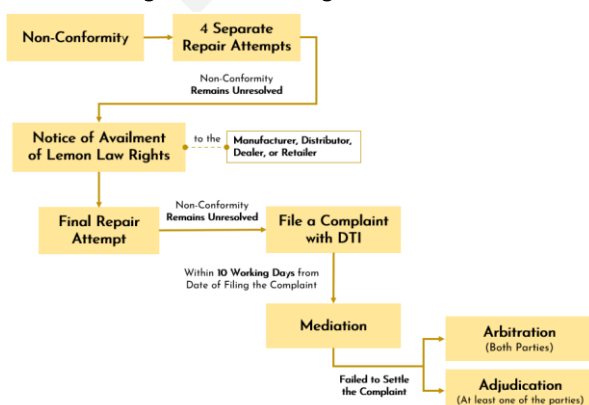
Whichever comes **first** of the following:

- **12 months** from date of original delivery to consumer
- **20,000 kilometers of operation** after delivery to consumer

Requisites to Invoke Lemon Law Rights

- Pertains to a **Brand-New Motor Vehicle Purchased in the Philippines** (Excludes any imported vehicles)
- Reported by a consumer to be **in Non-Conformity with the manufacturer or distributor's standards or specifications**
- **Within the Lemon Law Rights Period**

Process of Invoking Lemon Law Rights



- The four separate repair attempts **must be for the same complaint**

Requisites for Notice of Availment of Lemon Law Rights

- Must be made **in writing**
- Must **include the unresolved complaint and the consumer's intention to invoke his Lemon Law Rights**
- Must be made **in a manner and form stated under the Warranty Booklet**

Deemed Successful Repairs

- Vehicle **not returned for repair** based on the same complaint **within 30 days from date of notice of release** of the motor vehicle (If non-conformity still exists after such period, consumer is still allowed to **invoke his Lemon Law Rights** if within the Lemon Law Rights Period)

Compensation for Non-Use of Vehicle

Consumer shall be provided a **reasonable daily transport allowance**, covering transportations from residence to regular workplace and or destination, and vice versa, **equivalent to either of the following**:

- Official receipt-evidenced **fare of air-conditioned taxi**
- Amount **agreed upon** by the parties
- A **service vehicle** at the option of the manufacturer or distributor

Remedies for Dispute of Non-Conformity

Exclusive and original jurisdiction of the **DTI**

A. Mediation

- Towards **amicable settlement** between the parties
- DTI shall endeavor to **establish the validity of the consumer's complaint**, at which **any cost incurred for such is borne jointly by both parties**
- Must be **settled within 10 working days from date of filing with DTI**
- If **failed to negotiate or mediate** between the two parties, the parties shall **execute a certificate attesting to such failure**, and shall proceed to arbitration or adjudication, whichever is applicable

B. Arbitration

- **Both parties voluntarily decided** to undertake arbitration proceedings
- The **decision cannot be appealed**

C. Adjudication

- **At least one of the parties** commenced an adjudication proceedings administered **by the DTI, through an Adjudication Officer**
- Must be **settled within 20 working days**

Non-Conformity is Arrived At	DTI rules in favor of the Consumer and directs the Manufacturer or Distributor to grant either of the following to the consumer: ○ Replacement with a similar or comparable motor vehicle (if for a higher value, the consumer shall pay for the difference) ○ Refund or pay the purchase price plus collateral damages (fees paid for vehicle registration, insurance and other incidental expenses) upon acceptance of the return of the motor vehicle In both remedies, reasonable allowance for use shall be deducted in determining the value of the motor vehicle, computed as whichever is lower between: ○ 20% per annum deduction from purchase price ○ Purchase Price x (Distance Traveled ÷ 100,000 kms.)
Non-Conformity is Not Found	DTI rules in favor of the Manufacturer or Distributor and directs the Consumer to reimburse him of the costs incurred in validating the complaint An appeal may be made from a final judgment or order within 15 Days from receipt thereof by filing a Memorandum of Appeal with the DTI Secretary, limited only on the following grounds: 1) Grave abuse of discretion 2) Decision or order is in excess of Adjudication Officer's jurisdiction or authority 3) Decision or order is not supported by the evidence, or with serious error in the findings of facts DTI Secretary must decide on the appeal within 30 Days from receipt, and if further denied, may only be appealed by filing a case for Certiorari to the Court of Appeals

Disclosure on Resale of Non-Conforming Motor Vehicle

Must disclose in writing to the next purchaser the following information:

- That it was returned
- Nature of non-conformity causing the return
- Its condition at the time of transfer to the manufacturer, distributor, dealer, or retailer

If **not disclosed**, a **penalty of not less than 100,000 as damages** to the aggrieved party will be imposed