



UNIVERSITY OF TM
KWAZULU-NATAL
INYUVESI
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THE CONSUMER PROTECTION ACT & ITS IMPLICATIONS FOR UKZN

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EDGEWOOD CAMPUS



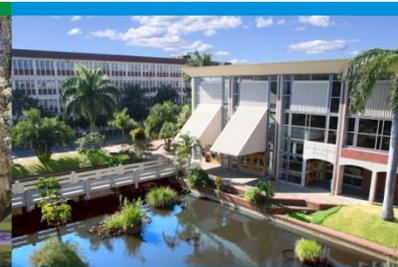
HOWARD COLLEGE CAMPUS



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INSPIRING GREATNESS

- **INTRODUCTION**

- The primary purpose of the CPA is to promote and improve the social and economic welfare of consumers in South Africa (SA) through the creation of a legal framework to a fair, accessible, efficient and sustainable consumer market.
- The CPA aims to achieve this through:-
 - a) the establishment of national norms and standards to ensure consumer protection;
 - b) making provision for improved standards of consumer awareness and information; and
 - c) Promoting fair business practices and protecting consumers from unfair, unreasonable and unjust practices or deceptive, misleading and fraudulent conduct.

- **Scope of the CPA**

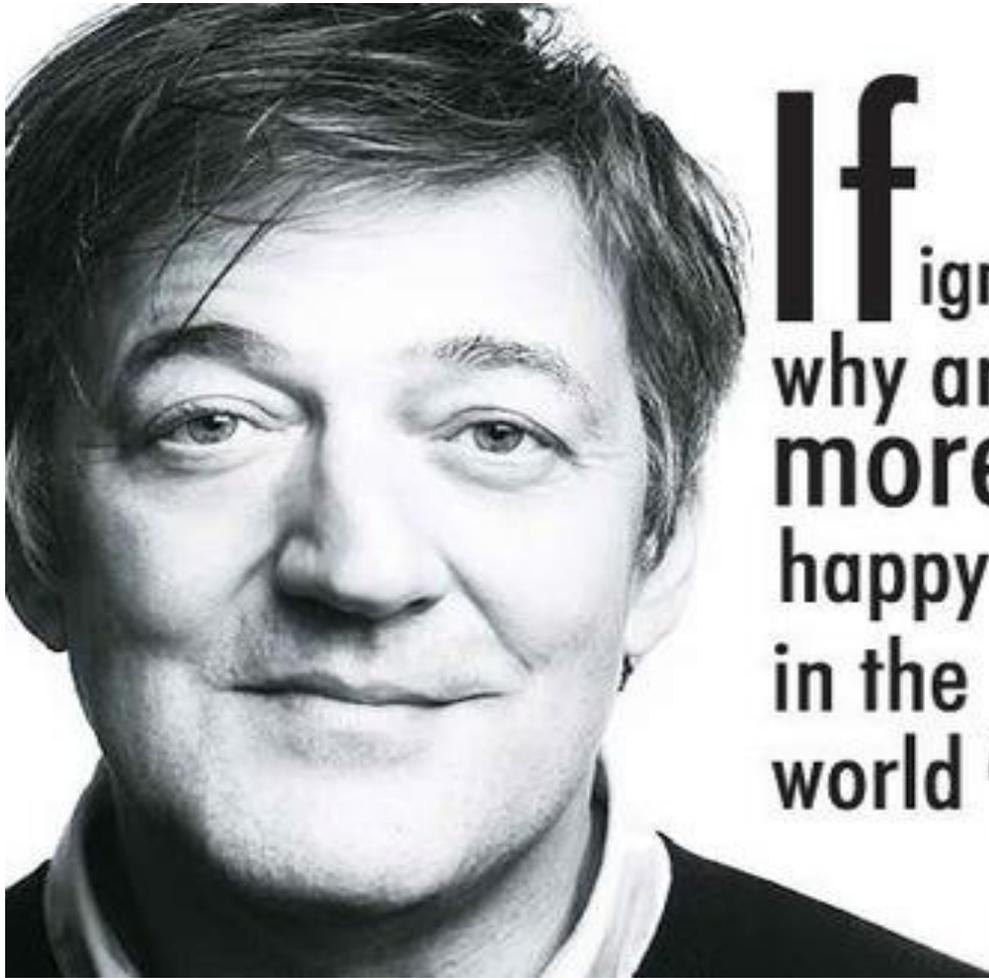
The CPA applies to:-

- Any transaction occurring within SA
- The promotion/ supply of any goods & services within SA; and
- Goods or services that are supplied or performed in SA in terms of transactions mentioned in the CPA.

The CPA is not applicable to:-

- Goods or services supplied to the State;
- If the consumer is a juristic person whose asset value or annual turnover exceeds R 2 million;
- Credit agreements regulated by NCA;
- Services under employment contracts or collective bargaining agreements.

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- Service includes “the provision of any education” and “service provider” refers to a person who promotes, supplies or offers to supply any service.
 - Universities are *service providers* and render *services* in terms of the CPA. As UKZN is a juristic person whose asset value or annual turnover exceeds R 2 million it is not a “consumer” ito CPA.
 - A consumer is defined as “a person to whom the goods and **services** are marketed, or who has **entered** into a **transaction** with the **service provider**, all in the ordinary course of the service provider’s business.”
 - Students are all consumers in terms of the above definition.
 - It is important that students must have the legal capacity to contract. Where they are minors, their parents/ legal guardians must contract on their behalf.
 - The provisions of the CPA are applicable to all HEIs.



If ignorance is bliss,
why aren't there
more
happy people
in the
world **?**

STEPHEN FRY

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- Are the terms of the contracts students are obliged to sign described to them in detail? Are members of staff aware of obligations of UKZN as a supplier of services? The short answer is that we remain blissfully ignorant.
 - The agreements we enter into with a student when s/he registers for a particular degree, course, diploma against the payment of tuition fees is a “*transaction*” - the provisions of the CPA are therefore applicable.
 - Any form or contract signed by a student such as indemnity form for field trips, forms for borrowing of books from libraries, forms for participation in UKZN competitions etc. are to be measured against the CPA.

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- The CPA introduces a Bill of Rights for consumers. Some of the rights entrenched in the CPA include the following:-
 - The right to equal access to the consumer market;
 - The consumer's right to disclosure and information;
 - The right to fair, just and reasonable terms and conditions;
 - The right to fair value, good quality and safety (Campbell N & Logan S *The Consumer Protection Guide for Lawyers* (2011) © Law Society of South Africa p31).
 - **Right No. 1: Protection Against Discriminatory marketing**
 - The CPA prohibits the unfair discrimination against any student on the grounds of race, gender, socio-economic status etc. when UKZN provides services.
 - UKZN may not directly or indirectly treat any person differently in a manner that constitutes unfair discrimination :-

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- By excluding students from accessing services offered or granting to some students exclusive access to services; In certain instances, this is permitted where there is a reasonable and justifiable reason for excluding certain category of students. **Scenario 1.**
 - When assessing the ability of students to pay the cost, or meet the obligations of a proposed transaction or agreement;
 - Deciding whether or not to enter into a transaction /agreement or to make an offer to do so;

Scenario 2

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- Determining whether to continue, enforce, seek judgment iro or terminate a transaction or agreement.

In this instance, the Rules, Policies and Procedures of UKZN ensure that we adhere to a specific standard. For example, a student caught cheating during exams will be disciplined irrespective of his/her race, gender or socio-economic status.

- **Right No. 2: Right to information in plain and understandable language**
- In terms of the CPA, agreements are drafted in plain language if it is reasonable to conclude that:-
- an **ordinary consumer** (student);
- of the **class of persons** for which the agreement (concluded with UKZN) is intended;
- and who has **minimal experience** as a consumer (student) of the particular service **could be expected**
- to **understand** the content, significance of terms and conditions of the agreement having regard to:
 - a) the context, comprehensiveness & consistency of language used;
 - b) organization, form and style of the agreement;
 - c) The vocabulary, usage and sentence structure of the agreement.

d) The use of any illustrations examples, headings or other aides to reading and understanding.

Students have a threshold of **average** literacy skills and minimal experience regarding agreements. Though UKZN is a English language medium institution; for many students English is their second language and the application & registration form is probably the first contract they enter into.

It is important that the terms and conditions of the agreement is drafted in **language** that is **plain and easy to understand** by students **without undue effort**. They should not need to consult a lawyer to interpret the terms.

- **Exemption Clauses**

- Exemption clauses are terms in a contract which exclude, alter or limit the liability, obligations or remedies of a contracting party which usually arise from a contract. An exemption clause represents a deviation from the law with regard to contractual or delictual liability.
- UKZN may not offer to supply, supply or enter into an agreement to supply any services – a) at a price that is unfair, unreasonable or unjust; or b) on terms that are unfair, unreasonable or unjust (Sec 48(1)(a) of the CPA).
- UKZN may not require consumers (students), to whom services are supplied, to waive any rights, assume any obligations or limit the UKZN's liability on terms that are unfair, unreasonable or unjust (Sec 48(1)(c) of the CPA)

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- Any provision in an agreement that purports to be an *assumption of risk or liability* by the student or an *acknowledgement of any fact* by the student must comply with following:
 - the **fact, nature and effect** of the notice or provision **must be drawn to the attention** of the student;
 - it must be **in a conspicuous manner and form likely to attract the attention of an ordinarily alert student** taking into account the circumstances;
 - this **must occur before the student enters into the transaction or agreement**, engages in a particular activity or gains access to a facility or is required to pay;
 - the **student must be given adequate opportunity in the circumstances** to receive or comprehend the provision or notice (Section 49 of the CPA)
 - For example, where the student assumes liability (or risk) to pay tuition fees, accommodation fees, registration fees etc.

- **Scenario 3**

- If a provision or notice concerns any activity or facility that is subject to any risk of an unusual nature or could result in injury or death, UKZN must bring the fact, nature and potential effect of that risk to the attention of the student.
- UKZN generally requires students complete indemnity forms prior to compulsory excursions or field trips which students are required to attend as part of studies. Students indemnify UKZN should they sustain any injuries or losses during the excursion or trip.
- To comply with Section 49, indemnity forms should highlight or box in certain important notices/provisions and require students to initial at the side or sign below confirming understanding and acceptance.

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- Further, the potential effect of any risk must be drawn to the students attention: description of the activity; potential consequences or hazards associated. **A general indemnification that students have to sign does not suffice.**
 - **Example 1**

- **Right No. 3: Disclosure of price of services**

- UKZN has a legal duty to inform students of the price of services offered. Therefore, notices should be sent out advising students of the Fee booklet and enabling access to it so that they are aware of the exact cost implications of their particular field of study.

- **Right No. 4: Consumer's right to demand quality service**

- The educational services performed by UKZN must be performed in a manner of quality that students are generally entitled to expect. One would have to consider what the expectation of the student was at the time of enrolment.
- If a University fails to perform services as per above, students may require it to either remedy any defect in the quality of education services or make a refund to the student.

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- There is a heavy burden on lecturers as this places a duty upon them regarding the standard of lectures, training and evaluation of students etc.
 - The same applies to other services offered such as student accommodation, food and facilities for students.

All of the above would be applicable to UKZN where it is procuring goods/services. Though it is not a “consumer” ito of the CPA, it is entitled to expect that service providers adhere to the standards set in the CPA.

What personnel should look out for:

- ◆ Clauses in agreements that require UKZN to waive any rights, assume any obligation or waive liability of the service provider (Sec48);
- ◆ Clauses that limit UKZN’s rights- goods are not suitable, defective, or poor quality.

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- The CPA provides that within 6 months of delivery of any goods, a consumer can return it and the supplier must, at the election (choice) of the consumer, either repair or replace the goods or refund the price paid for the goods.

- **Conclusion**

- The CPA is applicable to UKZN and agreements entered into with students must comply.
- Students have the right to:=
- Disclosure and information;
- Tuition, residence accommodation and facilities which is of a quality that they are entitled to expect.
- Universities have certain legal obligations:-
- To provide quality tuition and services;
- To conclude agreements with students in accordance with CPA.
- To specifically draw the attention of students in the prescribed manner to their assumption of liability or risk.