

# **Understanding the Doctrine of ‘Caveat Emptor/ Venditor Rule’ as a Guide to Electronic Commerce Transactions in Cameroon: A Critical Appraisals**

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## **Abstract**

It comes as no surprise that the growing influence of the internet and information technologies have ushered in the development of a medium of transacting or doing business called ‘Electronic Commerce’. Pertinent concerns are raised as to whether this form of commerce guarantees parties’ expectations and standards. Indeed, it is no gainsay that with such transactions lays a pointer to the entitlements and responsibilities of parties in the electronic contract/transaction. These aspects can be achieved through principles and doctrines that help aid parties in reaching a favourable contract outcome while acknowledging and/or with due regard to relevant legislation. As such, the aim of this paper is to ascertain the relevance of the ‘Caveat’ doctrine as a guide to electronic commerce transactions in Cameroon with a view to determining how useful it is in protecting the consumer in such transactions. Therefore, in achieving the said objective, the content analysis approach was adopted. Our findings reveal that the electronic commerce environment needs a more appropriate doctrine to guide commercial transactions between the buyer and the seller, and which particularly favours the protection of consumers who are most vulnerable in electronic contracts. This gives way for attention to be tilted to the ‘Caveat Venditor’ rule as a fundamental doctrine that assures consumer protection even in the realm of electronic commerce.

**Keywords:** Caveat, Emptor, Venditor, Consumer, Electronic Commerce, Sale, Contract

## Introduction

Based on the desire of businesses, trade and commercial transactions to flow or to be carried out beyond their initial frontiers, there became the tendency to introduce a multi-dimensional and more advanced way of commercializing that follows the exigencies and trends of global marketing and trade. The development of electronic commerce is therefore not a novel idea and has acted as one of the essential ways of enhancing and facilitating trade throughout the world. As such, the advent of Information and Communication Technology has an effect on almost all the spheres of human life and the buying and selling of goods and services is not an exception to it.<sup>i</sup> Since the internet became available for commercial use in the early 90s, the way of doing business was changed forever.<sup>ii</sup> The internet and electronic commerce have allowed people to carry out business by means of electronic communications, which makes it possible for them to do business and to conclude contracts with people situated within foreign jurisdictions.<sup>iii</sup>

However, considering the stakes of commercial transactions concluded online, parties are generally required to be cautious in ensuring that their acts do not conflict or offend each other/one another. The buyer and seller in this case need some degree of caution in the fulfillment of their obligations and responsibilities under the electronic contract. This has been made possible with the coming of the common law concept of the '*caveat*' (let him or her beware)<sup>iv</sup>, which could serve or serves as a guide to both traditional and electronic commerce transactions entered into between the buyer<sup>v</sup> and seller. The term *caveat* denotes a notice, warning or word of caution provided to an individual or entity before they take action.<sup>vi</sup> The concept generally applies to contracts for the sale of goods, and came into being because of the desire to protect parties in sales transactions. This idea of the *caveat* has brought about other associated doctrines like the *caveat emptor* and *caveat venditor* common law rules which are illustrative and relevant in sales contracts between the buyer and seller respectively. It is therefore imperative to examine these two concepts in view of determining whether or not they are appropriate in online commerce/transactions.

## **The Doctrine of *Caveat Emptor* and the Determination of its Appropriateness in Electronic Commerce Transactions**

Consumer and buyer protection in sale of goods contracts have become a prime focus in recent times. However, this direction in modern trade practice came to meet a time honoured practice of buyer beware principle known as *caveat emptor*.<sup>vii</sup> As far as the *caveat emptor* (let the buyer beware) rule is concerned, it is a doctrine holding that purchasers buy at their own risk.<sup>viii</sup> It is an ordinary rule in contract which stipulates that the vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist. Therefore the purchaser, who ought not to be ignorant of the amount and nature of the interest, must exercise proper caution.<sup>ix</sup> In practice, this doctrine requires the parties involved in a sale of goods contract namely the consumer to always beware before buying a product.<sup>x</sup> They should always ensure the intended products are free from any defects.<sup>xi</sup> In other words, the consumer is responsible for inspecting the products which he or she bought. This is because when buying the product, the consumer is considered to have used his or her discretion to buy it. Therefore, if the purchased product is found to have defects after the purchase is made the consumer should be responsible and should not blame the seller. The application of this doctrine can be seen in the case of *Chandelor v Lopus*,<sup>xii</sup> where a goldsmith in London sold a bezar-stone gemstone as alleged by the defendant to the plaintiff for 100 pounds sterling. However, the plaintiff eventually found that the gemstone was not a bezar-stone type as alleged by the defendant. The plaintiff then filed the case in court. The court stated that the defendant gave no guarantee as to the authenticity of the gemstone. In fact, there was no evidence to show that the defendant knew the type of gemstone. Thus, the defendant was found not guilty, and no award of damages was given to the plaintiff in the case. It is therefore evident from this case that the court did not place any responsibility on the defendant to disclose information about the authenticity of the gemstone to the plaintiff.<sup>xiii</sup>

Also, in the case of *Stuart v Wilkins*,<sup>xiv</sup> the court stated that the sale of a product accompanied by a guarantee will warrant the sale of the product to be free from all forms of defects regardless of whether the defect is known to the seller or not.<sup>xv</sup> However, if there is no guarantee, then the doctrine of *caveat emptor* will apply in the sale and purchase contract.<sup>xvi</sup> Also, the Court of Appeal in the case of *Wallis v Russel*<sup>xvii</sup> stated that;

“The legal meaning or interpretation of *Caveat Emptor* is that the buyer should be casual in his deals but must be fully responsible for all his undertakings. This includes things that the purchaser could do, exercise his judgment, make voluntary choices or decisions and the contract mandates him to do so or not to rely on the seller.” The responsibility therefore according to this rule is on the buyer to ensure that what he purchases is within his likeness.

However, the doctrine of *caveat emptor* will not apply in the following exceptions. Firstly, if the existence of defects in the product cannot be identified through self-inspection by the consumer and at the same time the seller also conceals its existence.<sup>xviii</sup> Secondly, the seller was asked by the consumer to disclose all defects that exist in a product before purchase. Therefore, for the second exception, the seller is responsible for disclosing any defects which exist in a product, if any, to the consumer after being asked to do so by the consumer before the process of purchasing goods occurs.<sup>xix</sup> Thirdly, the existence of guarantee of the purchased product and finally, the seller has issued a false statement about the product with an intention to commit fraud.<sup>xx</sup>

It is the researcher’s view that, a critical look at the *caveat emptor* rule indicates that the doctrine is not suited for electronic commerce transactions, since the parties are not in physical contact or do not meet directly, hence making it difficult for the buyer to actually examine the good before purchase is made. As such, the buyer/consumer is left at a detrimental position with respect to the sales contract, as the seller has more details or information about the actual state, quality or quantity of the product/good and can thus use it against the buyer who has little or no possibility of physically checking or inspecting the good before the purchase. And especially since online transactions pose threats to consumers with certain risks such as undelivered ordered goods, late delivery, received damaged or unusable goods along with other problems. This makes it of essence to give way for a new doctrine that necessitates the protection of buyers/consumers who stand at a weaker position in the electronic sales contract, thereby ushering fairness to the transaction.

## **The *Caveat Venditor* Rule: A More Suited Doctrine for Electronic Commerce Transactions**

Since online purchases or sales transactions are done without parties directly meeting each other, there is the tendency that consumers/buyers are on a weaker bargaining power compared to the sellers, as they only rely on the information the sellers supply via the platform of purchase.<sup>xxi</sup> This situation can lead to an information imbalance in contracting.<sup>xxii</sup> It is therefore worthwhile that sellers beware of the goods they sell, especially in ensuring that the goods or products they sell to buyers or consumers conform to the contract terms and descriptions. The problem here most often arises in instances where sellers post misleading and ambiguous advertisement. The consequence is that consumers may receive goods different from those purchased, such as different colours or sizes compared to the goods viewed online. On top of that, some sellers display testimonials and comments that gravitate only towards their best reputation.<sup>xxiii</sup> Such action can also deceive consumers and thus strips away the consumers' trust towards the online market.<sup>xxiv</sup> The shift to *caveat venditor* (let the seller beware) is therefore necessary in that it ensures consumer protection rights as well as accords fairness to the electronic transaction

The *caveat venditor* rule therefore stresses on the fact that the seller should be mindful, meticulous and cautious of what he sells to the buyer because he may not be absolved from liability in event that the good/product is found defective. The main justification for the change from *caveat emptor* to *caveat venditor* was due to the excess information possessed by manufacturers and sellers. Both parties had more accurate knowledge of a product's level of quality.<sup>xxv</sup> In other words, defective products should not be sold in the market by manufacturers and sellers as it may cause loss or physical injury to consumers. As such, the application of the doctrine of *caveat venditor* hinders the manufacturers and sellers from providing poor quality or unsafe products to consumers.<sup>xxvi</sup>

This doctrine has been applied in a number of cases such as the case of *Grant v Australian Knitting Mills Ltd*,<sup>xxvii</sup> where the court decided that the seller must beware of the defects of the products. This is because the consumer depends on the skills and information of the sellers and manufacturers either expressly or implicitly in acquiring a product. Indirectly, consumers are now no longer burdened with negative effects because of the application of the previous caveat

emptor principle, which is seen as more in favour of manufacturers and sellers.<sup>xxviii</sup> Moreover, the doctrine of *caveat venditor* complements the consumer right to obtain information. Manufacturers and sellers should provide clear,<sup>xxix</sup> accurate,<sup>xxx</sup> and sufficient information to facilitate consumers to make the right choice before purchasing a product.<sup>xxxi</sup> This is why in the case of *Wilkes v Deputy International Ltd*,<sup>xxxii</sup> the court decided that the absence of complete information on a product can be considered as a violation of one of the consumer rights, namely the right to obtain information. Equally, it was stated by Chief Justice Parker in *Bradford v Manly*<sup>xxxiii</sup> that “*Trade operations would be very embarrassed when samples are largely and frequently used in business transactions*”. Mercantile traditions were revived by case laws with the view of achieving the intent and purposes of the parties involved, and this gave way to the imposition of implied warranty on producers, agronomist and suppliers who sell by description for the assurance of quality in their delivery of goods similar to goods bought from the market with the same description. In as much as it is the responsibility of the seller to deliver on product quality sufficient to meet the purpose for which the transaction took place between him and the buyer, presupposes that fitness of purpose is implied or expressed into the agreement.<sup>xxxiv</sup>

### **Incorporation of the *Caveat Venditor* (C.V) Rule into Relevant Legislation in Cameroon**

At this point, it will be of interest to also look at the incorporation of this doctrine of *caveat venditor* into relevant legislation relating to or having a bearing on electronic commercial transactions in Cameroon. This aspect has been manifested in the form of responsibilities or obligations on sellers in contracts for the sale of good or service. The application of this doctrine is made more stringent through implied terms into the sales contract. The English Sale of Goods Act 1893<sup>xxxv</sup> has to this effect established the implied terms of quality or fitness of the good/products, which manifests by way of the idea of ‘satisfactory quality’. The act stipulates that, where the seller sells goods in the course of business, there is an implied term that the goods supplied under the contract are of satisfactory quality.<sup>xxxvi</sup> According to this act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account of any description of the goods, the price (if relevant) and all other relevant circumstances.<sup>xxxvii</sup> The quality of the goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods<sup>xxxviii</sup>;

- Fitness for all the purposes for which goods of the kind in question are commonly supplied
- Appearance and finish
- Freedom from minor defects
- Safety, and
- Durability

### ***Requirement of fitness for purpose***

The idea of the C.V rule is typically manifested by this requirement. The Act considers that goods sold must be particular fit for the purpose for which they are meant. It makes it clear that where the seller sells goods in the course of a business and the purchaser, expressly or by implication, makes known to the seller any particular purpose for which the goods are being bought, there is an implied term that the goods supplied under the contract are reasonably fit for that purpose, whether or not the purpose is that for which such goods are commonly supplied.<sup>xxxix</sup> This requirement was applied in the case of *BSS Group Plc v Makers (UK) Ltd (t/a Allied Services)*<sup>xl</sup>, where the court held BSS in breach of this implied condition of fitness for purpose by supplying the Makers with an Uponor type that did not match the one ordered.<sup>xli</sup> Therefore, sellers must beware of the fitness quality of the good so as to prevent any form of legal action against them for non-fitness.

### ***Requirement of appearance and finish***

The goods supplied must also conform to this requirement, and it is expected of the seller to make sure that the goods are not subject to any physical deterioration or deformation. The consumer/buyer must be assured that the goods supplied are of the right physical state. For example, the good must not be dented, scratched or hampered in any way. This is why in the case of *Berbstein v Pamson Motors (Golders Green) Ltd*<sup>xlii</sup>, Rougier J stated that ‘No buyer of a brand-new Rolls-Royce Corniche would tolerate the slightest blemish on its exterior paintwork, the purchaser of a motor car very much at the humbler end of the range might be less fastidious’. Much will depend upon the intended use of the goods in question. Highly

visible goods such fitted kitchen units and furniture will have appearance and finish as a more significant factor, whereas with pipe-work and cables, which will be concealed, it will be of little significance. It is important to recognize that not all imperfections of appearances will amount to a breach of contract, for example those involving second hand items, pottery, natural products etc.<sup>xliii</sup>

### ***Requirement of freedom from minor defects***

It is equally an implied term into the sales contract that the goods should be free from any minor defects. The seller is therefore under a duty to ensure that goods supplied do not have any inherent flaws that impairs quality, function, or utility. However, it will be a question of fact whether or not a number of minor defects are sufficient to amount to a breach of the implied term.<sup>xliv</sup> The court will have to ascertain upon the facts of the case the extent of the defect for it to amount to a breach of this condition.<sup>xlv</sup>

### ***Requirement of safety of goods***

Goods sold must also fulfill the requirement of safety in that the usage of good should not be that which is harmful to the buyer, and should not be one that poses a risk to life, health, heredity, consumer property and the environment. The good should not pose any form of danger to the buyer and other surrounding elements that can possibly be endangered by the product. This also tallies with the aspect of tortious liability in relation to consumer protection on the safety of goods.

### ***Requirement of Durability***

Durability here will mean that the goods must be those that are able to exist for a reasonable amount of time without significant deterioration in quality or value. However, this will depend on the type of product involved and what buyers would reasonably expect of the product.<sup>xlvi</sup> Breaches involving this factor will often only come to light some considerable time after the purchase of a product. It will be up to the buyer to establish that, at the time when the product was purchased, it did not measure up to the durability requirements reasonably to be expected of it.<sup>xlvii</sup>



However, section 14(2C) of this Act indicates three situations where there will be no implied term of satisfactory quality, which may or may not apply to electronic commerce transactions and for which will depend on the circumstances of the case. Firstly, a situation where the unsatisfactory quality of the good is specifically drawn to the buyer's attention before the contract is made, where the buyer examines the goods before the contract is made, which that examination ought to reveal and lastly in the case of a contract or sale by sample, which would have been apparent on a reasonable examination of the sample.

The English Sale of Goods Act 1893 is therefore illustrative of the *caveat venditor* rule since it has made provisions dealing with its application, and which goes a long way to guarantee consumer/buyer's rights and protection by virtue of its sections 13-15.

#### **A. Incorporation of the C.V rule under the Cameroon Consumer Protection Law<sup>xlviii</sup>**

This acts as the main piece of legislation that guarantees the rights of consumers in Cameroon, and hence a drive to the *caveat venditor* doctrine inherent in its provisions. This also ushers in responsibilities and obligations on sellers of goods, service or technology to be mindful of what they sell to consumers, and also what nature and manner of terms they insert into such contracts with consumers. This is why the law acknowledges the fact that consumers are sometimes subject to standard agreements or contracts of adhesion which necessitates the protection of their rights under such contracts owing to the fact that they are more susceptible to some kinds of business malpractices and maneuvers perpetuated by some unscrupulous and dubious sellers. Failing to comply with the requirements under this law may either attract damages from the seller to the buyer or may absolve the buyer of any liability under the contract. To begin with, this law stipulates that the seller or provider should provide or deliver to the consumer a product, technology, good or service that meets the minimum requirement of sustainability, utilization and reliability and guarantees his legitimate satisfaction.<sup>xlix</sup> This will mean that the seller should offer for sale goods that are of satisfactory quality with regard to the rights of consumers. Further, this law places another obligation on sellers to disclose any detail or information with respect to the condition of the goods. In this light, it provides that where defective, used, reconditioned or repaired goods are sold to consumers, mention must be expressly, clearly and distinctly made thereof on invoices, receipts, vouchers or accounting documents.<sup>1</sup>

It equally follows that sellers or producers in standard agreements or contract of adhesion should ensure that the terms of such contracts are clear and easy for the public to understand, without reference to other contracts, rules, practices, instruments and documents unknown to the public or not put at its disposal before or during the execution of such contracts.<sup>li</sup> The terms of such contracts must therefore be visible and legible at first glance by anyone with normal vision. Such contracts must equally be regulated and controlled to provide legal protection to the consumer.<sup>lii</sup> The consumer is equally entitled to be furnished with correct, adequate, clear and legible information in English and French, concerning the goods and services offered to enable him make appropriate and rational choices before concluding the contract.<sup>liii</sup> All these go a long way to show how pertinent it is to protect the consumer and thus making the seller beware of his dealings and engagements in contracts of sale.

### **B. Incorporation of the C.V rule under the Cameroon Electronic Commerce Law<sup>liv</sup>**

Since this law generally governs commercial transactions conducted electronically, it has brought out a number of provisions that go a long way to guarantee the rights of buyers/consumers, thereby falling in line with the *caveat venditor* rule which tilts more responsibility on sellers in sales or commercial transactions. It provides that “prior to the conclusion of the contract, the seller shall be bound, during electronic commercial transactions, to provide the consumer with the following information in a clear and intelligible manner; the identity, address and telephone number of the seller or service provider, a complete description of the states for the conduct of the transaction, the nature, characteristic and price of the product, cost of delivery and where applicable, the insurance rates of the product and the required taxes...”<sup>lv</sup> This provision illustrates the fact that the seller is under an obligation to provide the consumer with all necessary information as regarding their transaction. It makes it possible for the consumer/buyer not to be easily exploited by the seller as the former will have to scrutinize these information/documents before concluding the contract. It equally mentions that these information/documents are to be placed at the disposal of the buyer/consumer electronically for consultation at all stages of the transaction.<sup>lvi</sup>

The law also prohibits the seller to deliver a product not ordered by the consumer where it is accompanied by a request for payment.<sup>lvii</sup> The seller must also allow the consumer to make a final statement of all its choices, confirm or modify the order as it may desire and consult the

electronic certificate relating to its signing.<sup>lviii</sup> These provisions therefore portray the legislator's intention to protect and guarantee consumers' rights and interest in electronic commerce contract.

### **C. Incorporation of the C.V rule under the Law Governing Commercial Activity in Cameroon<sup>lix</sup>**

The *caveat venditor* rule has also been incorporated indirectly into this law when it talks about warranties, after-sales service and even deceitful commercial practices. This place a burden on sellers to ensure that goods sold must be befitting to the consumer/buyer as to be free from adverse effects. In this light, the law provides that the vendor or professional shall be bound to provide the buyer with a warranty for the peaceful and useful possession of goods sold, the actual use for which the good or service sold is intended and latent defects prior to the sale and unknown to him. This obligation of warranty shall be implemented by repairing the good, replacing the good and reimbursing the price of the good. The replacement of the good occurs when the defect is so serious that the good will be partially or totally unusable despite its repair.<sup>lx</sup> Also, where the vendor or professional is unable to repair or replace the goods, he shall immediately refund the amount paid.<sup>lxi</sup> Through this warranty engagement, the seller/vendor is bound to be liable for his own negligence or lack of care in goods sold or delivered to the buyer, especially when the good is found defective or unsuitable for the purpose for which it is meant. Therefore, the seller is called upon to be mindful of what he sells to the buyer so as to avoid inconveniencies on both parties, which could have possibly been avoided. The prohibition of deceitful commercial practices as enshrined in this law can also be seen as a drive towards the *caveat venditor* doctrine.

This law forbids any marketing or commercial practice that is intended to deceive consumers, buyers or the public into purchasing a product. This law clearly spells out those activities that are considered deceptive<sup>lxii</sup>, which includes but not limited to presenting false details about a product, presenting false sample of the product, displaying goods that do not exist etc. All these places an obligation of carefulness on the part of sellers, vendors or professionals to beware of what and how they sell to buyers/consumers so as not to attract liabilities on them, bearing in mind that failure to comply with these measures will only attract sanctions.

#### **D. Incorporation of the C.V rule under OHADA Uniform Act on General Commercial Law (UAGCL)<sup>lxiii</sup>**

This doctrine has also been implicitly recognized and enshrined in the UAGCL, and equally places some responsibilities on sellers in sales contracts. This goes a long way to ensure that there is fairness in the contract, and that, consumers/buyers who often fall victims to sellers business malpractices are protected in the contract. This has been achieved through obligations that confer on the seller more responsibilities towards the buyer. This piece of legislation has therefore been very instrumental in commercial transactions between the buyer and seller. The seller according to this Act undertakes to deliver goods and remit, if possible, documents and accessories necessary to their use, upon proof of purchase and acceptance of delivery, under the conditions set forth in the contract. It is also required that the seller ensures and guarantees that the goods are conforming to the order.<sup>lxiv</sup> These obligations are seen below;

##### *(a) Compliance Obligation*

It is incumbent on the seller to ensure that goods delivered or pending delivery comply with the terms of the contract; following their descriptions as ordered by the buyer/consumer in conformity with the contract. The uniform act therefore stipulates that the seller shall deliver the goods in quantity, quality, specifications and packaging in accordance with the terms of the contract.<sup>lxv</sup> In addition, where the contract is silent, the seller shall deliver the goods according to the customary practices or in the same way a she presented samples or models. He must also deliver them in packages or conditions usually applied for this type of goods or, failing that, in conditions enabling their conservation and protection<sup>lxvi</sup>. Equally, where delivery is anticipated, the seller may, until the date scheduled for delivery, either impose delivery of new compliant goods, or repair the non-conformity or defect of delivered goods insofar as the exercise of this right does not cause any damage or costs to the buyer.<sup>lxvii</sup> It is noteworthy that, under penalty of forfeiture for the buyer of the right thereof, the apparent defects of conformity on the day of delivery must be disclosed to the seller in the month following the delivery. (Art 258)<sup>lxviii</sup> In essence, this obligation is considered absolute as far as delivering goods in the right state, condition and description is concerned. The seller therefore must be able to honour this obligation owed to the buyer in order to avert the consequences of non-conformity of the goods.

*(b) Guarantee Obligation*

The Uniform Act also recognizes the seller's obligation to guarantee<sup>lxxix</sup> the product or good to be delivered. It follows that the seller must deliver the goods free of any right or claim of a third party, unless the buyer agrees to take them "as his". It equally mentions that the seller shall guarantee the buyer against any eviction of his own doing.<sup>lxx</sup> Any clause restricting the warranty due by the seller shall be construed accordingly. The seller who invokes such clause shall demonstrate that the buyer has known thereof and accepted it at the conclusion of the contract.<sup>lxxi</sup> The seller must thus ensure that the goods are free from any encumbrance and not subject to any adversity.

*(c) Delivery Obligation*

The seller has an express obligation to deliver the goods to the buyer/consumer as ordered. This obligation must be exercised in strict compliance with the terms of the contract. The seller must therefore deliver the goods on the date set in the contract or determined according to its provisions. If delivery is scheduled for a specific period, he may deliver any time during that timeframe. Absent of such stipulation in the contract, the seller shall deliver within a reasonable time after the conclusion of the contract.<sup>lxxii</sup> It equally follows that when the seller is not required to deliver the goods at a particular place, he must keep them at the disposal of the buyer, either at the place where they were manufactured or stored at the headquarters of his sales activities.<sup>lxxiii</sup> Also, where the sales contract provides for delivery of goods to a carrier, the seller shall meet his obligation to the buyer by delivering them as requested. However, the seller is required to conclude the necessary contracts so the transportation is effected by appropriate means and according to customary conditions up to the location agreed with the buyer. In addition, the seller is not required to subscribe to a shipping insurance, but he shall, at the request of the buyer, provide him with all information necessary to contract such insurance.<sup>lxxiv</sup> Where the seller is to hand over documents and accessories of the goods, he shall meet this obligation at the time, place, and in the form provided for in the contract or by customary practices in the concerned sector.<sup>lxxv</sup> Looking at this obligation, the seller is under a duty to ensure that goods are delivered to the consumer/buyer in accordance with what they agreed in the contract. The seller can therefore not deviate from this rule, except the parties stipulate otherwise or the law warrants so.

### **E. Incorporation of the C.V rule under the United Nations Convention on International Sale of Goods (CISG)<sup>lxxvi</sup>**

This is another instrument that incorporates the *caveat venditor* rule and places some obligations on the seller in a sales contract or transaction. These obligations are fundamental to the realization of the electronic commerce contract and to protecting the rights of consumers/buyers in such contracts.

#### *(a) Obligation of conformity of goods and third party claims*

In a typical commercial transaction, the seller is obliged to ensure that goods conform to what was ordered under the contract of sale, and also taking into consideration third party claims on such goods. Conformity here will mean that the seller must deliver goods that are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.<sup>lxxvii</sup> Also, except where the parties have agreed otherwise, goods do not conform with the contract unless they; are fit for the purpose for which goods of the same description would ordinarily be used, are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skills and judgment, where the goods possess the qualities which the seller has held out to the buyer as a sample or model, and lastly where the goods are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.<sup>lxxviii</sup>

In addition, the seller is liable in accordance with the contract and this convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time (art 36(1)).<sup>lxxix</sup> Equally, if the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense.<sup>lxxx</sup> This aspect typically demonstrates the legislator's

desire in upholding and protecting the rights of consumers by the incorporation of the doctrine of *caveat venditor* into its provisions.

Another aspect here is that the seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property; under the law of the state where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in the state or in any other case under the law of the state where the buyer has his place of business. (Art 42(1))<sup>lxxxii</sup>

*(b) Obligation to deliver goods and hand over documents*

The seller must be able or is obliged to deliver the goods as ordered by the buyer at the stipulated place and time of delivery, alongside handing over documents relating to such goods as the case may be. It follows that the seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this convention.<sup>lxxxiii</sup> The seller must therefore deliver the goods; if a date is fixed by or determinable from the contract, on that date, if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or in any other case within a reasonable time after the conclusion of the contract.<sup>lxxxiii</sup> Also if the seller, in accordance with the contract or this convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.<sup>lxxxiv</sup> Equally, if the seller is bound to arrange for carriage of the goods, he must make such contracts necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.<sup>lxxxv</sup> If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request provide him with all available information necessary to enable him effect such insurance.<sup>lxxxvi</sup> This obligation therefore safeguards the buyer's interest in the sales contract as far as the subject of delivery of goods is concerned, and equally places on the seller a duty of care in the course of delivery of the good.

## **Conclusion and Recommendations**

It is the researcher's view that the doctrine of *caveat venditor* is much more appropriate for electronic commerce transactions than the former *caveat emptor* rule. This is because the doctrine (*caveat venditor*) raises issues of consumer protection, awareness and fairness in the sales contract. Apart from Common Law principles and cases illustrating the importance of this doctrine, it has also been incorporated into legislations seen above, and which all demonstrate the desire of legislators in protecting commercial transactions involving consumers/buyers. Therefore, consideration needs to be given to consumers/buyers (especially in the electronic sphere) who are considered to be more vulnerable as far as the purchase or sales contract is concerned. As a result, the sellers are under an express/implied duty or obligation to ensure that the goods they sell conform to requirements ordered by the consumer/buyer, meets the aspect of satisfactory/merchantable quality and also that the goods are free from defects, otherwise liability shall be borne by that seller giving rise to damages sought by the buyer/consumer, or that of having the consumer/buyer absolved of responsibilities under the contract.



## Endnotes

- <sup>i</sup> Khare R & Rajvanshi G (2013) “E-Commerce and Consumer Protection: A Critical Analysis of Legal Regulations” *International Journal on Consumer Law and Practice*, vol. 1, p 55.
- <sup>ii</sup> Erasmus C (2011) “Consumer Protection in International Electronic Contracts” Mini-dissertation, Northwest University, Potchefstroom, South Africa.
- <sup>iii</sup> *Ibid.*
- <sup>iv</sup> Bryan G.A (2009), *Black’s Law Dictionary*, 9<sup>th</sup> Ed, Minnesota, Thomas Reuters, p.252.
- <sup>v</sup> At any given point of this work, any use of the term ‘buyer(s)’ will also comprise of consumers who are considered to be a category or class of buyers in sales transactions.
- <sup>vi</sup> <https://www.investopedia.com/terms/c/caveat.asp>, accessed 28/01/2024. Anyone can include caveats as part of an agreement or a contract. They generally advise a party that there may be an undesirable outcome or situation that may stem from any action they take, or it may be a condition that is attached to a pending agreement.
- <sup>vii</sup> Amasah E.N *et al.*, (2022) “Is There a Paradigm Shift from Application of *Caveat Emptor* to *Caveat Venditor* in the Sale of Goods in Ghana? A Comparative Analysis of the Application of the Principle *Caveat Emptor*” *E-Journal of Humanities, Arts and Social Sciences (EHASS)*, vol. 3, issue 4, p 130.
- <sup>viii</sup> That is why it is considered a Common Law maxim warning a purchaser that he could not claim that his purchases were defective unless he protected himself by obtaining express guarantees from the vendor.
- <sup>ix</sup> Frauley J (2014) “Caveat emptor under prudentialism: the case of the Canadian home inspection industry” 23(2), *Social & Legal Studies*, p.198.
- <sup>x</sup> Shukri Muhammad H.M *et al.*, (2021) “The Application of *Caveat Emptor* and *Caveat Venditor* Doctrines from Civil and Islamic Perspectives” *UKM Journal Article Repository*, 28 JUUM 92-103, p. 93.
- <sup>xi</sup> *Ibid.*
- <sup>xii</sup> [1603] 79 ER 3
- <sup>xiii</sup> Shukri Muhammad H.M *et al.*, (2021), *op. cit.*, p 93.
- <sup>xiv</sup> [1778] 99 ER 15
- <sup>xv</sup> This can also be the case where upon signing or validating the sale or purchase contract, consumers are no longer entitled to return, exchange, or demand compensation if defects are later discovered in the goods.
- <sup>xvi</sup> A similar approach was arrived at in the case of *Bernard v Kellogg*, where the court ruled that the yarns were not sold on a sample basis and if the plaintiff had wished to avoid any loss, he should have tried to obtain a guarantee from the defendant or inspected all the yarn packages shown to him first before finalizing the purchase.
- <sup>xvii</sup> [1902] 2 IR 585. The scope of this doctrine was explained in the case of *Ward v Hobbes*, where it was stated that “...although it was fraud for a seller to use false pretense to cover up or conceal defects in goods sold, the doctrine did not impose a strict liability that the seller’s duty was to disclose in details all defects on the product to the buyer. Rather it imposed the duty of care, obligation, skill and judgment on the buyer any time he is buying a product”.
- <sup>xviii</sup> *Keates v The Earl of Cadogan* [1851] 138 ER 234.
- <sup>xix</sup> Mc Evoy S.A (1991) “Caveat emptor redux: Psychologically Impacted Property” *Western State University Law Review*, p. 582.
- <sup>xx</sup> Pridgen D *et al.*, (1980) “Enhancing the flow of information in the marketplace: From caveat emptor to Virginia pharmacy and beyond at the federal trade commission” *Georgia Law Review*, p. 639.
- <sup>xxi</sup> Amirah M.A *et al.*, (2021) “Analysis of *Caveat Emptor* Application in Online Purchases” *Journal of Legal, Ethical and Regulatory Issues*, vol. 24, special issue 5, p. 4.
- <sup>xxii</sup> Nasser S (2018) “General Principles of Consumer Protection in E-commerce Trade: a Comparative Study between Sharia law and EU laws” PhD Thesis, University of Exeter, pp. 198.
- <sup>xxiii</sup> Wu Y. *et al.*, (2020) “Fake Online Reviews: Literature Review, Synthesis and Direction for Future Research” *Decision Support Systems*, vol. 132, 113280, pp. 37.
- <sup>xxiv</sup> Jana Valant (2015) “Online Consumer Reviews: The Case of misleading or Fake Reviews”. The European Parliamentary Research Service” PE 571.301, pp. 10.
- <sup>xxv</sup> Seshimo H (2020) “A Justification for caveat emptor in the second market: Risk transfer, enforcement cost and insurance” *Economic Analysis and Policy*, vol. 66, p. 217.
- <sup>xxvi</sup> Shukri Muhammad H.M *et al.*, (2021), *op. cit.* p. 97.
- <sup>xxvii</sup> [1936] AC 85.
- <sup>xxviii</sup> Shukri Muhammad H.M *et al.*, (2021), *op. cit.*, p. 97.
- <sup>xxix</sup> Donnelly M *et al.*, (2019) “Digital Content and Consumer Protection: An Empirical Study of Supplier Compliance with Consumer Information Obligation” 35(6) *Computer Law & Security Review*, p. 4.

- <sup>xxx</sup> Abe-Matsumoto, L.T *et al.*, (2018) “Do the labels of vitamin A, C and E supplements reflect actual vitamin content in commercial supplements?” 72 *Journal of Food Composition and Analysis*, p. 141.
- <sup>xxxi</sup> Riefa C *et al.*, (2018) “Enforcement and effectiveness of consumer law in the UK, in H.W. Micklitz *et al.*, Enforcement and effectiveness of consumer law”, springer, Switzerland, p. 674.
- <sup>xxxii</sup> [2016] 53 BMLR 91.
- <sup>xxxiii</sup> [1816] 13 Mass, 139.
- <sup>xxxiv</sup> Amasah E.N *et al.*, (2022), *op. cit.*, p 142.
- <sup>xxxv</sup> Applicable in Cameroon by virtue of Section 11 of the Southern Cameroon High Court Law (SCHCL) of 1955, which makes applicable the Common Law, Doctrines of Equity and Statutes of General Application in force in England on the 1<sup>st</sup> of January 1900.
- <sup>xxxvi</sup> Section 14(2) of the English Sale of Goods Act 1893.
- <sup>xxxvii</sup> *Ibid*, section 14(2) (a).
- <sup>xxxviii</sup> *Ibid*, section 14(2) (b).
- <sup>xxxix</sup> <https://www.mondaq.com/uk/consumer-trading-unfair-trading/143006/fitness-for-purpose-two-recent-cases>, accessed 23/02/24.
- <sup>xl</sup> [2011] EWCA Civ 809.
- <sup>xli</sup> See also *Trebor Bassett Holdings Ltd & Anor v ADT Fire and Security Plc* [2011] EWHC 1936 (TCC).
- <sup>xlii</sup> [1987] 2 All ER 220, QBD, M, H & P.
- <sup>xliii</sup> Nzalie J.E (2022), Law of Consumer Protection, lecture notes, Faculty of Law and Political Science, University of Dschang, unpublished, p 18.
- <sup>xliv</sup> *Ibid*.
- <sup>xlv</sup> See *Millars of Falkirk Ltd v Turpie* [1976] SLT 66
- <sup>xlvi</sup> See *Thain v Anniesland Trade Centre* [1997] SLT (Sh. Ct).
- <sup>xlvii</sup> Nzalie J.E (2022), *op. cit.*, p 19.
- <sup>xlviii</sup> Law no 2011/012 of 06 May 2011 on the Framework on Consumer Protection in Cameroon.
- <sup>xlix</sup> *Ibid*, section 10(1). It even goes further to state that the technology, good or service provided or delivered must be accompanied by a manual, receipt or any other document containing, inter alia, information on technical features, mode of operation, utilization and warranty (section 10(2)).
- <sup>l</sup> *Ibid*, section 11
- <sup>li</sup> *Ibid*, section 6(2).
- <sup>lii</sup> *Ibid*, section 6(1).
- <sup>liii</sup> *Ibid*, section 13
- <sup>liv</sup> Law no 2010/021 of 21 December 2010 on Electronic Commerce in Cameroon.
- <sup>lv</sup> *Ibid*, section 15(1).
- <sup>lvi</sup> *Ibid*, section 15(2).
- <sup>lvii</sup> *Ibid*, section 16(1). In the case of delivery of a product not ordered by the consumer, the latter may not be requested to pay its price or the cost of its delivery. The cost of returning products delivered without any order shall be borne by the seller (sub section 2 and 3).
- <sup>lviii</sup> *Ibid*, section 17
- <sup>lix</sup> Law no 2015/018 of 21 December 2015 Governing Commercial Activity in Cameroon.
- <sup>lx</sup> *Ibid*, section 55. The goods shall be replaced or repaired free of charge within a time limit that is consistent with standard practices (section 56).
- <sup>lxi</sup> This shall be done under the following conditions; partial refund proportionate to the loss will be made where the good is partially unusable and that the consumer prefers to keep it and full refund where the good is completely unusable (section 57).
- <sup>lxii</sup> *Ibid*, section 79.
- <sup>lxiii</sup> Adopted on the 17<sup>th</sup> of April 1997 and revised on the 13-15 of December 2010 by the Council of Ministers. Cameroon applies this act by virtue of Section 45 of Law no. 96-06 of 18 January 1996 to amend the 2 June 1972 Constitution of Cameroon.
- <sup>lxiv</sup> Article 250 of the UAGCL.
- <sup>lxv</sup> *Ibid*, art 255.
- <sup>lxvi</sup> *Ibid*. Compliance of the goods sold shall be determined as of the day of delivery, even if defects appear only later.
- <sup>lxvii</sup> *Ibid*, art 257
- <sup>lxviii</sup> Therefore, the action of the buyer based on the defect of conformity concealed on the day of delivery shall lapse after a period of one year commencing on the day where such defect was found or ought to have been found.

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This latter time limit cannot have an effect of reducing the duration of the contractual warranty eventually consented (Art 259).

<sup>lxi</sup> This constitutes a formal assurance that certain conditions will be fulfilled, especially that a product will be repaired or replaced if not of a specified quality, or also that a contract or legal act will be duly carried out.

<sup>lxx</sup> *Ibid*, art 260

<sup>lxxi</sup> *Ibid*, art 261

<sup>lxxii</sup> *Ibid*, art 253

<sup>lxxiii</sup> *Ibid*, art 251

<sup>lxxiv</sup> *Ibid*, art 252

<sup>lxxv</sup> *Ibid*, art 254

<sup>lxxvi</sup> It was adopted by the United Nations Conference on Contracts for the International Sale of Goods, held at Vienna from 10 March to 11 April 1980.

<sup>lxxvii</sup> Art 35(1) of the CISG

<sup>lxxviii</sup> *Ibid*, art 35(2)

<sup>lxxix</sup> The seller is also liable for any lack of conformity which occurs after the time indicated and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics (Art 36(2)).

<sup>lxxx</sup> *Ibid*, art 37

<sup>lxxxi</sup> This obligation does not extend to cases where at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim and where the right or claim results from the seller's compliance with the technical drawings, designs, formulae or other such specifications furnished by the buyer (art 42(2)). The buyer loses the right to rely on the provisions of art 41 or art 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim (art 43).

<sup>lxxxii</sup> Article 30 of the CISG

<sup>lxxxiii</sup> *Ibid*, art 33

<sup>lxxxiv</sup> *Ibid*, art 32(1)

<sup>lxxxv</sup> *Ibid*, art 32(2)

<sup>lxxxvi</sup> *Ibid*, art 32(3)