



**Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective**

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Business Law  
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at the Durban University of Technology

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**Date: 13 April 2023**

## DECLARATION

I, Nikita Dwarika, affirm that:

- The research reported in this thesis, except where otherwise indicated, is my original research.
- This thesis has not been submitted for any degree or examination at any other university.
- This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.

13 April 2023

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## ACKNOWLEDGEMENTS

A journey is never straightforward nor smooth. Along the road, we must surpass challenges in the form of bends, potholes, gravel and so forth. Many individuals may jump on the vehicle of your journey at the start, but along the way they may jump off, and only a selected few will stay at your side and complete the journey with you. Through the ups and downs, lefts and right, this journey has been an enthralling one.

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## DEDICATION

I dedicate this work:

In loving memory of my grandparents **Mr Purmasir Rampersadh** and **Mrs Chinthamani Rampersadh**, I will be eternally grateful to you for the integral part that you have played in my upbringing and for the words of wisdom you have shared with me.

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## **ABSTRACT**

The aim of the study is to explore consumer challenges with respect to electronic contracts of consumers in the Durban area and the implications of selected consumer protection legislation in South Africa. Since the Internet became available for commercial use in the early 1990s, the means of doing business changed forever. The Internet and electronic commerce have allowed people to engage in business transactions by means of electronic communications, which makes it possible for them to conclude contracts with people situated within foreign jurisdictions.

Consumers have been cautious to make use of electronic commerce, as they are uncertain about the consequences that their actions might have. Consumers will only utilize e-commerce if they have confidence in the legal system regulating it; therefore, legislation was needed to regulate their e-commerce activities. Most of the studies on contract agreements have focused on the implications of formal written agreements, particularly from the perspective of businesses. Limited research has been conducted on electronic contract consumer challenges and the rights offered by existing consumer law in South Africa. Therefore, this study seeks to fill the gap by exploring online consumer challenges in electronic sales contract and protection offered by existing consumer protection legislation in South Africa. Through a quantitative study using questionnaires, data was collected from 384 consumers in the Durban area. The findings from the study revealed that even though the Consumer Protection Act has been in existence for more than ten years, there are still consumers that still do not know and understand their basic consumer rights. The study has shown that there are multiple challenges and barriers facing consumers concerning the conclusion of electronic consumer contracts, notably, which have not been adequately addressed.

## TABLE OF CONTENTS

DECLARATION .....	i
ACKNOWLEDGEMENTS .....	ii
DEDICATION.....	iii
ABSTRACT.....	iv
LIST OF FIGURES .....	xv
LIST OF TABLES.....	xvi
LIST OF ABBREVIATIONS .....	xviii
CHAPTER 1: INTRODUCTION TO THE STUDY .....	1
1.1 Introduction .....	1
1.2 Background to the study .....	1
1.3 Research Problem and Aims .....	2
1.4 Aim and objectives.....	4
1.5 Research questions .....	4
1.6 Research hypotheses .....	4
1.7 Layout of the Research Report.....	5
1.8 Delimitations of the study.....	5
1.9 Social justice and consumer contracts.....	5
1.10 Conclusion .....	6
CHAPTER 2: LITERATURE REVIEW .....	8
2.1 Introduction .....	8
2.2 Background to the internet.....	8
2.3 Background to electronic contracts .....	9
2.4 The nature of electronic contracts.....	10

2.5	Features of electronic contracts .....	12
2.6	Types of electronic contracts .....	13
2.7	The advantages of electronic contracts for consumers.....	15
2.7.1	Convenience .....	15
2.7.2	Reduced costs .....	16
2.7.3	“Closing of deals” quickly .....	16
2.7.4	Time-saving.....	16
2.7.5	Ease in managing documents .....	16
2.7.6	Saving in terms of expenses .....	17
2.7.7	Fewer errors .....	17
2.8	Challenges in respect of electronic contracts.....	18
2.9	The need for consumer protection in electronic contracts .....	22
2.10	The implications of selected legal provisions on electronic contracts .....	22
2.10.1	South African common law requirements for contracts and the validity of electronic contracts.....	23
2.10.2	The implications of selected legislation on online contracts .....	25
2.10.3	The consumer’s right to equality in the consumer market .....	26
2.10.4	Implications of the Consumer Protection Act 68 of 2008 with respect to electronic contract consumer challenges .....	33
2.11	Conclusion .....	41
CHAPTER 3: RESEARCH METHODOLOGY .....		42
3.1	Introduction .....	42
3.2	Research design .....	42
3.3	Research methodology approach .....	42
3.4	Research Strategy .....	43

3.5	Survey research.....	44
3.6	Population and Sampling methods .....	45
3.7	Sampling Strategies and Size.....	<b>Error! Bookmark not defined.</b>
3.7.1	Sample Selection Method .....	46
3.7.2	Margin of error and confidence levels .....	47
3.8	Data Collection .....	48
3.9	Research instrument.....	48
3.10	Question format and type.....	49
3.11	Pre-test .....	50
3.12	Data analysis .....	50
3.12.1	Descriptive statistics.....	51
3.12.2	Inferential statistics.....	51
3.12.3	Cronbach's alpha test.....	51
3.12.4	Chi-square test.....	52
3.13	Validity .....	52
3.14	Reliability .....	52
3.15	Ethical considerations .....	53
3.15.1	Informed consent.....	53
3.15.2	Confidentiality.....	53
3.15.3	Anonymity .....	53
3.15.4	Inclusion and exclusion criteria.....	53
3.16	Conclusion .....	53
CHAPTER 4: ANALYSIS OF RESULTS AND DISCUSSION OF FINDINGS		
	.....	55
4.1	Introduction .....	55
4.1.1	The Sample.....	55



4.1.2	The Research Instrument.....	56
4.2	Section A: Biographical Data .....	56
4.2.1	Age distribution of respondents.....	56
4.2.2	Educational levels of respondents.....	57
4.2.3	Whether respondents had previously entered into an electronic contract.....	58
4.2.4	Types of electronic contracts concluded by respondents .....	59
4.2.5	Section Analysis.....	59
4.3	Section B: Nature and extent of consumer challenges .....	60
4.3.1	Electronic contract consumer challenges experienced by respondents.....	60
4.3.2	Consumer challenges with terms and conditions in electronic contracts.....	65
4.4	Other consumer challenges experienced generally with online contracts .....	70
4.5	Awareness of what the Consumer Protection Act 68 of 2008 entails .....	71
4.5.1	Whether respondents were aware that they have certain consumer rights and protection .....	71
4.5.2	Respondents awareness that electronic contracts have terms and conditions setting out the rights and responsibilities.....	72
4.5.3	Whether respondents were made aware of the terms when concluding electronic contracts .....	74
4.6	Electronic contract challenges experienced by respondents .....	74
4.6.1	Whether respondents understood the terms and conditions of contracts.....	74
4.6.2	Awareness of payment, price variation and penalties .....	75

4.6.3	Awareness of certain consumer rights and protection.....	76
4.7	Section C: Implications of Consumer Challenges .....	76
4.7.1	The quality of information provided by suppliers on websites about the goods/services lack information about the complaints procedure .....	78
4.7.2	Consumers think they are protected by the law, trust the company or think the contract is industry standard and thus cannot go elsewhere or do anything about the contract.....	78
4.7.3	Consumers are reluctant to pursue claims that are small.....	78
4.7.4	Consumers may find it difficult to enforce their rights against suppliers in court .....	79
4.7.5	Consumers may claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises.....	79
4.7.6	Consumers skip through the small print in an online contract and merely scan information, looking for what they want to know.....	79
4.8	Section D: Awareness of Consumer Rights .....	80
4.8.1	The right in respect of delivery of goods/return goods.....	81
4.8.2	The consumers right to choose .....	82
4.8.3	The right to performance .....	82
4.8.4	The right to information in a plain and understandable language .....	82
4.8.5	The right to disclosure and information .....	82
4.8.6	The right to fair, just and reasonable terms and conditions .....	82
4.8.7	The right to fair and honest dealings .....	82
4.8.8	The right to privacy.....	83
4.9	Respondents' level of understanding of selected consumer rights .	84

4.9.1	I understand what the right to disclosure and information is and what it entails.....	85
4.9.2	I understand what the right to fair, just and reasonable terms and conditions is and what it entails .....	85
4.9.3	I understand what the right to fair and honest dealing is and what it entails .....	85
4.9.4	I understand what the right to privacy is and what it entails: ....	85
4.10	Implications of the Electronic Communications and Transactions Act 25 of 2002 (ECTA).....	86
4.10.1	Online suppliers must provide their information, such as, their physical address and phone number, email address, which a consumer can use to track and order after a transaction has been completed .....	87
4.10.2	The ECTA prohibits the collection of personal information by institutions or persons .....	87
4.10.3	The ECTA provides for the protection of personal information of the consumer that is obtained through electronic transactions.....	87
4.10.4	The ECTA allows the consumer to cancel the transaction and claim a full refund during a specified "cooling-off" period without any penalty.....	88
4.10.5	The ECTA provisions require web site owners to display certain information for the benefit of potential customers.....	88
4.11	Section E: Remedies available and recommendations regarding alternate measures .....	88
4.11.1	The customer has a right to cancel fixed term agreements by giving 20 'business days' notice even if businesses make it difficult for them to do so.....	89
4.11.2	Should there be a fault consumer can return the goods or cancel the order within 14 days for a full refund .....	90

4.12	Reasons why consumer remedies/rights are not enforced with respect to electronic contracts .....	91
4.12.1	The complaints process for the consumer is unclear .....	91
4.12.2	The procedure for enforcing consumer rights is unknown or unclear.....	92
4.12.3	Consumers are not aware of the rights that apply to purchases made from other countries.....	92
4.12.4	Generally, claims are time and money consuming, making the process unworthy .....	92
4.12.5	Enforcing consumer rights is difficult for the consumer to do alone.....	92
4.12.6	Enforcing consumer rights against a supplier is a long and tedious process .....	92
4.13	Reliability Statistics .....	93
4.14	Factor Analysis .....	93
4.15	KMO and Bartlett's Test.....	95
4.16	Rotated Component Matrix .....	96
4.17	Crosstabulations .....	102
4.17.1	Theme 1: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and *Age (in years) .....	102
4.17.2	Theme 2: I do not understand my rights with respect to electronic contracts and *Age (in years) .....	103
4.17.3	Theme 3: The document did not have enough information explaining the terms and consequences of the contract and *Age (in years).....	104
4.17.4	Theme 4: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and *Education... ..	106

4.17.5	Theme 5: Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties? and *Education .....	107
4.17.6	Theme 6: Consumers' online transactions are protected by the Electronic Communications and Transactions Act and *Education .....	109
4.18	Correlations .....	110
4.18.1	Directly proportional relationships .....	110
4.18.2	Inverse relationships (negative correlations) .....	112
4.19	Hypothesis testing .....	113
4.20	Failure to read contracts Versus lack of understanding of rights ..	113
4.21	Lack of understanding of rights with respect to electronic contracts Versus challenges in terms of risks associated with such contracts.....	114
4.22	The terms in the contract were not in plain and understandable language Versus words used in online contracts are misleading .....	115
4.23	Conclusions .....	116
CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS .....		117
5.1	Introduction .....	117
5.2	Aims and objectives .....	117
5.3	Research questions .....	117
5.4	Summary of findings .....	118
5.4.1	Nature and extent of consumer challenges .....	121
5.4.2	Electronic contract consumer challenges experienced by respondents.....	121
5.4.3	Consumer challenges that were experienced with respect to the terms and conditions in electronic contracts.....	122

5.4.4	Other challenges experienced when concluding electronic contracts.....	123
5.4.5	Awareness of consumer rights in terms of the Consumer Protection Act.....	123
5.4.6	Respondents' level of understanding of terms and conditions	124
5.4.7	Implications of consumer challenges.....	124
5.4.8	Awareness of consumer rights .....	124
5.4.9	Respondents' level of understanding of selected consumer rights in terms of the CPA .....	125
5.4.10	Implications of the Electronic Communications and Transactions Act 25 of 2002 (ECTA) .....	125
5.4.11	Remedies available and recommendations regarding alternate measures.....	126
5.4.12	Reasons why consumer remedies/rights are not enforced with respect to electronic contracts.....	126
5.5	Conclusions .....	126
5.6	Conclusions from the literature review .....	127
5.7	Remedies available to consumers .....	128
5.8	Conclusions from the empirical study .....	128
5.9	Hypotheses.....	130
5.10	Recommendations.....	130
5.11	Limitations of the study .....	133
5.12	Suggestions for further research.....	133
5.13	Concluding note.....	133
	REFERENCE LIST .....	135
	LIST OF APPENDICES .....	150
	APPENDIX A: IREC Full Approval.....	150

APPENDIX B: Letter of Information .....	151
APPENDIX C: Letter of Consent .....	153
APPENDIX D: Questionnaire.....	155
APPENDIX E : Correlations Table .....	165
APPENDIX F: Statisticians Certificate .....	170
APPENDIX G: Editors Certificate .....	171
APPENDIX H: Turnitin Report .....	172

## LIST OF FIGURES

Figure 4.1: Age distribution of respondents .....	56
Figure 4.2: Highest level of education.....	57
Figure 4.3: Whether respondents have previously entered into electronic contracts .....	58
Figure 4.4: Types of electronic contracts concluded by respondents.....	59
Figure 4.5: Consumer challenges with electronic contracts .....	61
Figure 4.6: Consumer challenges with terms and conditions in electronic contracts .....	66
Figure 4.7: Respondents' awareness of consumer rights and protection in terms of the CPA.....	72
Figure 4.8: Respondents' awareness that electronic contracts have terms and conditions setting out the rights and responsibilities which may relate to payment, price, variation and penalties.....	73
Figure 4.9: Awareness of terms and conditions .....	74
Figure 4.10: Implications of consumer challenges .....	77
Figure 4.11: Awareness of consumer rights in terms of the Consumer Protection Act.....	81
Figure 4.12: Rights in terms of the CPA.....	84
Figure 4.13: Implications of the Electronic Communications and Transactions Act 25 of 2002.....	86
Figure 4.14: Awareness of remedies available to consumers .....	89
Figure 4.15: Reasons why consumer remedies/rights are not enforced with respect to electronic contracts .....	91
Figure 5.1: Diagrammatic representation of conclusions and recommendations .....	132



## LIST OF TABLES

Table 3.1: Advantages of questionnaires .....	44
Table 4.1: Understanding of terms and conditions .....	75
Table 4.2: Awareness of payment, price variation and penalties .....	75
Table 4.3: Awareness of certain consumer rights and protection.....	76
Table 4.4: Reliability Scores for Survey Themes using Cronbach's Alpha...	93
Table 4.5: KMO and Bartlett's test .....	95
Table 4.6: Rotated Component Matrices: Challenges associated with electronic contracts generally .....	96
Table 4.7: Rotated Component Matrix: Challenges pertaining to terms and conditions.....	97
Table 4.8: Implications of Consumer Challenges.....	98
Table 4.9: Awareness of consumer rights in respect of electronic contracts	99
Table 4.10: Consumer rights in terms of the Consumer Protection Act 68 of 2008.....	100
Table 4.11: Provisions/Implications of the Electronic Communications and Transactions Act of 2008 .....	100
Table 4.12: Remedies available and recommendations regarding alternate measures .....	101
Table 4.13: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and *Age (in years).....	102
Table 4.14: I do not understand my rights with respect to electronic contracts and *Age (in years) .....	103
Table 4.15: The document did not have enough information explaining the terms and consequences of the contract and *Age (in years).....	105
Table 4.16: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and *Education .....	106
Table 4.17: Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties? and *Education.....	108

Table 4.18: Consumers online transactions are protected by the Electronic Communications and Transactions Act * Education .....	109
Table 4.19: Chi-square test: Failure to read contracts versus lack of understanding of rights .....	114
Table 4.20: Chi-square test: Lack of understanding of rights with respect to electronic contracts Versus challenges in terms of risks associated with such contracts .....	114
Table 4.21: Chi-square test: The terms in the contract were not in plain and understandable language Versus words used in online contracts are misleading.....	115
Table E.1: Correlations .....	165

## **LIST OF ABBREVIATIONS**

CPA	Consumer Protection Act 68 of 2008
ECTA	Electronic Communications and Transactions Act
POPIA	Protection of Personal Information Act
ICT	Information and Communication Technology
ISP	Internet Service Provider
SES	Simple Electronic Signatures
AES	Advanced Electronic Signatures
QES	Qualified Electronic Signatures

# **CHAPTER 1: INTRODUCTION TO THE STUDY**

## **1.1 Introduction**

Although general studies of contracts in the fields of business and marketing are widespread, few writers/researchers have discussed the challenges of electronic contracts from the integrated perspective of contract characteristics and consumer welfare.

A quick introduction to the issues with electronic contracts will be given in this chapter. The chapter will outline the research question, the study's goals, and its justification. The conclusion completes this chapter after a quick discussion of the literature study. Additionally, it will make a few important observations about the study's limits and research methodology. The findings of this study are limited to the Durban University of Technology, the case study institute, and cannot, despite being somewhat indicative, be applied to all higher education institutions.

An overview of the challenges with electronic contracts for consumers will be presented in this chapter. The chapter will outline the research problem, the research aims and objectives, and the justification of the study. Furthermore, a brief synopsis of the literature review is provided before the chapter's conclusion. Additionally, it will highlight certain significant points about the delimitations of the study and research methodology.

## **1.2 Background to the study**

Businesses have ventured into the digitalized and computerized era. The development of the use of the internet and electronic contracts has prompted a higher demand for electronic contracts globally. Electronic contracts are agreements made digitally using platforms like online shopping sites (Marshall 2018).

This study is important because of the negative impact that the electronic contract challenges can have on customers. For example, consumers are not aware that their contracts usually continue automatically on a month to month basis (Gordon 2011). Hence, this study is intended to contribute to efforts aimed at consumer awareness on the underlying challenges as well as business being mindful of the terms that they

unilaterally include in contracts which will be beneficial to the society. These challenges will be discussed in more detail in Chapter 2.

In light of electronic contracts, business practices have taken on a whole new dimension and are no longer constrained by geographical restrictions, for instance, the need for the parties to a contract to be physically present in the same location. These are examples of challenges that arises in electronic contracts and presents a challenge to the traditional principles of contract law with regards to online trading and contracts.

In South Africa, when a consumer clicks on an icon, it is uncertain whether this is taken as he or she wants to be bound by terms to a contract. The lack of in-person negotiations in electronic transactions results in businesses unilaterally imposing the terms of the contract (Electronic Contracts 2020). The need for this research study is also to examine the unequal bargaining positions and the need for plain language in contracts.

In light of these challenges experienced by consumers, there is a need for this study, which aims to fill the gap with respect to the scarcity of research on the contractual challenges faced by consumers when concluding electronic contracts.

### **1.3 Research Problem and Aims**

Nortjie (2011) comments that consumers do not read contracts and that they merely just scan information looking for what they want to know even though the signor is accountable for reading the information and finding out what the document entails before entering into an agreement.

Generally, once a consumer concludes a contract or accepts a quote, they cannot change or cancel it without the other side agreeing (if they do, it would amount to breach of contract). Consumers are perceived as ignorant when it comes to signing electronic contracts as they are confident that they understand the contract that they sign. However, they do not fully comprehend these documents. In fact, consumers tend to feel overwhelmed when presented with more information, thus reducing their understanding of the contract (Understanding the South African mobile consumer 2014). Consumers have a tendency to agree to pre-formulated terms without questioning them due to the aforementioned reasons. When consumers encounter such terms, their initial response is to ignore the fine print and typically focus on the

payment terms, price, delivery dates and warranties (Lowe *et al.* 2013). This may not be due to lack of knowledge or ability, but rather an unwillingness to scrutinize and look at the details as consumers are always in a hurry and do not take time to read. Hence, they are not aware of their obligations. A person might claim to understand the implications of their signing a contract but fail to realize the consequences until a challenge arises from or related to the terms of the contract (Nahan *et al.* 2013).

The use of technology is now an accepted thing and has also presented itself in the area of concluding consumer contracts which gave birth to electronic contracts. Daily, many consumers are asking questions about their contracts. Furthermore, many articles are written in the press and there are radio interviews about the subject (Knowler 2019). There is a big gap in understanding the fine print in the terms and conditions of contracts. A significant number of consumers have low literacy levels and are therefore vulnerable as they are confused with information overload. An example can be consumers who experience difficulties in reading. Thus, they avoid text-based information and depend on visual cues in order to gather information (Gau and Vishwanathan 2008).

In electronic contracts, consumers lack the real opportunity to become acquainted with and understand contract terms before they are bound by them as there is no face to face interaction for them to seek clarity on terms that they may not prior knowledge of, hence, it could be challenged as being unfair (Unfair Contract Terms Explained 2015). Nicoleta (2016) proposes that the downside of online shoppers is their inability to try products before they buy. The key challenge that results in misleading or deceptive practices is that consumers are denied the opportunity to test or examine the product. According to Gowri (2015), consumers are often placed in difficult situations as they are left with no remedy due to the jurisdictional issues in the online environment. The study indicates that the existing legal framework on consumer protection is lacking in terms of addressing e-commerce consumer needs. The study further analyzes the changing nature of users in electronic transactions. This highlights new legal issues raised due to the increased advancements in technology. These problems arise because of the seller and buyer being at a distance from each other, the buyer was not given an opportunity to inspect the goods.

#### **1.4 Aim and objectives**

The primary aim of the study is to investigate the electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation.

The objectives of the study are:

- To explore the nature of electronic contracts as a means of concluding contracts;
- To identify the nature and extent of consumer challenges with respect to electronic contracts and the implications they have in the Greater Durban area;
- To determine the consumer rights that are applicable and the remedies that are available with respect to such consumer challenges in respect of electronic contracts.
- To identify the need for additional protection for electronic contract consumers.

#### **1.5 Research questions**

The key questions that this study intended to address in order to achieve the aforementioned aims were:

- What is the nature of electronic contracts as a means of concluding contracts?
- What is the nature and extent of consumer challenges with respect to electronic contracts and what are the implications that they have for consumers in the Greater Durban area?
- Which are the consumer rights that are applicable and what are the remedies that are available with respect to such consumer challenges in respect of electronic contracts?
- In which areas is there a need for additional protection for electronic contract consumers?

#### **1.6 Research hypotheses**

The following research hypotheses were created to guide this study based on the aims, objectives and the literature reviewed:

Ho1: Consumers failure to read the online contract does not play a significant role in contributing to their lack of understanding of the terms;

Ho2: Consumers' failure to understand rights with respect to electronic contracts does not play a significant role in terms of the risk associated with such contracts;

Ho3: The terms in an online contract not being in plain and understandable language does not play a significant role in frequently misleading words used.

## **1.7 Layout of the Research Report**

### **CHAPTER 1: INTRODUCTION AND BACKGROUND**

This chapter included the background to the study, research problem, aims and objectives.

### **CHAPTER 2: LITERATURE REVIEW**

This chapter sets out a review of relevant literature particularly on the areas of electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective.

### **CHAPTER 3: RESEARCH METHODOLOGY**

This chapter explores the research methodology used in the study. The population is described, the sampling method explained, the data collection defined and the analysis process is explained.

### **CHAPTER 4: DATA ANALYSIS AND FINDINGS**

With the use of illustrations, charts, and narrative, the data gathered from the survey is presented, examined and analyzed in this chapter.

### **CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS**

This chapter presents the conclusions of the study and recommendations based on the findings.

## **1.8 Delimitations of the study**

This study investigates and explores the consumer challenges with respect to online electronic contracts. According to Wiersma (2000), delimitations refer to characteristics that result from limitations in the scope of a study. As a result, the delimitation of this study is that the study will only be conducted among consumers in the Durban area.

## **1.9 Social justice and consumer contracts**

Customers often fall victim to unfair business practices and contracts worldwide. Previously, access to goods and services was problematic for certain groups of



consumers in South Africa, predominantly for those from historically disadvantaged communities. Additionally, many consumers struggle with understanding electronic contracts due to their poor literacy levels. When it comes to understanding the content and effect of consumer contract's these consumers are significantly disadvantaged (Reddy 2012:584).

Further, businesses use standard-form contracts that incorporate non-negotiated terms and are typically one sided and over-protective of business. These contracts also contain terms that are unfair and overwhelm the consumer. This practice is done in order to reduce risk and exempt businesses from as much liability as possible (Sharrock 2010:296; Reddy and Rampersad 2012:7407).

“Out of intense complexities, intense simplicities emerge. Broadly speaking, the short words are the best, and the old words when short are best of all.”

The above statement, made by former British Prime Minister Winston Churchill, should serve as the foundation to which consumer contracts should be evaluated. When dealing with contracts of sale, lease, loans and cellphone agreements, the author contends that consumers are frequently the unwilling, unwitting contracting party. For this very reason, plain-language and simplified consumer contracts are key to bringing the parties to such contracts to the equal bargaining position.

Therefore, the importance of consumer contracts written in plain language has increased. Consequently, the objective of this study is to address the contractual issues.

## **1.10 Conclusion**

This chapter introduced a brief overview of the study and provided the conditions within which the study was conducted. The topics presented included the introduction, background to this study, problem statement, the aims and objectives, and delimitations. The challenges that consumers face are quite serious and have both short-term and long-term consequences for them in terms of being bound by a contract. In light of this, it is therefore crucial to examine the implications that selected pieces of consumer legislation have on consumers. The following chapter will encompass a more comprehensive and structured review of relevant literature pertaining to contractual challenges of consumers, especially consumers that enter

into electronic contracts, and the implications of selected consumer legislation in terms of consumer contracts.

## **CHAPTER 2: LITERATURE REVIEW**

### **2.1 Introduction**

According to Rich (2018), the invention of the computer led to the development of the Internet, which became an important medium for communication and eventually opened opportunities for electronic contracts. The author states that Information Technology (AI software) can easily extract data and clarify the content of routinized contracts. The traditional assumption is that services will be performed by people and much of the expectation relating to contracts is based on that assumption. However, it is more likely now that services will be performed by computer machines with robotic process automation and cognitive computing (Eggers, Kishnani and Turley 2018).

Roodt (2018:24) maintains that, in the twenty first century, contracts have become a piece of our regular day to day existences, from cell phone contracts, service provider contracts, employment contracts, leasing, bond and motor vehicle financing. Devices such as laptops, tablets and cell phones have become a part of the lives of consumers, who conduct much of their business and personal contracts via this medium. Paul (2017) states that, from a customer perspective, adopting emerging technologies can give rise to a number of challenges, typically around the products being sold and services that are rendered on an "as is" basis with as few guarantees as possible, thereby arguably delivering limited value compared to more traditional solutions, but with an increase in risk to the customer.

The objective of this chapter therefore is to explore the rationale behind the use of electronic contracts as well as the nature and extent of consumer challenges with respect to electronic contracts. To do so, the first part of this chapter looks at the background to electronic contracts, the nature of such contracts, and the features and types of electronic contracts; the second part examines the challenges of consumers in respect of contracts, and the final part discusses implications of selected consumer protection legislation with respect to challenges.

### **2.2 Background to the internet**

According to Akinfiyeva (2018:8), up until the late 1990s, commerce was based on the "physical way" of operation. Customers used to conduct trade by means of physical establishments, whereby transactions such as placing their orders, receiving the

goods and paying for them, took place. In the late 1990s changes with regard to the development of internet and its further wide-ranging expansion across the globe marked the turning point of an evolution. This resulted in the development of Electronic Commerce (E-commerce) thus impacting the lives of individuals and economies (Bednarz 2019).

According to Internet World Stats (2014), the amount of people using the internet surpasses 2.41 billion which represents approximately 34.3 percent of the global population. This widespread use of internet technologies and its advancements has a revolutionary effect on people's lives and business operations. It has therefore become apparent that the internet and its technologies have promoted new and different avenues of business.

The historical background of electronic contracts in South Africa is connected to the evolution of Information and Communication Technology (ICT). According to Ndunguru (2018:1), this eventually led to the emergence of electronic commerce in South Africa when the government introduced the first computer in 1960 to streamline financial transactions.

According to West (2020), since the beginning of 2020, the number of South African consumers engaging in online shopping has increase drastically. Demographically, customers older than 60 years have become reluctant to engage in online transactions. Retailers attempted to offer customers more freedom and a variety of transactional options in order to incentivize consumers to engage in online sales. The author notes that these changes primarily coincided with the impact of lock-down restrictions (limitations surrounding movement). This resulted in consumers spending more time at home and consequently a greater need for online purchases.

From the above discussion it is evident that consumers have been embracing the ease of purchasing goods and services with just a click of a button without having to go anywhere.

### **2.3 Background to electronic contracts**

Due to the broad and highly expected expansion of the internet from the late 1990s into the beginning of the new millennium, Saad (2011) states that many businesses and individuals started treating electronic commerce (electronic contracts) as a new

medium to enter into contracts through the usage of electronic devices such as laptops, tablets and even cell phones

According to Guth (2011:1), an on-line contract/agreement, which is also known as an Electronic contracts, is in fact conceptually drafted in the same manner as a conventional formal written paper-based contract. The author explains that electronic contracts are completed and implemented by a software system in the sense that they are not concluded by face-to-face communications. Newman (2010:735) states that, for a traditional contract to be valid, there must be an “offer” that is made and such offer must be “accepted”. Similarly, the acceptance of electronic contracts is imperative and effective only when acceptance is sent in order to make that agreement enforceable.

Jain (2016) expresses the view that contracts have become so frequent in many households (hiring a taxi, buying airline tickets online etc.) that most of the time people do not realize that they have entered one.

According to Akinfiyeva (2018) it is evident that electronic contracts have become the preferred choice for most consumers and have given a new perspective on consumer buying which is no longer constrained by territorial restrictions. Hence, physical presence at the same location is no longer required. Jain (2016) further observes that, in the last ten years, extensive literature has developed on electronic commerce (E-commerce) activities and that such contracts have become an essential aspect of the daily lives of Internet users. Govender (2019) states that just like traditional contracts, electronic contracts consist of binding legal terms. Dangi (2019:2) states that digital contracts are better than traditional arrangements in the sense that they are fast, economical, providing transparency, mutual, provide reliable security and are self-executing. The author adds that the main difference between an electronic contract and conventional contracts is that electronic contracts are paperless, and the parties are not required to meet in person.

#### **2.4 The nature of electronic contracts**

This section explains the nature of electronic contracts. Previous studies, such as Akinfiyeva (2018), show that consumers can enter contracts on-line by means of the internet and advanced technologies such as laptop devices. Trading practices has

changed to embrace electronic processes and transmission of data in order to include text, sound, picture and video formats.

Thakur (2017) adds that any person who purchases goods or services for their personal use qualifies as a 'consumer'. The writer further defines a contract as an agreement that is voluntarily entered into by parties of competent capacity and understanding, which is legal and unaffected by any elements that could possibly invalidate the contract and result in several consequences.

Bonner (2019) explains that, an electronic consumer contract is a contract made between businesses and a consumer usually over the internet. It is a legally binding agreement between two parties which gives rise to rights and obligations.

The emergence and steady inclination of technological advancement results in a rapid increase in the usage of electronic contracts. However, the concept of electronic contracts is still not unclouded and a number of challenges are faced in this respect.

Electronic contracts are characterized by a worldwide coverage and are made possible by means of the internet, as it is not limited to a particular country and there are no boundaries on the internet. Also, the comfort in accessing internet websites 24/7 is a great aspect that stimulates customers from all around the world to enter such contracts and check for items and services at any time. It is a much broader term that encompasses Electronic Data Interchange and other forms of communications e.g., electronic mail. (Saad 2011).

E-commerce has brought about a new perspective of contracting in the electronic world which is commonly known as electronic contracts as well as e-contract or online contracts. The most common ones are the "End User License Agreement" or EULA where one has to click on the "I Agree" button to install a software or the Terms and Conditions/User Agreement on a website (Electronic Contracts and their Validity 2014). However, the main concern, is whether or not communication, negotiation and more specifically, accepting an offer to purchase electronically is legally valid and binding with such transactions. With advancement of the internet and electronic commerce, a valid contract can be modelled, signed, and executed electronically by the click of a mouse, generally over the internet (McCullough 2020).

Thakur (2017) expresses the view that, with online sales contracts, the seller is the party with the intention to sell products and presents their products, prices, and terms

for purchasing of such products to the consumers. Therefore, the consumers who are enthusiastic on purchasing products can either click on the 'I Agree' or 'Click to Agree' option in order to indicate their acceptance of the terms produced by the seller or alternatively they can sign electronically. The author indicates that this is known as a "click-wrap" agreement. In a click-wrap agreement the user typically expresses consent by clicking the "I accept" icon on a webpage or pop-up screen.

## **2.5 Features of electronic contracts**

This section examines the features of electronic contracts. According to Nasr and Tarek (2015), electronic contracts in their structure, composition, types, and content do not differ from the traditional paper contracts, although no handwritten signature and, in most cases, no handwriting is required in electronic contracts.

However, the most important feature of electronic contracts is the non-existence of the parties physically in the same place. "The physical existence" is in fact considered one of the key characteristics that distinguish E- contracts from the traditional contract states (Nasr and Tarek 2015).

Electronic contracts differ from traditional paper-based contracts in the following ways;

- **No face-to-face interaction:** Dangi (2019:18) maintains that the major difference between electronic contracts and conventional contract is that electronic contracts are paperless and the parties are not required to meet in person;
- **No handwriting or signature:** Generally, no handwritten signature and in most times, no handwriting is required in electronic contracts. Msomi (2020) expresses the view that, with the progression of technology, electronic signatures are used to identify a person's identity and constitute proof of consent to information contained in a document. The signature is an indication of a person's intention to accept the content of the contract.
- **Speed and ease of concluding contracts:** Dangi (2019:22) also maintains that digital contracts are better than traditional arrangements since they are fast, economical, they provide transparency, they provide reliable security, and are self-executed. In the electronic era, the contract can be completed within seconds, with both parties attaching their digital signatures to an electronic copy

of the contract. Delayed couriers will no longer occur and therefore no additional travelling expenses. Initially, hesitation existed amongst legislations to acknowledge modern technology. However, several countries have passed laws to acknowledge these electronic contracts (Ezeigbo 2017).

- **Parties are not required to be at the same place:** the most important element of electronic contracts is the non-existence of the parties' physical presence in the same place.
- **No one-on-one offer:** With regard to electronic or conventional contracts, Ranka (2015) implies an offer is not made directly one-on-one. The consumer 'browses' the availability of goods and services displayed on the seller's website and then chooses what he would like to purchase. The "offer" is not made by websites selling products at a specific price. Since this is effectively an invitation to offer, it may be revoked at any point before acceptance. As a result, the buyer makes the offer after placing the goods in the virtual "basket" or "shopping cart" for purchase. Mupangavanhu (2016:857) concur with Ranka (2015) that an offer and acceptance can be expressed by means of data messages unless the parties agreed otherwise.

Ezeigbo (2017) states that communication technology is used in electronic contract formation involving several mediums, such as Internet Service Providers (ISPs). In explaining what would happen in the absence of electronic contracts, the author gives an example of a contract between an Indian exporter and an American importer. One option for such contract to come into being would be that one party signs two copies of the contract and couriers them to the other, who in turn signs both copies and couriers one copy back. Alternatively, the two parties meet in person and sign the contract (after negotiation).

From the review of literature above it is apparent that electronic contracts have different as well as similar features as compared to traditional contracts and there is a possibility that the traditional way of doing business seems to be shifting more towards electronic contracts.

## **2.6 Types of electronic contracts**

Ahmadi, Ahangaran and Panjepour (2017:393) state that electronic contracts can be concluded in several different ways by electronic intermediaries, such as the Internet.



In this section the different forms of online contracts will be discussed. There are numerous categories of online contracts which include:

- **Email contracts:** According to Roy (2019) an electronic contract in the form of an email is a contract created by means of the internet and signed electronically. i.e., a written contract exists in Microsoft Word, but instead of printing it out, one party may send the contract via email to another and they sign it electronically and email it back to the first party. This implies that offers and acceptances can be exchanged via e-mail. In addition, parties may sign with electronic signatures; this is done by entering their name into a signature box and checking the box that says that they are aware that this is their official signature underneath it (Upcounsel 2020);
- **Contracts through websites:** Most consumers do not understand that electronic contracts are created once an individual clicks the "I Agree" button. Consequently, this constitutes a valid contract into existence when the customer "clicks" an acceptance button (such as; "accept", "submit", "proceed to check out" or a similar phrase) (Wright 2006:8). Consumers click the button at the bottom of the page stipulating the terms of the contract they are bound (Ranka 2015). This is efficient and easy; however, it can lead to consumer problems. It is easy to waiver and exclude an important provision or misinterpret a person's meaning when reading an online consent form, text message, or email than when you are speaking with them in person (Upcounsel 2020);
- **Browse-wrap contracts:** A browse wrap agreement is an online agreement created on a website or by referencing a hyperlink to a website containing the terms and conditions. These terms are displayed to users when they access the website and are deemed sufficient to bind the consumer to the terms of the website and constitute a valid contract. Torvasei (2019:2) expresses the potential exists that consumers may be exploited in such arrangements expressed as there is little to no ability to negotiate or change the terms contained in consequently browse wrap and click wrap agreements;
- **Click-wrap contracts:** Clickwrap agreements typically require you to read the terms and conditions provided on the website or program and then click the "I agree" icon to accept or "Disagree" to opt out. Gholap (2018:253) states that this type of acceptance usually takes place before the goods are received. This type of

contract is widely used on the Internet for granting access on websites, downloading software and selling on websites. This can be called the creation of contracts by conduct (action).

Ghodoosi (2021:3) emphasizes that contracting essentially involves human interaction. However, what is also clear from the discussion is that online contracting, on the other hand, promises to have less human involvement and more automated processes. From the types of electronic contracts presented, there are clearly features that are different from traditional contracts and there are also certain advantages. The next section discusses some advantages that electronic contracts have for consumers.

## **2.7 The advantages of electronic contracts for consumers**

From the preceding discussion, it is clear that electronic contracts have certain advantages for consumers. However, online purchasing has some advantages and benefits over traditional shopping. These advantages are examined in this section from the perspective of consumers.

### **2.7.1 Convenience**

Given that the internet has become a vital medium for communication, consumers may prefer to engage in online shopping. (Ariffin, Mohan and Goh 2018). From an end user's standpoint, contracts made through websites make it more convenient for customers to make purchases of goods and services online. Khurana (2019) states that since consumers may place orders in a reasonably short amount of time without leaving their homes or offices, the procedure is frequently fairly efficient. For example, Al-Debei, Akroush, and Ashouri (2015:708) state that comparing online retailers on the price of a particular product can be done easily and efficiently when shopping online. The author further states that consumers want to get the desired product immediately and want it sent to them wherever they are – which means that customers are becoming more demanding. Consumers can order the needed goods or services and have them delivered to their house or place of business in just a few clicks. Moreover, literature (Benefits of eCommerce for Businesses and Consumers 2019) suggests that consumers can easily approach electronic sales websites at any time and they can order anything they desire conveniently and in a comfortable

manner. This is undoubtedly the main advantage of online shopping in comparison to brick and mortar stores which have well-defined operating hours.

### **2.7.2 Reduced costs**

Since electronic contracts require less human interaction and fewer intermediaries, this will therefore minimize expenses by paperlessly managing contracts and sealing negotiations by the use of electronic signatures. With storage capacity that can be easily managed with Google Drive, business owners do not need to be wary of the overhead expenses that are associated with filling and printing, which is usually the case with traditional contracts (Baker 2016).

### **2.7.3 “Closing of deals” quickly**

Businesses need customers. E-contracts save time through digital processes, thus reducing operational costs (Baker 2016). The main challenge businesses face in contracting arises from the ability to track their number of contracts. These often lack uniformity and lead to difficulty in the organization, management and updates of contracts. This is where electronic contracts are quite advantageous. Rich (2018) supports the statement that electronic contracts effectively enable trade with significantly fewer barriers.

### **2.7.4 Time-saving**

Feelium (2020) states that, typically when preparing a contract using the conventional method, businesses engage in hiring a lawyer. Following their explanation of their demands, conditions, and terms, the entire contract is then put in writing. This process is long and tedious. However, if businesses adopt the usage of electronic contracts, it would allow for easy and efficient contracting processes. The only requirement is to select a template and fill in the necessary information and sign. This streamlines the whole contracting process even if they are new to the electronic contracting system.

### **2.7.5 Ease in managing documents**

Enterprises need electronic contracting for more reasons than just time and money savings. It is time-consuming and challenging to search for a certain document when several agreements are stored and managed using a standard filing system. Additionally, it makes business processes simple for them to save and manage their documents. Additionally, the management requires a lot of physical storage space.

However, with the use of e-contracting services, all legal documents can be stored in one location, e.g. “Cloud”, which makes storage and searching easy (Feelium 2020).

### **2.7.6 Saving in terms of expenses**

According to Khurana (2019), using digital contracts can result in savings for companies with respect to all kinds of expenses, such as the cost of labour. There are also savings in terms of material costs. When using paper-based contracts, you need paper, ink, printer, electricity and these are not required with electronic contracts.

### **2.7.7 Fewer errors**

Electronic contracts, according to McCullough (2020), also allow for less errors. For instance, both the sender and the recipient can view the contracts at the same time, check them for errors, and streamline the terms for more consideration.

In general, electronic contracts have also revolutionized the whole shopping experience. As most consumers are price conscious, with electronic sales, it makes price comparison checks much easier and more efficient (Impact of ecommerce On Society 2019). Online shopping does, however, come with some drawbacks, such as the inability for customers to touch or smell products. According to Erasmus (2011:3), consumers' complaints about e-commerce included and the dependability of their services. With respect to the reliability of services, the author reports that the goods frequently arrived very late or never at all with challenges relating to accuracy of the information on websites. Furthermore, crucial information about the complaint's procedure was not supplied to the public. Although there are advantages to online contracts, consumers experience serious challenges.

The above discussion is in agreement with the view of Dangi's (2019:2) who points out that electronic contracts eliminate the middlemen (lawyers and banks), and that it is a platform created between buyers and sellers without the use of a broker. It is as a digital notary for contracts where there is no requirement for a lawyer to ensure that the agreements are adhered lawfully. A contract involving an automated message is valid due to the lack of human intervention. However, this is a problem conventional contracts face. Whereas, with electronic contracts, individuals are not in the same place at the same time to accept the offer, unlike conventional written contracts where it is a requirement for the parties to sign at the same time and place. Therefore, the

enforceability of electronic contracts can be questionable and viewed as a challenge for consumers (Challenges of E Commerce to Traditional contracts 2013).

The next section serves to give the consumer a background as to the challenges facing consumers with respect to electronic contracts.

## **2.8 Challenges in respect of electronic contracts**

Internet accessibility is increasing rapidly, thus allowing for an increase in online international consumer contracts. Due to the fact that several jurisdictions have their own laws and regulations, the majority of national legislation dealt with consumer protection and internet contracts locally. Globally, however, there is no protection offered to online shoppers. Therefore, consumers are in dire need for protection where online transactions indicate a significant international success (Al-Enizi and Aladaseen 2019).

Electronic contracting provides consumers with access to information with respect to goods and services at anytime, anywhere in the world. Electronic contracting is more intricate than one would envision, and the rights and commitments therefore could present many challenges. This section sets out the challenges that arise in respect of electronic contracts.

- **Misleading or unfair terms:** According to Roy (2019), the language used in an online offer (advertisement) can often be regarded as misleading. Kapdi (2016) states that, as a result, disadvantaged consumers become easy targets for unfair, unjust, and unreasonable business practices due to a lack of understanding of their rights. According to Christie and Bradfield (2011:14), what started off as a legitimate aid (when consumers are provided with the opportunity to conclude online contracts), turned into an expense trap for unsuspecting consumers. This was due to service providers being able to inflict unfair terms upon the consumer, such as early termination fees and late fees in typical written formal contracts;
- **Terms are vague:** De Stadler (2017:105) discovered that the problem with legal contracts is that significant terms are not evident or easily detected. This is also the case with electronic contracts. The CPA (Section 22) requires contracts to be in plain language. De Stadler (2017:106) presents the problem of whether consumers are fully aware of their rights that the CPA provides them.

- **Failure to read terms:** Another challenge is that consumers do not read the terms in the contract. They merely just scan information looking for what they want to know. Nahan and Webb (2013) support this view and note that consumers are always in a hurry and do not take time to read due to their unwillingness to scrutinize and look at the details. Therefore, they are not aware of their obligations and consequences that arise from being bound to a contract. Van Heerdan (2019) states that the *caveat subscriptor* is a well-known principle in the South African law of contract. In short, this rule means “let he who signs beware”. *Caveat subscriptor* is a tacit warning to consumers signing agreements or contracts that, unless expressly provided for in the document, they are responsible for the ensuing consequences and obligations. Parties who sign are accountable for reading the information before entering into a binding agreement (Nortjie 2011);
- **The quality of information and reliability of services:** According to Erasmus (2011), one of the major challenges identified by consumers with respect to electronic contracts is the quality of information provided by merchants on their websites and how reliable their services are. In many instances, the goods arrive very late and sometimes not at all, thus the services are not reliable for the consumer. Important information was also not made available to consumers regarding the complaints process. The author states that, at times, the situation was worse for the consumer as the company’s identification was unclear and important physical information, e.g., the business address and contact details, were not supplied. Other challenges presented included delivery, insurance, risks and geographical restrictions as goods are sometimes only available in certain provinces. Consumers do not understand that when they are involved with an electronic transaction, they could be exposed to fraudulent and deceitful business practices. At times, they may be reluctant and not trust e-commerce as they are potentially more vulnerable (Bregmans 2014);
- **Data protection:** Data protection is a major challenge with regard to online contracting as it includes the degree to which the communication between the parties is secured (Technopedia 2017). Important information is exchanged, for

instance, addresses, one's banking details as well as identity numbers, all of which are vulnerable to misuse. The Protection of Personal Information Act 4 of 2013 (POPI Act) is important for businesses that process the personal and private information of consumers in South Africa. It sets out conditions for responsible parties to lawfully process the private information of data subjects and aims to protect the data privacy of consumers. The POPI Act is essential as it protects data subjects against harm, including theft and discrimination;

- **Misunderstanding of content:** Zvomuya (2017: 7) states that many consumers misunderstand or do not know the details and content of a contract. Gouws (2010) recommends that plain language should be direct and straightforward, in order to effectively and efficiently convey its message to its intended audience. Nahan *et al.* (2013) disagree with Gouws (2010) and believe that this may not be due to lack of knowledge or ability, but rather an unwillingness to scrutinize and look at the details as consumers are always in a hurry and do not take time to read. Therefore, they are not aware of their obligations and consequences that arise from being bound to a contract. Based on the review of literature mentioned above, it is apparent that although some authors are not in agreement about plain language being enforced in contracts, they agree that consumers might claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises from or related to the terms of the contract. In addition, consumers may merely just scan information, looking for what they want to know.
- **Failure of consumers to read the terms and conditions and fine print:** There is no doubt that consumers fail to read the small print in the contract, which may be written in an unambiguous language, and they may therefore fail to understand the agreement and its implications. According to Snail (2008), a valid electronic contract may be presumed to have been concluded without any reference to the ECTA, where electronic communications (such as email or SMS) between two or more parties are deemed to meet the formal constitutional requirements of the contract. If any of the prerequisites for a valid contract is absent or its validity is questionable, it might be deemed as void or voidable by a court. Christelle (2018) maintains that although consumers enter contracts on a daily basis, whether knowingly or unknowingly, not everyone

understands the meaning of the term “contract”, or even the terms used in the contract;

Hence, there is the challenge that, by concluding the online agreement, the consumer is agreeing to the terms of the contract, which may be in fine print or elsewhere on the site and the consumer clicks “Agree” without having read them.

- **Consumers do not understand the agreement and terms are often vague:** Gordon (2011) states that the consumer’s right to disclosure and information includes Section 22 of the Consumer Protection Act 68 of 2008 (CPA) which stipulates that consumers have the right to information in simple and comprehensible language. It should be readable to consumers to accommodate consumers with low literacy levels. (Snail 2017:40); and
- **The goods cannot be physically inspected by consumers:** when entering online contracts, as opposed to traditional written contracts where the consumer is given an opportunity to inspect the goods. Errors can be conveniently avoided when parties enter conventional contracts and communicate in person as opposed to when parties are at a distance and negotiate with one another using the internet as a medium. However, when parties enter into electronic contracts, the entire agreement can be concluded within seconds at the click of a button. Dahiyat (2011) explains that a challenge with electronic sales contracts is the absence of the face-to-face encounter between buyer and seller.
- **Vulnerability of the consumer:** According to Lee and Tan (2003), consumers shopping online, tend to perceive higher risks than they would with a traditional paper-based contract. The concept of purchasing online is different in comparison to traditional transactions. As online shopping has become more sophisticated, it has exposed and increased the vulnerability of consumer perception to imbalanced online shopping. For example, placing an order and receiving the incorrect item or receiving no goods after having paid the supplier with the customer’s debit or credit card (Ariffin, Mohan and Goh 2018:310);



- **Lack of rules:** There are regulations that apply to issues like jurisdiction, legality, contract creation and contract amendments under the traditional paper-based contract law. These are matters that come up in electronic contracts in the domain of electronic trading which pose a problem for the established principles of contract law. Written agreements are legally binding once they have been signed and accepted. Online internet contracts enforceability, nevertheless, is debatable. The principles outlined for written agreements typically apply to internet contracts as well, according to Boss (2015: 555-573), despite the fact that the internet is still emerging.

From the above evidence it is apparent that there is no longer a need for formal meetings to discuss a sale agreement. Electronic communication actually appears to be the preferable option. It is not difficult to believe given that practically everyone has some type of electronic device accessible to them.

## **2.9 The need for consumer protection in electronic contracts**

From the information provided above, it is evident that consumers would only fully utilize e-commerce if they have confidence in the system and the advantages, such as ease, outweigh the disadvantages (risk factor). Offering the customer complete protection against possible risks (misuse of personal data), can help build trust. Multiple sections of legislation such as the CPA and the Electronic Communications and Transactions Act 25 of 2002 (ECTA) along with its protection mechanisms, already exist in South Africa that address how to safeguard customers when they make online transactions (Van der Merwe 2008). However, despite the existing protection, there may not be adequate protection for the consumer in respect of electronic contracts, as evident from the challenges mentioned above.

## **2.10 The implications of selected legal provisions on electronic contracts**

When it comes to developing online marketplaces, regulation is critical. It can create a framework that encourages client trust, even if the customer is unfamiliar with the business or the supplier is in another country, expresses Basson (2020).

This part of the literature review discusses the impact of the various legal provisions on electronic contracts. It examines the common law requirements for contracts; the relevant consumer rights in terms of CPA and the ECTA; and their implications for online contracts.

### **2.10.1 South African common law requirements for contracts and the validity of electronic contracts**

The study investigates electronic contracts, including the legitimacy of electronic contracts, therefore it is important to review some of the criteria that such contracts must satisfy to be valid in South Africa.

Fouché (2012: 44) states that, for a contract to be considered valid, the parties involved have to meet certain basic requirements. For instance, there must be serious intention to enter into an agreement; there must be mutual consensus between contracting parties involved; the parties involved should have contractual capacity; the agreement must be legitimate; the performance must be ascertainable and possible; and the formalities for the particular contract must be complied with. Therefore, an online contract will only be legally binding upon the contracting parties if such requirements are complied with.

Firstly, each of the parties to an electronic contract must sincerely intend to create contractual duties and rights and to be legally bound and the parties must intentionally reach unanimity on all the terms of their agreement (Fouché 2012: 43). Online consumers are unaware of the extent to which their actions are restricted by legal terms in the form of “clickwraps” or “browse-wraps,” (Preston 2015: 535). Without any indication that the terms were knowingly consented to, these contracts are enforced. Consumers frequently click and browse the internet regardless of any legal obligations associated with such actions.

Secondly, there must be consensus between the parties which means that the parties involved must be of the same mind as to all the terms of the contract and that the terms should not be vague or uncertain. So, where a party misunderstands any term in the agreement, no contract comes into existence and there are no rights and obligations. Ncube (2012: 2) states that usually, the parties to a contract negotiate the terms. However, with online contracts, this is not the practice as the supplier normally determines the terms on the website and the consumer merely clicks to indicate agreement. Therefore, if a consumer happens to misunderstand the terms of a contract, they would not be able to communicate this misunderstanding effectively to the supplier before delivery takes place.

This raises certain questions, such as: What if the terms and conditions are not on the screen but on another site which the offeree does not read? Do they have consensus if one party is not aware of certain terms and conditions?

Thirdly, each party to the contract must have the contractual capacity to act, explains Molaudzi (2017: 6). This implies that people who enter into electronic contracts must be legally able to perform the specific actions that lead to the formation of the contract. Hence, it does raise certain issues as to the consequences of online contracts concluded by minors. Fourthly, the agreement must be legally possible and the performances delivered during the time of contracting must also be possible. Mbhele (2015: 11) asserts that both the agreement and the rights and obligations it creates, must be permitted by the law. The electronic contract must therefore be legitimate or legal. Fouche (2012: 88 – 89) states that lawfulness of an electronic contract will depend on the common law (it should not be against public policy or *contra bonos mores*) and statute law.

Fifthly, the agreement must be physically possible. Mbhele (2015: 11) states that it must be possible to exercise the rights and fulfill the obligations resulting from the contract at the time it is concluded. Their rights and obligations however will only ensue once a valid and legally binding contract is concluded. Lastly, if formalities are required for the creation of the contract by the parties, they must be met. With the sale of immovable property, for instance, in terms of the Credit Agreements Act 75 of 1980, credit agreements have to be in writing. Generally, there are no formalities that need to be obeyed for the conclusion of a valid contract (Mbhele 2015: 13).

In a modern world, the consumers seldom have any say in the contents of contracts and parties no longer negotiate. According to Poole (2020), although parties are supposed to determine the consequences of a contract, unfair situations may often arise where there is in fact no consensus with the online retailer and there is a lack of physical communication. The writer further states that consumers are often unaware of the existence of certain contractual terms or risks, and where they are unable to negotiate more favourable terms. In order to address these imbalances, fairness acts, such as the Consumer Protection Act, was promulgated. The CPA acknowledges the unequal position between parties. It strives to create access and encourages fair business practices. In addition, it aims to protect the vulnerable from exploitation and

unsafe and harmful products. In defense of the good intentions of the CPA, the problem lies with the enforcement of these principles (Melville 2011:1).

### **2.10.2 The implications of selected legislation on online contracts**

In South Africa, legislation exists which deals with consumer protection, such as the CPA and the ECTA. It is important to briefly mention some of the basic implications of these two pieces of legislation for electronic contracts.

#### **2.10.2.1 The Consumer Protection Act 68 of 2008**

According to contract law, the parties to a contract are free to decide whether or not they want to be duly bound to its terms. Individuals are bound by the terms appearing above his or her signature in a contract.

This is the sanctity of contract principle (Bracher 2018). Therefore, an individual who decides not to read a contract runs the risk of being legally bound by it (Christelle 2018). The CPA is at the heart of the “consumer revolution” in South Africa and an underlying feature of the Act is that it shifted the power from suppliers to consumers, by providing consumers with the right to choose. As far as unfair contracts are concerned, the CPA provides protection for the vulnerable consumers from exploitation of their consumer rights as mentioned above. However, the problem that remains is that of enforcement of these principles (Melville 2011). The Act also enables consumers, to some extent, to make informed decisions when entering into an agreement without being deceived by the supplier. Christelle (2018) points out that, previously, the burden was placed on consumer, i.e., “buyers-beware”, but today the onus has now been moved to suppliers, placing more responsibility on businesses and prohibiting unfair, unreasonable and unjust terms which are experienced in South Africa today especially regarding electronic contracts. The next section examines the implications of the CPA in respect of electronic contracts

#### **2.10.2.2 The fundamental consumer rights in terms of the CPA and their effect on electronic contracts**

Chapter 2 of the CPA lays out nine fundamental consumer rights, viz. the right to equality; the right to privacy; the right to choose; the right to disclosure and information; the right to fair and reasonable marketing; the right to fair and honest dealing; the right to fair, just and reasonable terms and conditions; the right to fair value, good quality and safety; and the right to hold the supplier accountable. This section will examine

certain rights insofar as they may impact on consumers with respect to electronic contracts.

### **2.10.3 The consumer's right to equality in the consumer market**

Discrimination is a serious challenge that was prevalent before the CPA was put into place and was a result of apartheid mentioned Mohamed, Reddy and Naidoo (2017:37). Section 8 of the CPA addresses the duty of the supplier to treat individuals equally (not to discriminate against any persons). Businesses are prohibited from treating customers unjustly on the reasons set out in Section 8 of the South African Constitution (Republic of South Africa, 1996, Section 9). Contracts between businesses and consumers cannot contain any discriminatory language, and as a result consumers cannot be denied access to goods and services.

With respect to the grounds of social origin and race, a vast majority of rural areas within South Africa have predominantly Black South Africans living in these regions, which have very little to no infrastructure in terms of government funded roads and proper residential-address numbering systems. Dube (2020) explains that these areas consist primarily of Black South Africans due to them being disadvantaged because of challenges that arose during the Apartheid era. According to Xaba (2019) this period of South African history has caused a multi-generational impact on the social-economic standing of such individuals who now still live in informal housing settlements. This causes a ripple effect for these individuals when wanting to enter into online contracts, as they are discriminated against when being denied order fulfillment by the online supplier due to their informal location.

#### **2.10.3.1 The consumer's right to choose**

This section explores the consumers' freedom of choice, which encompasses the right to select suppliers, the right to terminate a contract and the right to choose and examine goods. Sections 13 to 21 of the CPA focuses on the consumer's right to choose. The following subset of consumer rights is based on the consumer's right to choose:

- **The right to select suppliers:** The consumer has the right to choose and select whatever supplier he or she wants to do business with. According to Section 13 of the CPA, suppliers are prohibited from pressuring consumers to make additional purchases or sign contracts with the same supplier (Gordon-Davis

and Cumberlege 2013:121). As a result, a provider may not demand a customer to acquire any specific products or services in order to participate into further agreements or transactions as a condition of supplying goods or services to that consumer.

- **The right to renew fixed-term agreements:** In the case of cellphone contracts, Section 14 of the CPA relates to fixed-term agreements, which are agreements that are concluded for a specific period of time. For example, in case of cellphone contracts, businesses that do not want to let a customer go, have, in the past, come up with policies which have made it incredibly difficult for consumers to cancel. For instance, if consumers do not cancel their three-year contract on the very last day of those three years, they will be locked in with the service provider for another three years, unless they pay a massive cancellation penalty. Such tactics are now illegal in terms of the Consumer Protection Act, but that has not stopped a Durban security company from including such terms into its contract (MTN Subscriber terms 2017).
- **Rights in respect of delivery of goods/supply of services:** Consumers look at the buyer experience as a whole and not solely the cost of a product or service as it contributes to good value. Consumers have a right to timely performance, and suppliers are required to provide adequate warning of any delays in product delivery that cannot be avoided. Additionally, as per Section 54(1), the supplier must provide the services in a manner and quality that consumers "generally entitled to receive." This is significant in relation to online contracts in that it applies to the quality of the product itself, timely delivery service, (which must be in keeping with the agreed upon delivery date and time) and support services, as well as administration. The customer is entitled to have the online supplier "remedy the defect" if they do not deliver the products and services by the agreed time and date or refund the price paid or a reasonable portion thereof (Section 54 (2)). Consumers have a right to products that are safe, high-quality, and "free of faults," as stated in Section 55 of the Act. Suppliers are required to deliver high-quality services and safe goods and services in order to satisfy the rights to a fair price, good quality, and safety. Additionally, the Act stipulates that the seller agrees to deliver the goods or services at the agreed-upon location and time, at his own expense, and that the

risk in the goods remains with the seller until delivery to the consumer. This is an implied condition of every contract for the supply of goods or services (Section 19; Reddy and Rampersad 2012: 7409)). These conditions may be amended by the parties upon mutual agreement. Therefore, these standards for the delivery of goods and the provision of services are critical when it comes to electronic sales contracts as the consumer generally does not have sight of the actual goods when the contract is concluded.

### **2.10.3.2 The consumer's right to privacy**

The right to privacy in terms of the CPA is derived from Section 14 of the Constitution. The CPA consists of a broad range of consumer rights with regards privacy (Kirby 2009: 29). Section 11 deals with unwanted direct marketing. As a result this section offers individuals the right to pre-emptively block any approach or conservation addressed to him or her if the conversation is primarily for the cause of indirect marketing. Unwanted direct marketing includes aspects such as emails from companies promoting their products or services. According to Section 11 of the Act, the right to privacy also includes the ability to refuse any unsolicited communications and to request that the party that initiated the communication avoid any similar future communications. (Section 11 of the CPA).

Therefore, Section 14 of the CPA establishes the right to privacy (Jacobs, Stoop and van Niekerk, 2010: 320). With respect to electronic contracts, this right includes, among other things, the consumer's ability to limit unwanted direct marketing. These provisions have ramifications for both online retailers and consumers as online service providers, such as Takealot, may engage in direct marketing to attract business. Sections 11 and 12 therefore prohibit unwanted direct marketing, such as when a supplier contacts a consumer directly or via mail, pop-up adverts, or electronic communication to promote any goods or services (Section 11; Hamann and Papadopoulos 2014: 44). These regulations apply to both in-person and online purchases. Unwanted direct marketing can be restricted by the consumer, where an individual rejects or requests for the practice to stop. Such marketing can also be blocked in advance by the consumer (Havenga, 2010: 488).

Gladwin and Civin (2014: 13) observe that, thanks to technological advancements, consumers can now be contacted via SMS, email and phone calls at any time of day

or night. Section 12 therefore restricts direct marketing at specific periods to safeguard consumers' right to privacy.

### **2.10.3.3 The consumer's right to cancel/return goods:**

Consumers have the right to return items under Section 20. This can be done when the products purchased are unsafe or defective, and they have a reasonable period of time to do so in order to receive a refund. This right is applicable when shopping online. As a result, if a consumer feels that the purchased goods are harmful or do not resemble what was ordered, the consumer may request a complete refund. Additionally, if the online supplier is unable to provide the advertised product as guaranteed, this will constitute misrepresentation. Thus, the customer will be entitled to a full refund (Section 47).

If the agreement was made by direct marketing and the customer wants to cancel, they have the right to return the goods and receive a full refund; where the customer was denied an opportunity to examine the goods prior to delivery and has rejected delivery (repudiated); and where the goods are unsuitable for the purpose intended use and the supplier was aware of that (Section 20). The right of the consumer to "cancel agreements that arose out of direct marketing" is especially significant to online contracts. Amalsyah, Bangsawan and Rouly (2020:55) express that a vast majority of websites use direct marketing in the form of pop-up advertisements.

According to **Section 43(2)**, the consumer must be provided with the opportunity to review the itemized receipt, correct any mistakes and withdraw if desired.

### **2.10.3.4 The consumer's right to disclosure and information**

Many articles are written in the press and there are radio interviews about the subject (Knowler 2019) which point to the big gap in understanding the fine print terms and conditions of contracts. A significant number of consumers struggle with literacy, making them vulnerable because they become overwhelmed by information. According to Newman (2010: 745), given the low literacy levels of South African consumers, there may be onerous contract terms written in fine print in an incomprehensible language. Therefore, in accordance with Section 22 of the CPA, consumers have a right to information in "plain and understandable" language. As a result, suppliers must adhere to this requirement when drafting contracts (Stoop 2011;



Reddy 2012: 594). Consequently, the above-mentioned requirements certainly apply in the case of online contracts.

Due to the fact that business transactions are conducted through contracts, product labeling disclosures, as well as the price of any goods or services sold, are also required. As a result the right to disclosure and information is crucial. According to Newman (2010), South Africa's literacy levels are so poor that the corporate sector has no choice but to accept the responsibility to make written contracts more comprehensible for consumers. Furthermore, Van Deventer (2021:8) states that online contracts frequently make use of hyperlinks, which places the burden on the consumer to find the relevant terms and read them. Although this will only apply in circumstances when consumers choose to access and read the terms of the contract, it still acts as a deterrent to proper informed consent by the consumer.

The author also notes that multiple studies have demonstrated that reading text in an electronic format often results in reduced consumer engagement and understanding.

Reddy and Rampersad (2012: 7407) explain that low literacy levels makes it difficult for consumers to comprehend the provisions of a business deal when contracting online. The authors further state that, as a result, they are unable to pursue their rights since they are ignorant of electronic contracts and lack the understanding necessary to exercise their rights. Even customers with a fair level of literacy may lack the experience or understanding necessary to comprehend the nature and implications of the terms and conditions included in the contract.

#### **2.10.3.5 The consumers right to information**

The right to information in a language that is clear and understood is a specific right that is incorporated into the broader right of information and disclosure. An average consumer with average literacy should be able to grasp the terms of the agreement they are getting into without undue effort, hence agreements should be written in a way that allows for that (Section 22(1)(a)(b)). Section 32(1) provides that consumers are further protected by the right to the “cooling-off period” in terms of which a consumer has 7 business days to give written notice to cancel the transaction, without reason or penalty (Section 16 (3) of the CPA). The CPA fully applies to those consumers who enter into traditional written contracts, however, with electronic contracts, some sections of the CPA will not apply where the consumer protection

principles of the ECTA apply. Kapdi, Sulaiman, Twala and Achmat (2016) are of the opinion that it is for the above-mentioned reason that consumers may be confused and unaware about which consumer protection principles should apply to electronic transactions, i.e. the provisions of the ECTA or the provisions of the CPA.

### **2.10.3.6 Notice of disclaimers**

According to Mohamed, Reddy and Naidoo (2017:40), disclaimers generally limit or exclude the liability of one of the parties to a contract. Section 49 of the CPA deals with disclaimers and requires businesses to make disclosures to consumers of specific terms and conditions. It applies to all agreements and disclaimers, whether written or in the form of a notice or sign. Although the Act does not forbid the use of disclaimers, businesses are bound by Section 22 and they have to explain the impact of such disclaimers in "plain and understandable" language (McGee 2010:20).

### **2.10.3.7 The consumer's right to fair and just marketing**

According to Jacobs, Stoop and Van Niekerk (2010:318), one of the key consumer rights that promotes ethical advertising and sales activities is the right to fair and responsible marketing.. In the case of electronic contracts section 30 provides for significant limitations as to how suppliers can promote products and services to customers. The CPA addresses supplier marketing activities in three ways: firstly, it declares that certain marketing tactics are illegal. Bait marketing is one instance of this unscrupulous marketing. According to Mosdell, Parma and Cox (2015) Bait and Switch marketing refers to the practice in which some suppliers may opt to advertise their products or services in a misleading manner, in that they create an offer that is seemingly attractive in order to entice the customer to their website. However, when the consumer clicks on the website they are pressured/ persuaded to buy a product of more expensive value.

An example of this can be seen in that of an online supplier advertising a fur coat that is made from high-quality materials, but is being sold at a low price. Wishnia (2021) explains that a consumer who sees a pop-up advertisement for instance, becomes curious and gets lured. Upon entering the website, they notice that fur coats are no longer available at the initially advertised price and thereafter suggestions from the website of similar products at a more expensive price range are presented to the

consumer. Bait marketing is illegal because it deceives or misleads customers about the availability of goods at the claimed price.

#### **2.10.3.8 The consumer's right to fair and honest dealing**

The consumer is safeguarded from dishonest and unconscionable conduct by the right to fair and honest dealings. Formal written agreements should be established so that consumers may comprehend the terms of the agreement in order to make informed decisions (Stassen 2009).

#### **2.10.3.9 The right to fair, just and reasonable terms and conditions**

Chapter 9 of the CPA deals with the right to fair, just and reasonable terms and conditions. In terms of the common law principles applicable to contracts, the contracting parties are able to choose whether or not they want to be bound by a particular contract's provisions. Bregmans (2014) advises that before the CPA went into effect, courts frequently declared that clauses in contracts limiting one party's liability had to be written in plain language and clearly highlighted. In terms of Section 48(1), suppliers are prohibited from supplying goods or services on terms that are unfair, unreasonable or unjust. With the introduction of the CPA, a provider must not market goods or services in an unfair, unreasonable, or unjust manner (Section 48(1)(b)). If consumers are forced to accept "no-refunds under any circumstances" when shopping online, this is unreasonable and illegal because it is overly one-sided in favour of the retailer. In addition, Section 16 provides consumers with a "cooling off period" and the terms under which a deposit reimbursement is appropriate are outlined in Section 17, which regulates the consumer's right to cancel. According to Kerchhoff (2020:23), if the customer relied on a false, misleading, or deceptive representation covered by Section 41, the advertisement may be considered unfair, unjust, or unreasonable.

According to Van Deventer (2021:7), online contracts are unique from other contracts in their form and way of presentation. The fact that online contracts are weightless and not bound to a printed document, has important consequences regarding their physical attributes. Online contracts are typically longer than paper-based standard form contracts. Van Deventer contrasts a consumer who purchases clothing at a brick-and-mortar store with one who makes the same purchase from an online supplier such as takealot.com: the former is only subject to the return policy of the retailer (which is

printed on the back of the receipt), whereas the latter is required to agree to terms and conditions in an online contract that may be more than 50 pages long. This may be deemed as unfair and unjust to the consumer in that it is unreasonable to be overwhelmed with lengthy terms and conditions.

Online contracts, or standard-form contracts that appear in electronic form, are the subject of Van Deventer's (2021:219) analysis in the South African setting. It is more challenging to establish assent to online contracts than it is to do so with conventional standard-form contracts because of their distinctive qualities, such as their length and ubiquity. In general, expecting consumers to read online contracts is simply unreasonable, as the cost of reading (in terms of time spent) outweighs the potential benefits. Furthermore, evidence shows that consumers do not perceive online contracts in the same manner as their paper-based equivalent stated the writer.

#### **2.10.4 Implications of the Consumer Protection Act 68 of 2008 with respect to electronic contract consumer challenges**

Earlier in the chapter, the consumer challenges relating to electronic contracts were discussed. The CPA sets out certain rights and obligations which apply to online transactions and, in fact, resolves some of the consumer challenges mentioned earlier. The Implications of the CPA with respect to the electronic contract consumer challenges discussed above

- **Misleading or unfair terms:**

As noted above, the terms in an online contract can sometimes be misleading or unfair (Roy 2019). According to Christie and Bradfield (2011:14), service providers inflict unfair terms upon the consumer, such as early termination fees and late penalties in typical formal online contracts.

Section 48 of the CPA prohibits unfair, unjust or unreasonable terms while Section 41 addresses false, misleading or deceptive representations. Section 48 (3) states it would mean that online contracts cannot falsely state or imply for instance, that that the goods have certain ingredients, characteristics or accessories; or are of a particular standard or quality; or are new or unused, if they are not; or are available or can be delivered within a specified time.

According to these provisions, terms in an online contract should not be unfair and misleading. This is achieved by the CPA which provides for certain mechanisms to protect the consumer. Prem (2016), for instance, states that fines may be imposed by the Consumer Protection Tribunal for prohibited or required conduct, such as marketing goods in a false or misleading manner. Also, Devin (2020) points out that an administrative fine imposed under Section 112 of the CPA but it cannot be more than ten percent of the respondent's annual turnover. The author states further that this can therefore be seen as a sufficient remedy for consumers and a deterrent to a would-be breach of CPA regulations with regard to misleading information and contracts. A fine of 10% of annual turnover is indeed a significant amount of funds to be charged to any online business. From the above discussion it can be noted that the CPA does offer adequate protection with respect to misleading or unfair terms.

- **Terms are vague or not in plain language:**

Another challenge that was mentioned is that the terms in an online contract can sometimes be vague (Christelle 2018). In terms of common law principles, Fouché (2012: 44) mentions that, where the terms in a contract are vague, consensus cannot be reached. This would imply then that one of the requirements for a valid contract have not been satisfied.

**Section 22 of the CPA**, which is titled "Right to information in plain and understandable language" stipulates the following:

If an ordinary customer (i.e., one with average literacy abilities for online contracts) can read the notification, document, or visual representation, then it is considered that they can understand the content, relevance, and importance without undue effort.

- **The quality of information and reliability of goods and services:**

One of the major challenges identified by consumers with respect to electronic contracts relates to the quality of information given by merchants on their websites and the reliability of their services (Erasmus 2011).

Part H of Chapter 2 of the CPA makes provision for the following in regard to reliability of goods and services: Consumer's rights to demand quality service and Consumer's rights to safe, good quality goods

Poole (2020) explains that the CPA provides a fair and reliable foundation upon which equal and lawful trade can take place on online platforms, inclusive of the aforementioned provisions for just and honest reliability of both goods and services.

- **Consumers do not have the opportunity to physically inspect the goods:**

As discussed above, consumers do not have the opportunity to physically inspect goods. Atkinsons (2020) maintains that, in terms of the CPA (Section 44), consumers are entitled to inspect and examine goods. However, this could appear to be a right that exists only in theory when it comes to online shopping. The author further states that reality dictates that an online shopper is not going to be able to inspect a laptop screen. The CPA obliges suppliers of goods and services to provide full and comprehensive information about the products and services they offer. Poole (2020) however observes that, although they form the basis of most consumer-based rights and obligations, there are certain instances of online transactions where the consumer rights reflected in the CPA are not practiced.

- **Challenges relating to terms and conditions being in fine print or not being available on the website:**

Another challenge experienced is that consumers fail to read the small print in the contract, which may be written in an ambiguous language, and they may therefore fail to understand the agreement and its implications. Obar (2022:2) mentions that the implications of this is that consumers have shown trends of ignoring or merely browsing over the terms of service, privacy policy or terms and conditions documents when entering into an online contract. This is further supported by the research by Obar (2022) which found that a vast majority of young adults will tend towards avoiding reading the terms and conditions documents in any meaningful capacity, and thus could very easily miss important pieces of information found within and could serve to negatively impact the consumers rights by not being fully aware of what they are agreeing to.

The CPA provides for terms and conditions in an online contract to be fair, just and of reasonable terms, in order to allow for the consumer to be protected when engaging in such contracts. However, from the suppliers' point of view, Section 52(h) is advantageous since it addresses: whether the consumer knew or **ought reasonably to have known** of the existence and extent of any particular provision of the

agreement that is alleged to have been unfair, unreasonable or unjust, having regard to any.

Thus, there is the challenge that the consumer is agreeing to the conditions of the contract by concluding the online agreement which may be in fine print or elsewhere on the site and the consumer clicks “Agree” without having read them. On the whole, challenges with respect to such terms being in fine print or not being available on the supplier’s site, are not directly addressed by the CPA.

- **Vulnerability of the consumer:**

In the challenge of vulnerability to the consumer, it is often seen when browsing the internet and shopping online, that consumers are bombarded with cookies on websites which in some cases force the consumer to ‘accept’ in order to continue browsing the website. Although cookies are necessary for the modern Internet, they compromise your privacy. Vasic (2022) mentions that as a necessary part of web browsing, cookies on websites enable web developers to provide you with more personalized and efficient internet visits. Another example of this is pop-up advertising for specials appearing and websites tracking consumer habits. The data protection aspect is addressed in the next section.

The CPA does not directly address the challenge of vulnerability of consumers, however, Section 3 of the CPA mentions certain categories of vulnerability, such as those with low literacy. We have discussed that the CPA provides protection for the vulnerable consumers from exploitation of their consumer rights as mentioned above. However, the problem that remains is that of enforcement of these principles (Melville 2011).

- **Data protection:**

Due to the fact the CPA does not sufficiently provide for the complete and total protection of online consumers engaging in contracts, the POPI Act has been enacted in order to meet shortfalls that may arise in the area of online data protection of consumers with respect to their personal particulars, such as passwords, addresses, banking details and identity numbers which are exchanged when the consumer is concluding contracts online. Olsen (2021) explains that the goal of the POPI Act is to

protect **data subjects from security breaches, theft, and discrimination in online contracts.**

The CPA does not address the data protection challenges of consumers with respect to online contracts. However, the ECTA does address these challenges and are discussed in the next section.

- **Certain provisions of the CPA do not apply to online transactions**

Atkinsons (2020) states that the Consumer Protection Act (CPA) does not apply to internet transactions in some circumstances, according to the Consumer Goods and Services Ombud (CGSO). The CGSO has stated that online shopping transactions are exempt from the CPA's regulations on refund policies after direct marketing, consumer rights regarding the delivery of goods and the provision of services, pricing disclosure, sales records, and catalog marketing (Atkinsons 2020). Instead, consumers may turn to the ECTA. Toutlines the conditions under which transactions involving direct marketing may be canceled as well as a cooling-off period for such transactions.

#### **2.10.4.1 Penalties and remedies for non-compliance of CPA**

The CPA provides for certain penalties and remedies for breach of regulations contained within the act, such as the challenges discussed above. The penalties for such noncompliance are the following:

- White (2011: 10) explains that a CPA violation attracts a possible fine or imprisonment for a period not exceeding 12 months or both a fine and imprisonment.
- Furthermore, if a person is guilty of a breach of confidence, the penalty is either a fine or a term of imprisonment of not more than ten years, or both fine and imprisonment. White (2011: 10) explains that when a person exposes any personal or confidential information about another person's affairs gained while performing any role under the CPA, it is considered a breach of confidence.
- The National Consumer Tribunal may impose administrative fines for prohibited or required conduct. Prem (2016) explains that an administrative fine may be imposed in terms of the CPA.



Various parties, such as consumers and credit providers, may approach the Tribunal to have their case heard. It will hear all sides of a matter before making a decision that is equivalent to one reached by the South African High Court. The tribunal will determine the punishment for the offences made.

#### **2.10.4.2 The Implications of the Electronic Communications and Transactions Act 25 of 2002 with respect to the electronic contract consumer challenges**

When examining the legal provisions that apply to electronic contracts, Chapter 7 of the ECTA is quite significant as it deals specifically with consumer protection. The discussion on the ECTA examines how the consumer challenges mentioned earlier are addressed, as well as how consumer protection and protection of personal information are dealt with, in order to provide for the facilitation and regulation of electronic contracts and transactions as stated in the Act.

Chapter 3 of the ECTA discusses the legal framework for facilitating electronic transactions. This chapter is an important part of the Act as it clears up the legal uncertainty that existed regarding the formation of electronic contracts. Chapter VII of the Act pertains to consumer protection which is one of the key objectives of the Act. It provides various means of consumer protection, such as requiring web site owners to display certain information for the benefit of potential customers and allowing for the cancellation of a transaction during a specified "cooling-off" period explained Johnson (2003:24). The specific challenges that are addressed are:

- **Challenge 1: Lack of rules for electronic contracts**

The challenge of lack of rules for electronic contracts in regard to the ECTA, pertains to that of the recognition of electronic contracts as being legal as well as acknowledging or setting out rules on various aspects of such contracts, such as what signature would be in regards to electronic contracts.

According to Sectigo (2021), the ECTA does not sufficiently meet the standards of electronic signatures, when compared to that of what is found in the international online standard. This is so, in that, both the USA and European Union regulatory boards for ecommerce protection provide for more advanced electronic signatures,

such as: Simple Electronic Signatures (SES), Advanced Electronic Signatures (AES), and Qualified Electronic Signatures (QES), whereas the ECTA only provides for AES.

- **Challenge 2: Factors that contribute to failure to read terms and conditions:**

Snail (2015:221) explains that the core difficulty regarding the formation of online contracts is establishing the legal basis for their enforcement and that this is so because consumers generally do not read or understand the terms of the contract, and as such, there cannot be a true meeting of the minds.

Chapter 7 of the ECTA focuses primarily on consumer protection. This only applies to electronic transactions, to achieve the objectives of the law regarding consumer protection. Their purpose is to "promote legal certainty and confidence in electronic communications and transactions" and to "create a safe and effective environment for consumers." Even though the ECTA provides for consumer protection mechanisms with regard to the aforementioned areas, the ECTA does not however provide specific context and coverage (in regard to failure to read terms and conditions) for the areas and challenges of the type of language used as well as access to terms and conditions. In that, the use of technical legal-terms is seen as a deterrent to consumers due to their lack of understanding of specific jargon and thus results in their failure to read terms and conditions fully.

- **Challenge 3: Data protection challenges**

This challenge arises from the fact that online contracts and transactions are subject to various risks, one of which is the disclosure of personal information. Consequently, Johnson (2003:24) points out that consumers in the online environment deserve some level of legislative protection in this area. As discussed above, the protection of the personal and private information of the consumer is an obvious challenge with online contracts. Therefore, Chapter 8 of the Act provides for the protection of personal information obtained through electronic transactions by outlawing it and the prohibition on the collection of personal information by institutions or persons. These obligations are thus placed on individuals or entities who would otherwise seek to attempt to obtain data through means of electronic contracts.

Section 43 of chapter 7 which pertains to information to be provided by the supplier states that one of the obligations imposed by the Act on a provider, is to provide a secure payment method for consumers to pay for goods that they have purchased.

- **Challenge 4: Challenges relating to the availability of information to the consumer**

As noted above, consumers experience challenges relating to the quality of information provided by suppliers on their websites. Chapter 7 sets out the information that must be provided to the consumer. Online suppliers must comply with section 43(1) by providing a list of information that includes their physical address and contact number, email address, the procedure that a consumer can use to track an order after a transaction has been completed, and the supplier's security contract.

- **Challenge 5: Cancellation and the cooling-off period**

The challenge faced with respect to cancellation of a product or service relates to the cooling-off period, for instance where, due to direct marketing by a supplier to a consumer in an online setting where the consumer impulsively responds to offers from the supplier and wants to cancel.

According to Section 44 (Chapter 7 of the ECTA), there must be distinguishing factors when deciding whether the CPA or the ECTA should apply to electronic contracts, as this may cause consumer uncertainty about which legislation takes precedence. Mashebela (2018: 17) states that this is significant from the standpoint of consumer protection, as customers must know which statute to use when asserting their consumer rights stated. According to Section 42(2), the provisions of Section 44 do not apply to all electronic transactions including financial services, auctions, everyday items, goods manufactured to the consumer's requirements, personalised goods, and cases in which the consumer has unsealed audio or computer software. The Act provides that only the cost of returning the goods would be the consumer's responsibility and further that, within 30 days of cancellation, the consumer must receive a full refund.

- **Challenge 6: Challenges with respect to the quality of information and reliability of services**

One of the consumer challenges mentioned relates to the quality of information offered by suppliers on their websites and the dependability of their goods and services. For example, the goods are occasionally not delivered on time or they are delivered to the incorrect address, and in other cases, goods are not delivered at all or services are not rendered. According to Torevasei (2019: 16), consumers are frequently left in the dark about how to file a complaint or resolve a dispute on websites. In certain cases, the company's information is unclear, and information on the company's location and contact information is not provided. The author adds that consumers also face the threat that personal information such as addresses, financial information and identification numbers could be misused.

## **2.11 Conclusion**

Based upon the above discussion it is reasonable to conclude that the CPA does address a majority of the challenges faced within the discussed challenges. However, the ECTA does not provide for a definitive solution for all areas of the challenges in its entirety. Hence, although some aspects are discussed it may not solve the problem of the consumer and there is need for more protection as this can be seen in challenge 5: Cancellation and the cooling-off period. In future, the ECTA needs to be reworked and researched further for more adequate protection mechanisms.

## **CHAPTER 3: RESEARCH METHODOLOGY**

### **3.1 Introduction**

Most research studies are informed by and built on certain theoretical perspectives called methodology. Research methodology refers to the overall strategies or techniques used to integrate different components and analyse information about a research problem (Kumar 2011). Chapter 2 reviewed literature pertaining to electronic contract challenges of consumers and the implications of selected consumer legislation. This chapter discusses the research methodology utilized and describes the research paradigm that will be used to guide the study, with an emphasis on research methods that will be used in the study. It presents the research design, sampling strategies, research tools, data collection, data analysis methods, reliability and validity which will be unpacked below, as well as how validity and reliability will be assessed in the study.

### **3.2 Research design**

There are multiple types of research design from which a researcher can opt to select from, all with varying characteristics. The statement is supported by Creswell and Creswell (2017) who describes the four main types of research designs, viz. correlational, explanatory, exploratory and descriptive design. The authors describe descriptive design as a process of design in which the characteristics of a population or situation are described. It is based on facts and accurate measurements, in which the results are arranged into patterns.

Due to the methodology of this research study being largely quantitative, the descriptive design has been selected as the most appropriate approach. According to Murphy (2018), the advantage of descriptive design is that a significant amount of data can be collected in a short time. It is the most appropriate design to describe the responses collected and analyze the data to explore online consumer challenges in electronic sales contract and protection offered by South Africa's existing consumer protection legislation.

### **3.3 Research methodology approach**

Research methodology can be described as the specific procedures or systematic plan which focuses the research process. This is achieved through a specific manner in which research data is selected to be analyzed and interpreted by the researcher

(University of Witwatersrand Johannesburg 2019). There are 3 different approaches to research methodology which can be selected, each yielding an array of ways to both collect and analyze data. These are:

- Quantitative Research
- Qualitative Research
- Mixed Methods Research

McLeod (2017) states that qualitative approach refers to empirical research where the data is not in the form of numbers. This implies that qualitative researchers study things in their natural settings, endeavoring to interpret and make sense of phenomena in terms of the meanings people bring to them (Surbhi 2017). Quantitative research, on the other hand, accumulates data in a numerical form which can be divided into categories or in rank order. This type of data can be used to construct tables and graphs of crude data (McLeod 2017). In this study, the quantitative approach will be used.

The quantitative research approach is relevant in this context and a cross-sectional survey will be carried out in accordance with the quantitative approach of research. According to Leedy and Omrod (2001), the quantitative research method deals with quantifying and analyzing variables to get results. An example of quantitative research is survey research (Creswell 2013). The survey research method will be adopted in this study.

A cross-sectional survey is the best research design for the study. According to Cherry (2022) a cross-sectional study looks at data at a single point in time. The participants in this type of study are selected based on variables of interest. It can also be characterized by its features which include, analysis of the prevailing characteristics of a given population, and does not involve manipulation of variables.

### **3.4 Research Strategy**

In research, there are many different techniques that can be applied. The quantitative method is connected with a positivist approach, whereas a qualitative investigation is linked to an interpretivist approach (Creswell and Creswell 2017). The most common strategy in the positivist approach is a survey. A survey, according to Johnson and Christensen (2012), is a tool used to provide answers to "who," "what," "when," "how

much," and "how many" inquiries. A deductive approach is connected to the survey instrument.

The applied research design in this study will be a positivist research strategy consisting of an online survey. This strategy permits the researcher to gather data which can be analysed using statistics, both descriptive and inferential.

### 3.5 Survey research

The study will entail a survey through the use of questionnaires to determine the nature and extent of consumer challenges in respect of electronic contracts.

The questionnaire determines levels of awareness of the CPA and ECTA legislation, the ability to identify potential challenges that can arise from research, and the nature of problems experienced by consumers when entering into electronic contracts.

Questionnaires were the study tool utilized to get the data. The questionnaire is a useful instrument for revealing participants' thoughts, opinions, and attitudes and is a very popular method of data collecting in management studies (Ghauri and Gronhaug 2002: 94).

The researcher will create a self-completion questionnaire that is structured in accordance with the study's objectives and after reviewing the relevant literature. The purpose of the survey will be to accomplish the study's primary objective. Therefore, it is crucial that the questions are precise and relevant. The best way to efficiently gather information from respondents who are consumers is through a self-completion questionnaire. These benefits of questionnaires have been summarized in Table 3.1.

**Table 3.1: Advantages of questionnaires**

Advantages
<ul style="list-style-type: none"><li>• A huge number of people can receive the same instrument (questionnaire).</li></ul>
<ul style="list-style-type: none"><li>• They give respondents the opportunity of completing the questionnaire at their own pace.</li></ul>
<ul style="list-style-type: none"><li>• Because there is no interviewer, there is no possibility of bias.</li></ul>

- |   |
|---|
| <ul style="list-style-type: none"><li>• They offer the greatest degree of anonymity.</li></ul>  |
| <ul style="list-style-type: none"><li>• The instrument can be administered either personally (researcher or research assistant), through mail or via internet or email.</li></ul> |

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

The questionnaire will be administered to the sample of consumers to elicit their understanding of their rights under the CPA, as well as their challenges and perceptions pertaining to online contracts. Both closed-ended and open-ended questions were included in the questionnaire. The open-ended questions sought to gather justifications and descriptions of consumers' experiences and their overall views relating to online contract challenges and consumer protection. The statistical package for the social sciences, SPSS, was used to analyze the quantitative data.

### **3.6 Population and Sampling methods**

Mack (2019) describes a target population as any group of individuals who are involved in a study. In other words, a group of individuals who are intended to be a part of a study and whose participation plays an integral part in the findings of a study. A population consists of units, people or things. It is referred to as people or entities from whom gaining information is vital as it affects the purpose of the study (Du Plooy-Cilliers *et al.* 2017).

The research design describes the population and sample of the study's participants as well as the criteria used to choose them. Typically, the sample is chosen from the larger population that is the subject of the study. Welman, Kruger, and Mitchell (2005: 55) contend that in order for study findings to be acknowledged, the sample, or identical replica of the population, must be representative of the population.

The target population for this study comprised consumers in the metropolitan Durban area. according to the World Population Review, it is estimated that Durban has around 3 777 921 people. Since, in terms of Section 1 of the CPA, the definition of consumers includes those who utilize goods and services this implies that there are approximately 3 777 921 consumers in Durban. This sample size was guided by Survey System Software which suggests that for such population, a sample of 384 was sufficient for the researcher to draw inferences. The sample size included 384



consumers who have entered into online contracts. Hence, the sample size in this study comprised 400 consumers to account for incomplete or obsolete questionnaires as well as non-responses.

Sampling can be defined as representation or depiction of a smaller data set from a larger target population of a research study that is chosen and selected for analysis to be inferred (Kenton 2019). In research, the purpose of this is to allow for the researcher to gain knowledge and understanding of the target population through insights from the characteristics of the sample population. The reasoning behind the use of a sample population in place of the target population in its entirety is to allow for research to be less time consuming and less cost inductive on the part of the researcher (Bhat 2019).

The sample size is very important for this study due to the fact that it is the representation of the entire population. It will therefore be almost impossible to conduct a survey with every individual in the Durban metropolitan area who is engaged in online-shopping, so a sample representing the population is required. For this reason, there are two sample possibilities that the researcher can choose from, viz. probability sampling and non-probability sampling. Random selection is used in probability sampling so that each individual in the population has a known likelihood of being selected. When this approach of population selection is adopted, it is typically assumed that a representative sample will result from this procedure (Creswell and Creswell 2017). Non-probability sampling is where a non-random sampling selection method is used. This would mean that some individuals of a population have a better chance of being selected for a survey than others (Ogunsanya 2019). Within the confines of non-probability sampling, there are a subset of techniques, namely quota sampling, convenience sampling, snowball sampling, self-sampling and purposive sampling (Ogunsanya 2019).

### **3.6.1 Sample Selection Method**

Based on the above sampling strategies, the participants in this study were selected using a non-probability sampling technique called convenience sampling. Zikmund, Babin, Carr, and Griffin (2013: 392) define convenience sampling as the sampling method of obtaining those individuals or units that are most readily available. As a result, convenience sampling is therefore the most convenient sampling approach,

especially due to the COVID-19 pandemic and the necessary restrictions being imposed it was challenging to implement other sampling methods.

A snowball sampling technique is deemed most appropriate to identify the online shoppers in the Durban metropolitan area. Given that banks and retail stores are legislatively prohibited from disseminating client information (Abdulrauf, 2020), no data base was used in this study. Surbhi (2018) clarifies that the snowballing technique is ideal when the characteristics of the sample are rare and difficult to find. The reason the researcher selected this method is that companies are not allowed to divulge personal information of their clients. Convenience sampling will be used to select the initial 10 respondents.

In keeping with the snowball technique, the researcher identified a convenience sample of 10 respondents who were accessible to be used as the initial respondents. They were asked to nominate other respondents to participate in the survey.

### **3.6.2 Margin of error and confidence levels**

Online shoppers in the Durban metropolitan region were the target market for a population of 250 000, according to The Research Advisors (2006) and The Survey System (2007).

According to survey system software, at a confidence level of 95%, and a margin of error of 5%, a sample size of 384 is required. Stats SA states that as of the 2011 South African Census, the city of Durban consists of 595,061 people. Of this total population, only 479,619 people fall within the age demographic of being eligible for making online purchases.

The margin of error refers to the amount of error that that can be tolerated (The Survey System 2007). If 90% of respondents answer yes, while 10% answer no, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55. The confidence level is the amount of uncertainty you can tolerate (The Research Advisor 2006). For instance, if there were 20 yes-no questions in the survey. With a confidence level of 95%, one would expect that for one of the questions (1 in 20), the percentage of people who answer yes would be more than the margin of error away from the true answer. The true answer is the proportion an individual would get if exhaustively interviewed everyone. A higher confidence level thus requires a larger sample size.

### **3.7 Data Collection**

This study conducted a survey using questionnaires as part of the data collection method which enabled the researcher to gain an in-depth understanding of the experiences and insights of online consumers. Statistics, on the other hand, assist in consolidating facts and turning quantitative data into meaningful knowledge to aid in decision-making (What's the difference between qualitative and quantitative research 2017).

This study utilized surveys and questionnaires as a data collection method which enabled the researcher to gain an in-depth understanding of experiences which are subjective. It further focuses on the interest in describing the experiences in a comprehensive substantial manner with no need to quantify data (Polkinghorne, 2005).

The most appropriate data collection method to use within this study was questionnaires. To conduct the survey, participants were sent an online questionnaire via a generated link in order to gain an understanding about their opinion, views and beliefs on a specific phenomenon. Questionnaires were utilized within this study as it helped in getting a better understanding of participant's thoughts, feelings and opinions. Furthermore, questionnaires form a conversation with the aim of gaining information based on questions that are open-ended.

The advantages of a questionnaire are that it enables the researcher to interpret and understand the participants' answers as well as ask participants to clarify or make a more detailed point of a specific question. A limitation however is that the researcher cannot force a participant to answer a specific question or take part in the questionnaire. The information and findings from participants gathered from the questionnaires then answered the research questions of the study. A standardized questionnaire with a few open-ended questions occurred within this study which led to the collection of data through these questionnaires.

### **3.8 Research instrument**

A prepared questionnaire was the instrument used to collect data from online consumers. A purposive sample comprising 384 respondents was selected.

According to Moffitt (2019), a typical questionnaire is a structured data gathering tool, with most questions pertaining to specific information or providing respondents with a

selection of response options. This makes questionnaire data particularly suited for quantitative analysis. The survey's questions were made up of themes that are directly relevant to the study's objectives. This illustrates the connection between the study's objectives, the questions being asked, and the information being gathered. An online instrument such as survey monkey or google forms was used to conduct the survey. The draft questionnaire is attached.

The questionnaire is developed by the researcher through reading constructs and content that emerged from the literature review. To validate the questionnaire, factor analysis (exploratory factor analysis and confirmatory factor analysis) was performed on the constructs. These were tested using both discriminant and convergent validity. The questionnaire took approximately 15 minutes to complete.

A rating scale, viz. the five-point Likert scale was used as a means to rate the responses of the respondents, where strongly disagree = 1 and strongly agree = 5. The goal of the Likert scale, which is the most common technique in questionnaire design, is to measure intensity of feelings relating to the area in question (Bryman 2012: 166).

### **3.9 Question format and type**

The questionnaire was divided into the following sections:

- Section A – Demographic data
- Section B – Nature and Extent of Consumer Challenges (Closed Questions)
- Section C – Implications of Consumer Challenges
- Section D – Awareness of Consumer Rights
- Section E – Remedies Available and Recommendations Regarding Alternate Measures

Closed-ended questions include a set of pre-set options from which participants must select the most appropriate response, whereas open questions allow respondents to respond in any way they see fit. Because closed questions are easier for responders to answer, self-completion questionnaires frequently feature fewer open questions (Bryman 2012: 233). Open-ended questions, on the other hand, can be very beneficial to a study since respondents can react freely in their own words and present ideas or

opinions that differ from the typical or predefined options supplied in closed questions. This study's questionnaire included both open-ended and closed-ended questions.

The nature and extent of consumer challenges were measured using closed questions. Furthermore, a series of questions were posed to determine whether consumers were aware of the law governing the acquisition of online contracts as well as the numerous legal mechanisms for redress. In business research, this form of quantitative analysis has previously proven to be effective (De Jager and Van Zyl 2013: 752).

The questionnaire included open-ended questions to gather feedback from the consumers regarding their personal experiences and viewpoints on challenges with online contracts and consumer awareness. This collection of information was critical for determining if deceptive business practices continue after the CPA and ECTA takes effect, and whether customers are aware of the legal ramifications of these acts.

### **3.10 Pre-test**

According to Hu (2014), pre-testing ensures that the questionnaire is created to satisfy the study's objectives and tests the accuracy and relevance of the information collected. Pretesting is a critical component of research as it pertains to the phase of survey research whereby survey questions and questionnaires are tested on participants in the target population to assess the validity and reliability of the survey instruments before they are distributed to the sample. The researcher conducted a pre-test with approximately 15 participants who were not be part of the main study. Consequently, the pilot study ensured that there was no obscurity in the questions. The purpose of the pre-test was to ensure that all questions and statements are easily understood and relevant to the study.

### **3.11 Data analysis**

The primary focus of collecting data during survey research is to formulate relevant conclusions about the problem or issue being investigated. Bloomfield and Fisher (2019) note that statistical analysis is usually used in quantitative research to estimate the outcome of a study that can then be applied for the target population. The reason for selecting this approach is to ensure that the research approach is congruent with the objectives of the study. This study used both descriptive and inferential statistical techniques in analyzing the data.

### **3.11.1 Descriptive statistics**

Presenting answers to specific research questions is the aim descriptive research seeks to accomplish. Descriptive statistics as a result limit the researcher to discussing the outcomes of the data collected. Analysis in terms of frequencies, proportions, mean, 100 median, standard deviation, and so on are included in this analysis (Hussain 2012: 741). The data analysis will be presented using tables and a graphical presentation.

### **3.11.2 Inferential statistics**

According to Omair (2012: 1255) when describing the purpose of inferential statistics, the researcher should present only those findings, both positive and negative, that are pertinent to the research study's specific aims. Inferential analysis will correlate variables or compare groups of variables in order to make population inferences from the sample. As a result, the researcher may draw conclusions regarding the research questions based on the findings (Creswell 2014: 209).

Data is used to detect connections and relationships rather than establishing causality between variables in cross-sectional study approaches. To make causal inferences from the data, the researcher must depend on common sense or refer to theoretical explanations (Bryman and Bell 2011: 107).

Due to the methodology being quantitative, both descriptive and inferential analysis has been selected as the most appropriate data analysis method. This method utilizes interactions between individuals in their specific social settings and focuses on their experiences while in said environment (Dudovskiy 2018).

The data will be analysed using the analysis programme together with the relevant statistical tests (SPSS). The Spearman and Pearson's correlation analyses are the necessary tests that will take place. This will determine the relationship between the leadership role and digital transformation. These tests are associated with inferential statistical analysis. The analysis of data will be presented using graphs and tables. It will include and interpretation of results and findings.

### **3.11.3 Cronbach's alpha test**

Internal reliability is typically assessed using Cronbach's alpha test. It estimates the average of all split-half reliability coefficients rather than conducting a statistical test.

The coefficient can range from 1 (perfect internal reliability) to 0 (no internal reliability) (denotes no internal reliability).

#### **3.11.4 Chi-square test**

Chi-square testing, according to Welman, Kruger, and Mitchell (2005: 231), determines whether the separate classes into which the interval or ratio variable is grouped are statistically or substantially connected to another variable, and that the association is not purely coincidental. As a result, the chi-square test is used to determine whether two nominal 101 variables have a genuine link or association. This estimate is based on the two variables' cross tabulations or contingency tables (Bryman and Bell 2011: 327).

#### **3.12 Validity**

Validity is about the accuracy of and reliability is about the consistency of a measure (Middleton 2020). Research measurement and whether it has been completed successfully are two aspects of validity. According to Cooper and Schindler (2014: 257), the term validity relates to “the extent to which a test measures what we actually wish to measure” whilst reliability refers to “the accuracy and precision of a measurement procedure”.

Therefore, every component of the research investigation must be fully tested by the research instrument. For the purpose of ensuring dependability, the questionnaire went through a pre-test. Additionally, the dependability of the study was evaluated using Cronbach's Alpha, a measure of internal consistency. Factor analysis was also utilized to guarantee the validity of the quantitative investigation. Reliability in this study was obtained by conducting a pre-test of the questionnaire. It is important to keep in mind that the pre-test participants were not included in the study.

#### **3.13 Reliability**

Joseph *et al.* (2003) explains that reliability is associated with consistency of a measure. This study used Cronbach's alpha as a reliability factor. Cronbach's alpha is a measure used to assess the internal consistency or reliability of a set of scale or test items. Cronbach's alpha is one approach to gauge the strength of such consistency. In other words, the reliability of any particular measurement refers to the degree to which it is a consistent assessment of a concept (Shelby 2011).

### **3.14 Ethical considerations**

Ethics alludes to a set of accepted rules or code of conduct which sets the standard for attitudes and behaviour. It shows integrity within a person and ensures trust as it affects the different stakeholders in research (Knottnerus 2018). Various ethical considerations and impediments were considered when conducting this research study which must be considered to avoid misconduct.

#### **3.14.1 Informed consent**

Participants were informed that they need to give their agreement or consent to participate. As such, participants were given a letter of Information and Consent to ensure that they were made aware of the details of the research being conducted.

#### **3.14.2 Confidentiality**

Respondents were informed that participation in this study is on a voluntary basis and confidentiality will be assured. The information provided by participants remains strictly confidential. Upon completion of the study, the data will be retained for a period of five years and then destroyed.

#### **3.14.3 Anonymity**

The participants were informed that their identity and personal information will be protected and that their participation will be anonymous as the study uses alphanumeric coding to ensure anonymity.

#### **3.14.4 Inclusion and exclusion criteria**

To participate in the study, respondents needed to be over the age of 18 years and they must have concluded electronic contracts during the 5 years preceding the survey (inclusion criteria). Therefore, those who had not engaged in online shopping over the previous 5 years or who are below the age of 18 were excluded from this study. There were no incentives given to participants to participate in the survey.

### **3.15 Conclusion**

This chapter sets out the nature of information and type of research activities to be carried out in the study and explained the researcher's choice for quantitative method for this study. Data collection instruments that were utilized in this study were also described. The next chapter will review related literature and present the analysis of the data which was collected through a survey and the discussion of findings.



This chapter dealt with the research approach to the study. Given the two methods of data gathering instruments, the study on electronic contract challenges will be examined through a descriptive and interpretative case study. Hence, the research design lends itself to both qualitative as well as quantitative approaches. In respect of the study, data was gathered from a primary source. The primary source included the structured questionnaires.

## **CHAPTER 4: ANALYSIS OF RESULTS AND DISCUSSION OF FINDINGS**

### **4.1 Introduction**

The previous chapter explored the methodology and data collection methods used in this study. This chapter addresses the study's findings in addition to the analysis and interpretation of the data gathered from the questionnaires. As mentioned in Chapter 1, the aim of this research was to analyse electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation.

This chapter begins with a thorough analysis of the data that gives the reader a glimpse into the study's findings along with data representations in numerical and graphical form and an explanation of the findings. The presentation of detailed analysis and findings, which were extracted from questionnaires administered to consumers in the Durban area is discussed in this chapter. Analysis of the data included the use of descriptive statistics in the form of frequency distribution tables, percentages and crosstabulations.

The findings from the analysis of data collected using questionnaires are presented and discussed in this chapter. The questions posed were aligned with specific themes. The questionnaire was administered to 391 respondents and 10 did not satisfy the requirement in terms of the filter question (whether respondents had previously entered into electronic contracts before) so they were ignored for the purposes of the analysis. The questionnaire was created with careful consideration given to the objectives of the study as highlighted in Chapter 3 and served as the main instrument in the data collection process. SPSS version 27.0 was utilized for the analysis of the information gathered from the replies. For the quantitative data that was gathered, the results will illustrate the descriptive statistics as graphs, cross tabulations, and other figures. Correlations and chi square test results, which are interpreted using p-values, are examples of inferential approaches used. The conventional method of reporting a result necessitates a statistical significance statement inferred from a test statistic is a p-value. A finding that is significant is denoted by "p 0.05".

#### **4.1.1 The Sample**

In total, 391 questionnaires were administered and 10 did not satisfy the requirement in terms of the filter question so they were ignored for the purposes of the analysis.

391 questionnaires were despatched and 391 were returned which gave a 100% response rate.

#### 4.1.2 The Research Instrument

The research instrument consisted of 17 items, with a level of measurement at a nominal or an ordinal level. The questionnaire was divided into 5 segments which measured various themes as illustrated below:

A – Biographical data

B - Nature and Extent of Consumer Challenges

C - Implications of Consumer Challenges

D - Awareness of Consumer Rights

E - Remedies Available and Recommendations Regarding Alternate Measures

#### 4.2 Section A: Biographical Data

The respondents' biographical details are outlined in this section, such as age and the respondents' highest qualification, as well as whether the respondents had previously concluded electronic contracts and the types of contracts concluded.

##### 4.2.1 Age distribution of respondents

The respondents were asked to select the age-group that they belonged to. Figure 4.1 below shows the age distribution of the respondents.

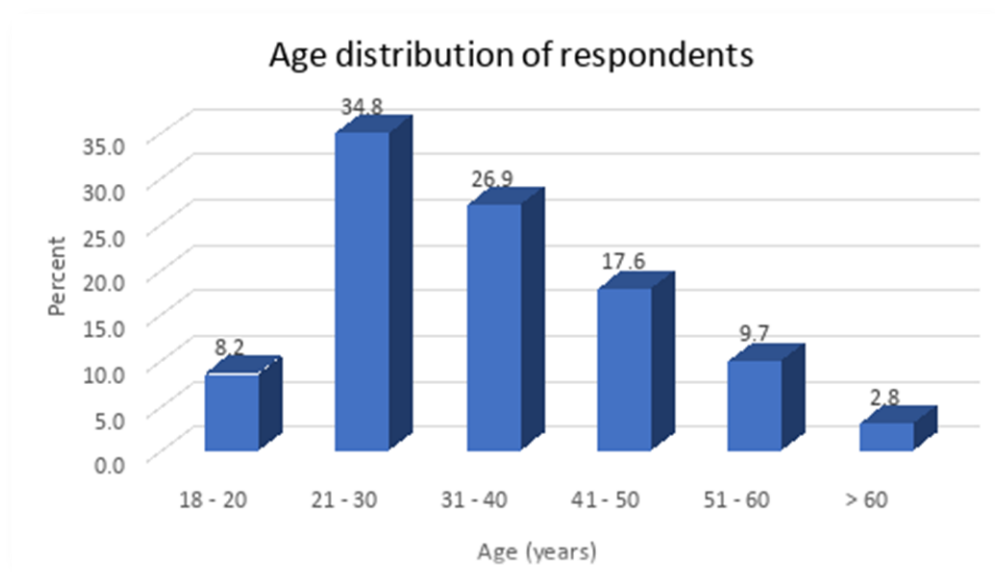


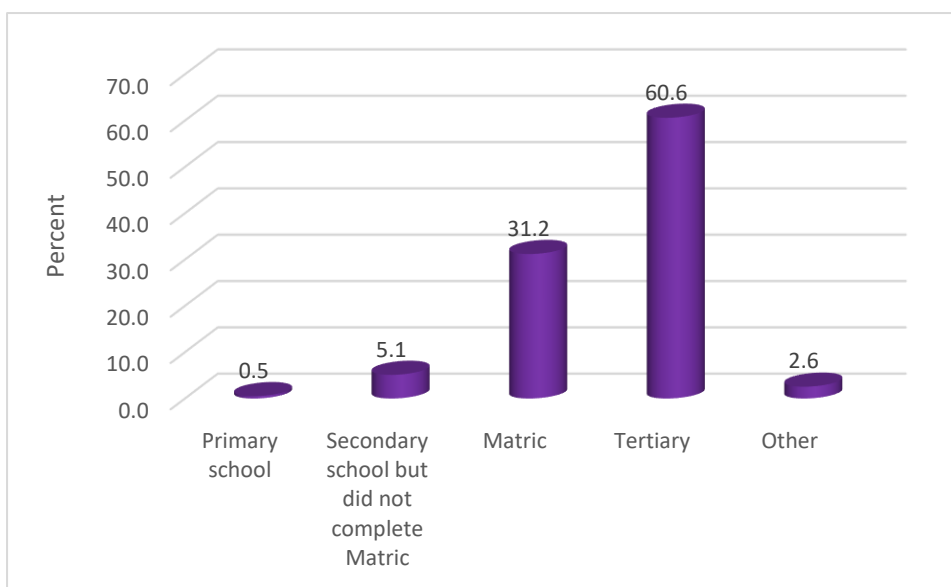
Figure 4.1: Age distribution of respondents

As shown in Figure 4.1 above, 34.8% of the respondents were in 21-30 age group, 26.9% were from 31 to 40, 17.6% were from 41 to 50 and 9.7% were from 51 to 60. In addition, 8.2% were from 18 to 20, while the remaining 2.8% were over 60. Hence, the majority of the respondents were from the category 21-30 years.

The age distributions are not similar as there are more respondents older than 30 years ( $p < 0.001$ ). The results show that almost more than half of the respondents are between 21-30 years.

#### 4.2.2 Educational levels of respondents

Figure 4.2 below indicates the education levels of the respondents.

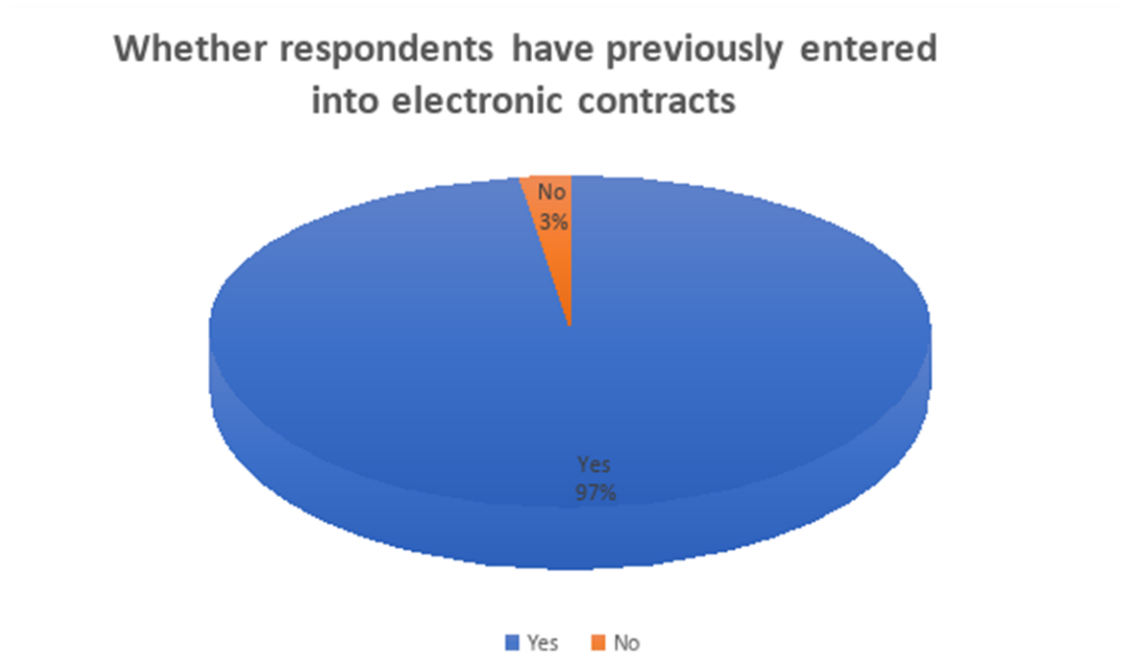


**Figure 4.2: Highest level of education**

As shown in Figure 4.2 above, the respondents were required to indicate their highest level of education obtained using the categories provided. The depictions are interpreted below. The results show that 60.6% of the respondents had a tertiary qualification as their highest qualification, while 31.2% completed matric, only 5.1% went to secondary school but did not complete matric whilst 0.5% of the respondent's went to primary school only and 2.6% obtained other qualifications. Hence, the results show that the majority of the respondents had a post-school qualification. Consequently, this indicates that a fair proportion of the respondents have a higher qualification which could imply that the responses gathered would have been from an informed (learned) source.

### 4.2.3 Whether respondents had previously entered into an electronic contract

The respondents were asked whether they had previously entered into an electronic contract. Figure 4.3 below illustrates the results.



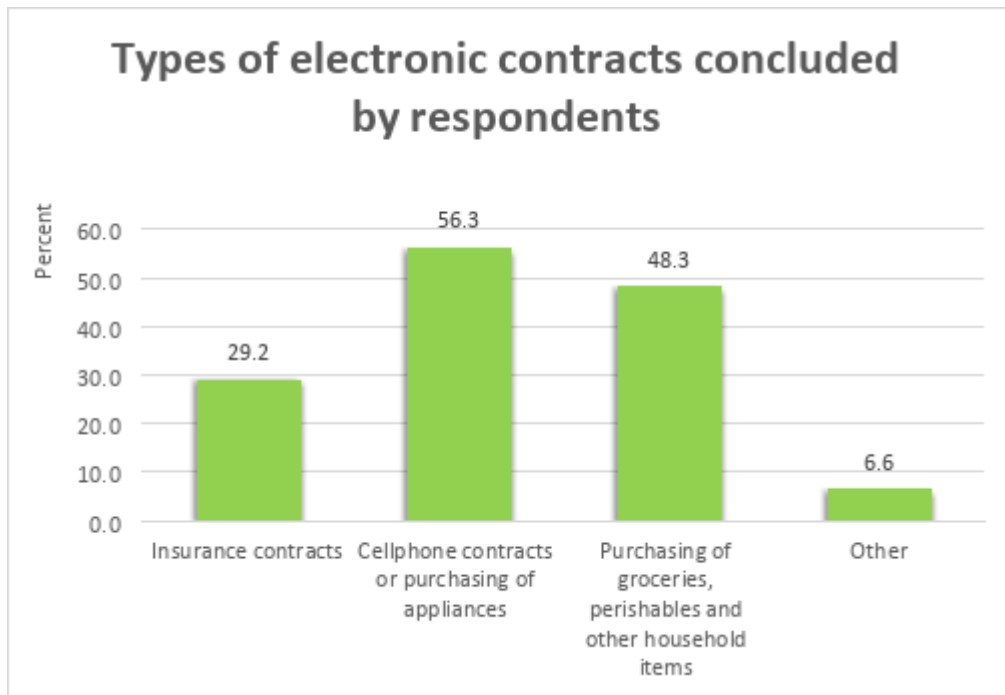
**Figure 4.3: Whether respondents have previously entered into electronic contracts**

As shown in Figure 4.3 above, 97% of the respondents entered into electronic contracts while 3% did not engage in electronic contracts, indicating that the majority of the respondents did not enter into electronic contracts. Significantly more respondents indicated that they had concluded such contracts ( $p < 0.001$ ).

The analysis that follows is restricted to only the 381 respondents who had entered into electronic contracts.

#### 4.2.4 Types of electronic contracts concluded by respondents

The respondents were asked what type of consumer contracts they had entered into. The results are indicated in Figure 4.4 below.



**Figure 4.4: Types of electronic contracts concluded by respondents**

The figure above shows that 56.3% of the respondents concluded cellphone contracts or purchasing of appliances, 48.3% concluded contracts pertaining to the purchasing of groceries, perishables and other household items while 29.2% entered into insurance contracts.

Hence, the results show that majority of the respondents entered into cellphone contracts or purchasing of appliances

#### 4.2.5 Section Analysis

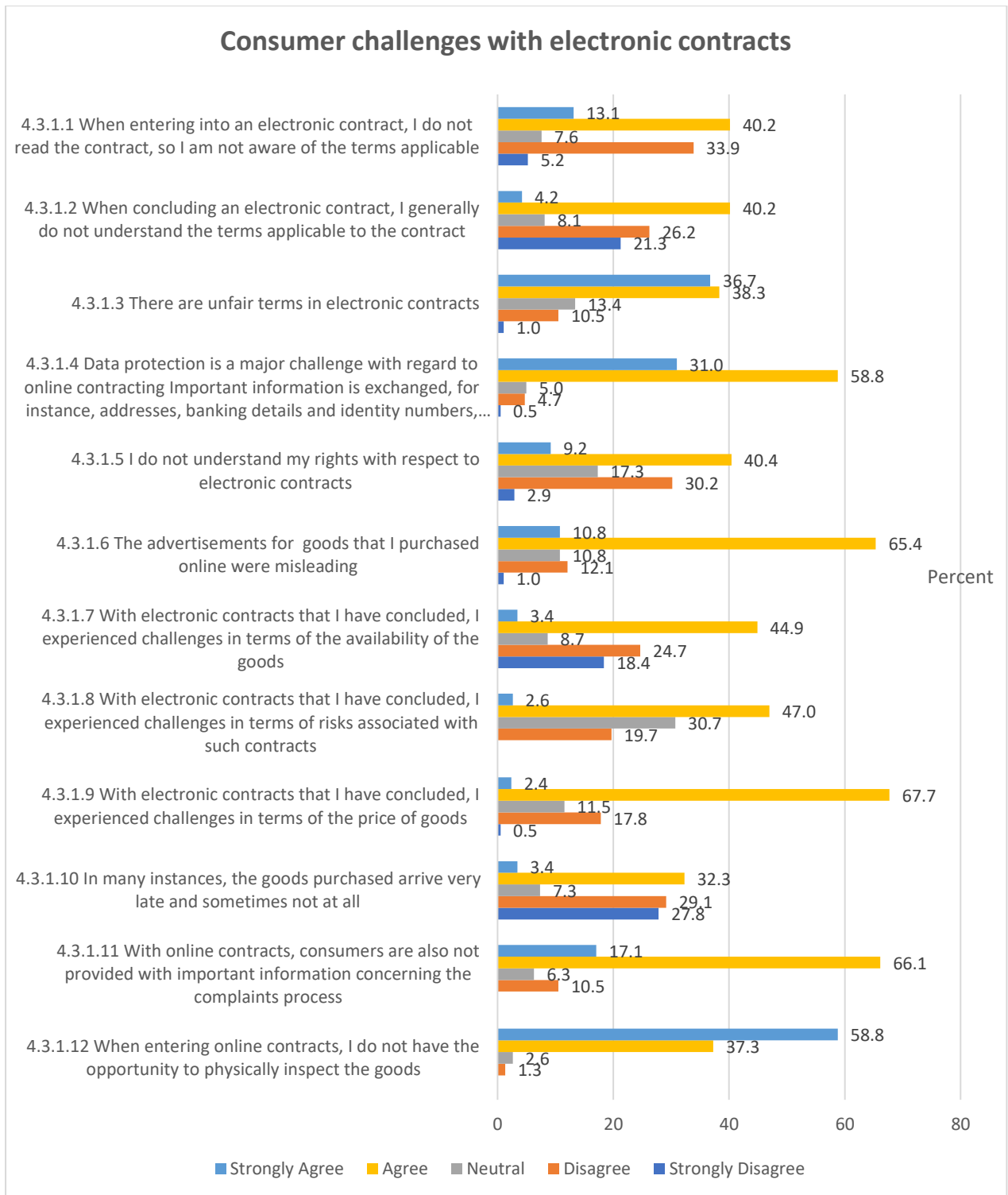
The section that follows explores scoring patterns of the respondents per variable per section. For the variables that comprise each section, the findings are first presented as summarized percentages for each section. The results are then further analyzed according to the importance of the statements.

### **4.3 Section B: Nature and extent of consumer challenges**

This section deals with the nature of consumer challenges experienced by the respondents.

#### **4.3.1 Electronic contract consumer challenges experienced by respondents**

The respondents were asked whether they agreed/disagreed with various statements relating to consumer challenges with respect to electronic contracts. Figure 4.5 below shows the results.



**Figure 4.5: Consumer challenges with electronic contracts**

The following patterns are observed:

- Ten statements show (significantly) higher levels of agreement whilst other levels of agreement are lower (but still greater than levels of disagreement).



- 2 statements (Statements 2 and 10) indicate higher levels of disagreement; and
- Some statements have a significant contribution of neutral scores.

The results for each of the sub-themes indicated in Figure 4.5 above are discussed below:

#### **4.3.1.1 When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable**

Collectively, 53.3% of the respondents either strongly agreed (13.1%) or agreed (40.2%) that when entering into an electronic contract, they do not read the contract, so they are not aware of the terms applicable, while 39.1% either strongly disagreed or disagreed (5.2%) and 7.6% remained neutral. Hence, the majority of the respondents indicated that they do not read all the contract provisions in the disclosure form and therefore they are not aware of the terms. Becher and Unger-Aviram (2010) state that there is sufficient evidence to show that consumers lack the motivation to read general contract terms in the first place, as they quite easily suffer from information overload and their mental thoughts and resources are saturated.

#### **4.3.1.2 When concluding an electronic contract, I generally do not understand the terms applicable to the contract**

Collectively, 44.4% respondents either strongly agreed (4.2%) or agreed (40.2%) that when concluding an electronic contract, they generally do not understand the terms applicable to the contract, while 47.5% respondents either strongly disagreed (21.3%) or disagreed (26.2%) and 13.8% were neutral. Hence, only some of the respondents felt that they experience challenges when reading electronic contracts and do not understand the terms used in contracts, while almost half of the respondents disagreed.

#### **4.3.1.3 There are unfair terms in electronic contracts**

Figure 4.5 shows that collectively, 75% of the respondents either strongly agreed (36.7%) or agreed (38.3%), while a few of the respondents either strongly disagreed (36.7) or disagreed (10.5). The findings show that the majority of the respondents felt that there are unfair terms in electronic contracts. These results correlate to the findings of Roy (2019) that the words used in an online offer can frequently be

considered misleading which supports the idea of consumers finding contracts having unfair terms.

#### **4.3.1.4 Data protection is a major challenge with regard to online contracting as important information is exchanged, for instance, addresses, banking details and identity numbers, which can be misused**

As shown in Figure 4.5 above, collectively, 89.8% of the respondents agreed (58.8%) or strongly agreed (31%) that data protection is a major challenge with regard to online contracting, while 5.2% of the respondents either strongly disagreed (0.5%) or disagreed (4.7%) and 5% remained wneutral. Hence, the majority of the respondents indicated that data protection is a major challenge in respect of online contracts.

Johnson (2003:24) confirms that online contracts and transactions are subject to various risks. The author adds that shortfalls exist in the area of online data protection of consumers.

#### **4.3.1.5 I do not understand my rights with respect to electronic contracts**

Collectively, 49.6% of the respondents either strongly agreed (9.2%) or agreed (40.4%) that they do not understand their rights with respect to electronic contracts, while 33.1% of the respondents either strongly disagreed (2.9%) or disagreed (30.2%) and 7.6% were neutral. Hence, the majority of the respondents felt that they did not understand their rights with respect to electronic contracts. This finding is supported by the views of Hawthorne (2008:440) who argues that the consumer is regularly the reluctant, unwitting contracting party in dealings with contracts and agreements.

#### **4.3.1.6 The advertisements for goods that I purchased online were misleading**

Collectively, 76.2% of the respondents either strongly agreed (65.4%) or agreed (10.8%), while 13.1% either disagreed (12.1%) or strongly disagreed (1%) and 10.8% remained neutral. Hence, the findings show that the majority of the respondents felt that the advertisements for goods that are purchased online were misleading.

#### **4.3.1.7 With electronic contracts that I have concluded, I experienced challenges in terms of availability of goods**

As shown in Figure 4.5 above, collectively 48.3% of the respondents agreed (44.9%) and strongly agreed (3.4%) with the statement, 24.7% of the respondents disagreed and 18.4% strongly disagreed whilst 8.7% of the respondents remained neutral.

Almost half of the respondents agreed that they experienced challenges in terms of availability of goods with contracts they have concluded. Daroch *et al* (2021: 1) states that the availability of goods is one of the factors that limit online shopping behaviour of consumers, which is indicative from the above analysis findings

#### **4.3.1.8 With electronic contracts that I have concluded, I experienced challenges in terms of risk associated with such contracts**

Figure 4.5 above indicates that collectively, 49.6% of respondents either agreed (47.0%) or strongly agreed (2.6%) that they experienced challenges in terms of risk associated with electronic contracts, whilst 19.7% of respondents disagreed and 30.7% were neutral. Hence, the findings reveal that almost half of the respondents agreed that they experienced challenges in terms of the risk associated with electronic contracts.

#### **4.3.1.9 With electronic contracts that I have concluded, I experienced challenges in terms of the price of goods**

Collectively, 70.1% of the respondents either agreed (67.7%) or strongly agreed (2.4%) and 18.3% either disagreed (0.5%) or strongly disagreed (0.5%) whilst 11.5% remained neutral.

#### **4.3.1.10 In many instances, the goods purchased arrive very late and sometimes not at all**

As shown in Figure 4.5 above, collectively, 56.9% of the respondents either strongly disagreed (27.8%) or disagreed (29.1%) that, in many instances, the goods purchased arrive very late and sometimes not at all, while 35.7% agreed (32.3%) or strongly agreed (3.4%), while 7.3% were neutral. Hence, the findings show that the majority of the respondents agreed that they received the goods that they purchased online very late or sometimes not at all. According to Erasmus (2011), one of the major challenges identified by consumers with respect to electronic contracts is the reliability of their services. In many instances, the goods arrived very late and sometimes not at all.

#### **4.3.1.11 With online contracts, consumers are also not provided with important information concerning the complaints process**

As shown in Figure 4.5 above, collectively 83.2% of the respondents either agreed (32.3%) or strongly agreed (17.1%) that consumers are not provided with important

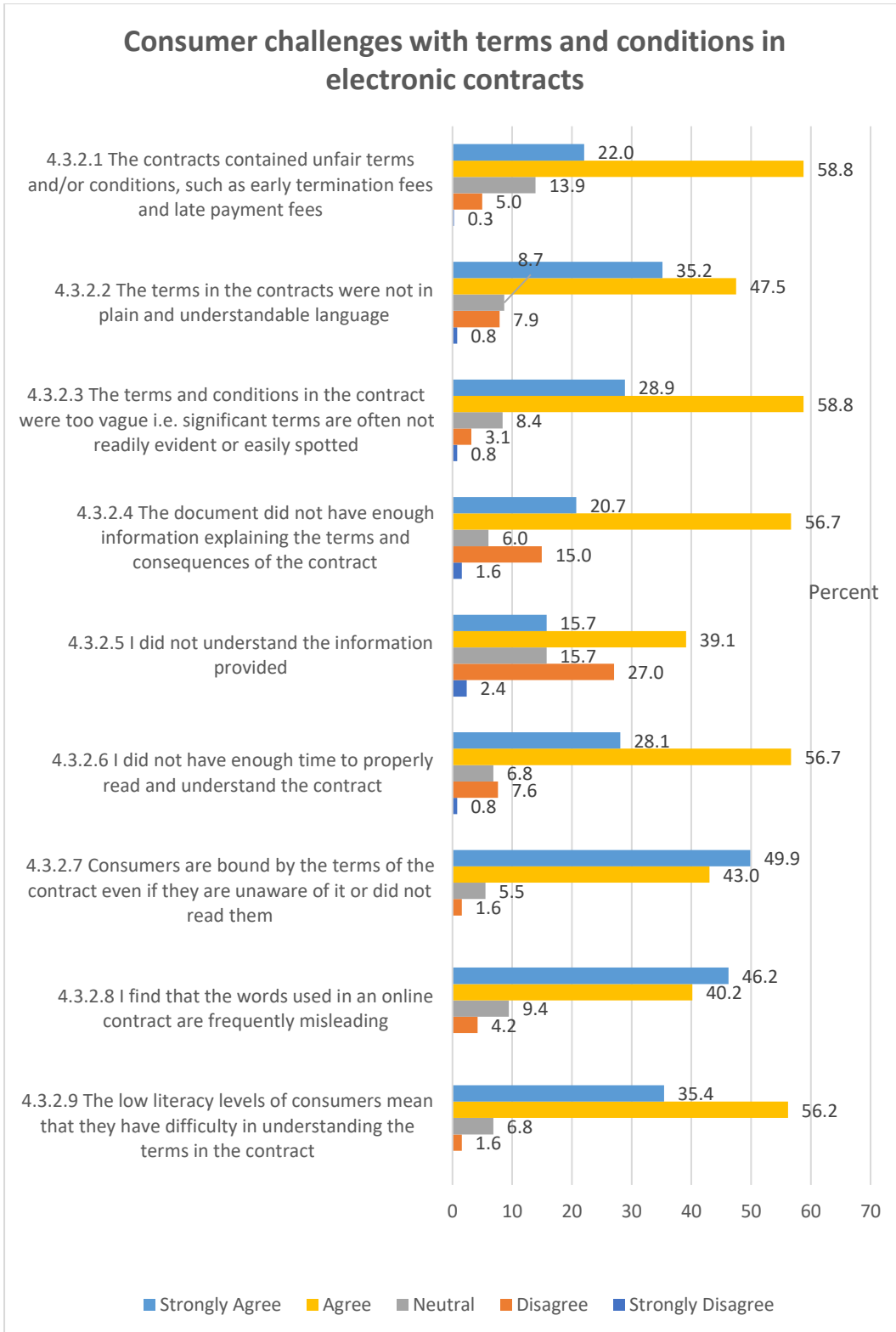
information concerning the complaints process while 6.3% remained neutral and 10.5% disagreed. Hence, the findings suggest that the majority of the respondents agreed that a challenge they faced was the lack of information regarding the complaints process. The findings are supported by the views of Erasmus (2011:3) who point out that customers are not provided with critical information concerning the complaints procedure.

#### **4.3.1.12 When entering online contracts, I do not have the opportunity to physically inspect the goods**

Collectively, 96.1% of respondents stated that they either strongly agree (58.8%) or agree (37.3%) that they did not have an opportunity to physically inspect the goods. Further 2.6% of the respondents remained neutral and 1.3% disagreed. The findings show that the majority of respondents agreed with the statement. Since the nature of electronic contracts essentially can be concluded through the click of a button, Dahiyat (2011) explains that a challenge with electronic sales contracts is that it has a self-executing nature and therefore the absence of the face-to-face encounter between buyer and seller thus denying consumers the opportunity to physically inspect goods purchased.

#### **4.3.2 Consumer challenges with terms and conditions in electronic contracts**

The aim of this section is to explore consumer challenges with terms and conditions pertaining to electronic contracts. The respondents were asked to indicate their level of agreement with each statement. Figure 4.6 below shows the results.



**Figure 4.6: Consumer challenges with terms and conditions in electronic contracts**

As shown in Figure 4.6, the following patterns are observed:

- All statements reflect (significantly) higher levels of agreement;

- There are no statements that show higher levels of disagreement;
- There are significantly low levels of disagreement; and
- There were neutral responses throughout statements.

The results for each of the sub-themes indicated in Figure 4.6 above are discussed below:

#### **4.3.2.1 The contracts contained unfair terms and/or conditions, such as early termination fees and late payment fees**

80.8% of the respondents agreed that the contracts had unfair terms and/or conditions (58.8%) or strongly agreed (22%). A total of 5.3% of the respondents either strongly disagreed (0.3), agreed (5.0%), or were neutral (13.9%). According to the data, the majority of respondents agreed that the early termination and late payment penalties in their contracts were unjust terms and/or conditions.

Hence in support of the findings, what started off as a legitimate aid (when consumers are provided with the opportunity to conclude online contracts), turned into an expense trap for unsuspecting consumers. According to Christie and Bradfield (2011:14), this was due to service providers being able to inflict unfair terms upon the consumer, such as early termination fees and late fees in online contracts

#### **4.3.2.2 The terms in the contracts were not in plain and understandable language**

As to whether the contract was in plain and understandable language, collectively, 82.7% of the respondents either agreed (47.5%) or strongly agreed (35.2%), while 8.7% remained neutral and 7.9% disagreed with the above statement. The remaining 0.8% of the respondents strongly disagreed. Hence, the findings show that the vast majority of the respondents agreed that the terms in the online contracts were not in plain and understandable language.

#### **4.3.2.3 The terms and conditions in the contract were too vague - i.e. significant terms are often not readily evident or easily spotted**

As shown in Figure 4.6 above, collectively 87.7 of respondents agreed (58.8%) or strongly agreed (28.9) that the terms and conditions in the contract were too vague and significant terms are not easily spotted, whilst 8.4% remained neutral and 3.9%

either disagreed or strongly disagreed with the above statement. Hence, the majority of the respondents agreed that the terms in online contracts were not readily evident.

De Stadler (2017:105) agrees with the findings and argues that the challenge with online contracts is that significant terms are often not easily evident or spotted and that consumers merely scan information looking for what they want to know.

#### **4.3.2.4 The document did not have enough information explaining the terms and consequences of the contract**

Figure 4.6 above highlights that, collectively, 77.4% of the respondents stated that they either agree (56.7%) or strongly agree (20.7%) that the document did not have enough information explaining the terms and consequences of the contract, while only 6% remained neutral and 16.6% disagreed with the above statement. Hence, the findings show that the majority of the respondents agreed that the document did not have enough information explaining the terms and consequences of the contract.

The above findings also support Poole (2020), who affirms that an unfair situation arises when consumers are often not aware of the existence of certain contractual provisions or threats, and where they cannot negotiate more favourable terms.

#### **4.3.2.5 I did not understand the information provided**

As to whether respondents understood the information provided in the electronic contracts, collectively, 54.8% of respondents either strongly agreed (15.7%) or agreed (39.1%) that they did not understand the information provided to them. Almost 16% of the respondents remained neutral and collectively, 29.4% either disagreed (27%) or strongly disagreed (2.4%) with the statement. Hence, the findings show that the majority of the respondents agreed that they did not understand the information provided. In view of the above findings regarding understanding of information provided, it is evident that consumers do not understand the content of electronic contracts. Reddy and Rampersad (2012: 7407) explain that the low literacy levels of consumers make it difficult for them to understand the information that is provided when contracting online. The authors add that, as a consequence, they have a lack of understanding of the contracts, nor are they aware of their rights and are not in a position to assert their rights.

#### **4.3.2.6I did not have enough time to properly read and understand the contract**

Collectively, 84.8% agreed (56.7%) or strongly agreed (28.1%) that they did not have enough time to properly read and understand the contract, whilst 6.8% of the respondents remained neutral and collectively, 8.4% either disagreed (7.6%) or strongly disagreed (0.8%) with the above statement. Hence, the findings indicate that the majority of the respondents agreed that they had insufficient time to properly read and understand the contract.

This is supported by Obar (2022:2) as the author mentions that the implications of this is that consumers have shown trends of ignoring or merely browsing over the terms of service, privacy policy or terms and conditions documents when entering into electronic contracts.

#### **4.3.2.7Consumers are bound by the terms of the contract even if they are unaware of it or did not read them**

As reflected in Figure 4.6 above, 92.9% of the respondents stated that they agree (43%) with the above statement while only 1.6% disagreed. Therefore, that a vast majority of the findings show that the respondents agreed that they are bound by the terms of the contract even if they are unaware of it or did not read the contract.

#### **4.3.2.8I find that the words used in an online contract are frequently misleading**

As evident in Figure 4.6 above, 86.4% of the respondents either strongly agreed (46.2%) or strongly agreed (40.2%) with the above statement, while 9.4% remained neutral and 4.2% of the respondents disagreed. Hence, an overwhelming majority of the respondents have agreed that words used in online contracts are frequently misleading. The findings can be supported by the opinions of Roy (2019) and Kapdi (2016) who state that disadvantaged consumers become easy targets for unfair, unjust, and unreasonable business practices due to the lack of understanding of misleading contractual terms and provisions.

#### **4.3.2.9The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract**

As shown in Figure 4.6 above, collectively 91.6% of the respondents either agreed (56.2%) or strongly agreed (35.4%) with the above statement and on the other hand 6.8% remained neutral and 1.6% of the respondents disagreed. In terms of the



findings, majority of respondents agreed that literacy levels are a challenge and impact the consumers understanding of contracts. Reddy (2012:584) maintains that consumers with low literacy levels are seriously disadvantaged in comprehending the content and effect of consumer related contracts

#### **4.4 Other consumer challenges experienced generally with online contracts**

The respondents were asked in an open-ended question to comment on/indicate any other challenges they experienced when concluding an electronic contract which were not indicated in the previous closed-ended questions on challenges that were discussed above.

The responses are shown below under the respective themes that were identified:

- **Copies of contracts** – hard copies of the consumer contracts are not provided to consumers;
- **Contracts are lengthy and very time consuming** - consumers do not get a chance to check for fine print clauses; Some contracts don't give enough time to make an informed decision especially if it is a telephone salesperson.
- **Direct marketing challenges** – consumers receiving a lot of calls and emails.
- **Difficulty in receiving assistance from or receiving communications** – thereafter, from either client services or support – It's difficult to make direct contact with people to have a problem resolved. All processes are electronic and do not address all consumer problems.
- **Have to use online methods to sort out problems:**
  - (a) depending on the interface of the website it can be tricky to get to the actions you want to complete.
  - (b) It is always I feel simpler to speak to someone at that specific company that is familiar with their system to take care of intricate actions that are irritating and time consuming to perform.
  - (c) Maybe that affects whether we complain or not or if we even bother to do so.

- **Challenges with terms and conditions:**

- (a) Terms and conditions text is always too small; the size of the font for terms and conditions is often too small to read. They also make it far too text heavy and this increases this chance of users/buyers just ticking the box and accepting the terms without going through it accurately.
- (b) Terms and conditions were hidden I only found out when I have signed.
- (c) Too much of terms and conditions included in the contract.
- (d) There may be pages and pages of terms and conditions, that important information may be hidden with the overload of information.
- (e) Warranty and guarantee are not done properly, very misleading.
- (f) The question of refunds for goods not delivered.

#### **4.5 Awareness of what the Consumer Protection Act 68 of 2008 entails**

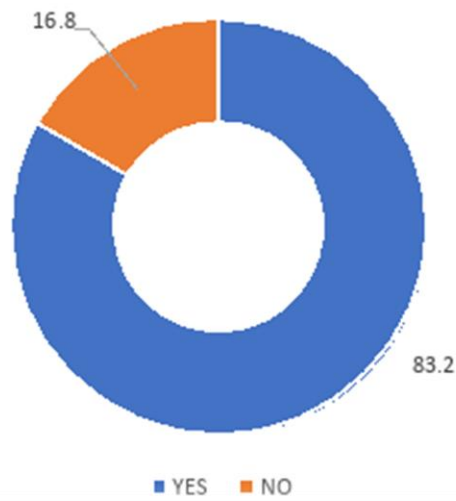
In keeping with the objectives of this study, the following sections explore the level of awareness of various consumer rights set out in the CPA.

However, the Act is quite extensive in its application. Therefore, only certain sections that apply to consumer protection and contracts are discussed.

##### **4.5.1 Whether respondents were aware that they have certain consumer rights and protection**

The respondents were asked to indicate if they were aware that, as consumers, they have certain consumer rights and protection in terms of the Consumer Protection Act 68 of 2008. The results are depicted in Figure 4.7 below.

### Respondents' awareness of consumer rights and protection in terms of the CPA



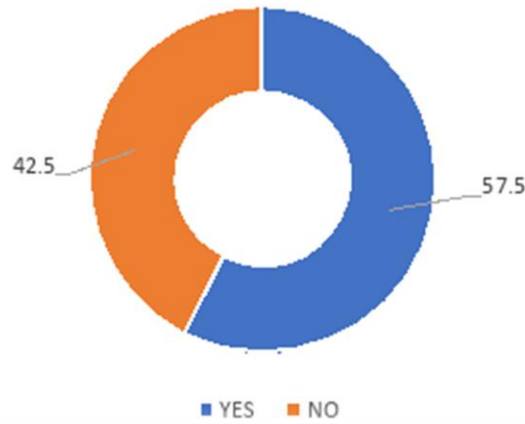
**Figure 4.7: Respondents' awareness of consumer rights and protection in terms of the CPA**

As illustrated in Figure 4.7 above, of the 381 respondents, 83.2% were aware that they had certain consumer rights in terms of the CPA, whereas 16.8% were unaware. The findings therefore show that the majority of the respondents were aware that they had certain consumer rights in terms of the CPA.

#### **4.5.2 Respondents awareness that electronic contracts have terms and conditions setting out the rights and responsibilities**

The question about awareness of contracts setting out rights and responsibilities is deemed to be a critical component. Hence, Figure 4.8 below shows the results.

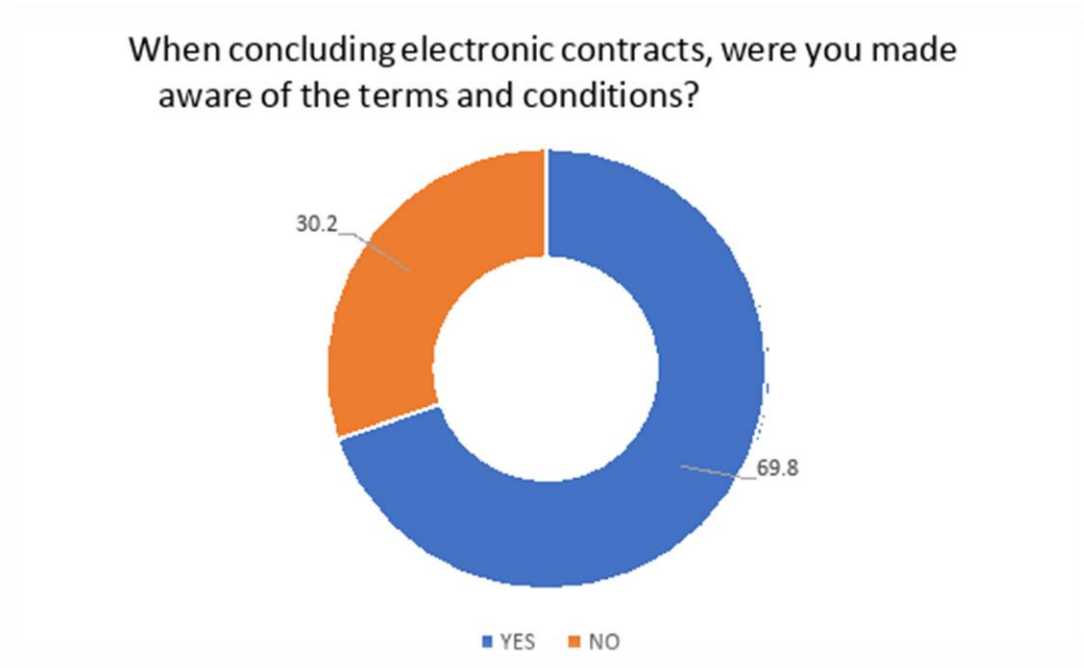
**Respondents' awareness that electronic contracts have terms and conditions setting out the rights and responsibilities which may relate to payment, price variation and penalties**



**Figure 4.8: Respondents' awareness that electronic contracts have terms and conditions setting out the rights and responsibilities which may relate to payment, price, variation and penalties**

As reflected in Figure 4.8 above, 57.5% of the respondents were aware that electronic contracts have terms and conditions setting out the rights and responsibilities that consumers have, whilst 42.5% were unaware of this fact. The findings therefore confirm that the majority of the respondents were aware that they have rights relating to payment, price variation and penalties.

### 4.5.3 Whether respondents were made aware of the terms when concluding electronic contracts



**Figure 4.9: Awareness of terms and conditions**

In exploring whether when concluding contracts consumers were made aware of the terms and conditions. As evident in Figure 4.8 above, of the 381 respondents, 69.8% were aware of the terms and conditions, whereas 30.2% were unaware. Hence, the findings depict that the majority of the respondents were aware of the terms and conditions included in the contract.

## 4.6 Electronic contract challenges experienced by respondents

Consumers were asked to indicate Yes/No for each of the following statements relating to electronic contract challenges that may have been experienced. The results are illustrated below.

### 4.6.1 Whether respondents understood the terms and conditions of contracts

The respondents were asked to indicate if they understood the terms and conditions of contracts they entered into. The results are represented in Table 4.1 below.

**Table 4.1: Understanding of terms and conditions**

	<b>Frequency</b>	<b>Percent</b>
<b>Yes</b>	248	65.1
<b>No</b>	133	34.9
<b>Total</b>	381	100.0

The results in Table 4.1 above highlight that 65.1% of the respondents answered “Yes” they have generally understood the terms and conditions within the contract whilst 34.9% answered “No”. The findings therefore indicate that the majority of the respondents generally understood the terms and conditions.

#### **4.6.2 Awareness of payment, price variation and penalties**

The respondents were asked if they were aware that electronic contracts have terms and conditions setting out the rights and responsibilities which may relate to payment, price variation and penalties. The results are presented in Table 4.2 below.

**Table 4.2: Awareness of payment, price variation and penalties**

	<b>Frequency</b>	<b>Percent</b>
<b>Yes</b>	219	57.5
<b>No</b>	162	42.5
<b>Total</b>	381	100.0

As evident in Table 4.2 above, of the 321 respondents, more than half of the respondents (57.5%) were aware of payment, price variation and penalties included in the contract whereas 42.5% were unaware. Hence, the findings indicated that most of the respondents were aware of these rights and responsibilities.

### 4.6.3 Awareness of certain consumer rights and protection

The respondents were asked if they were aware that they have certain consumer rights and protection in terms of the Consumer Protection Act 68 of 2008. The results are shown in Table 4.5.3 below.

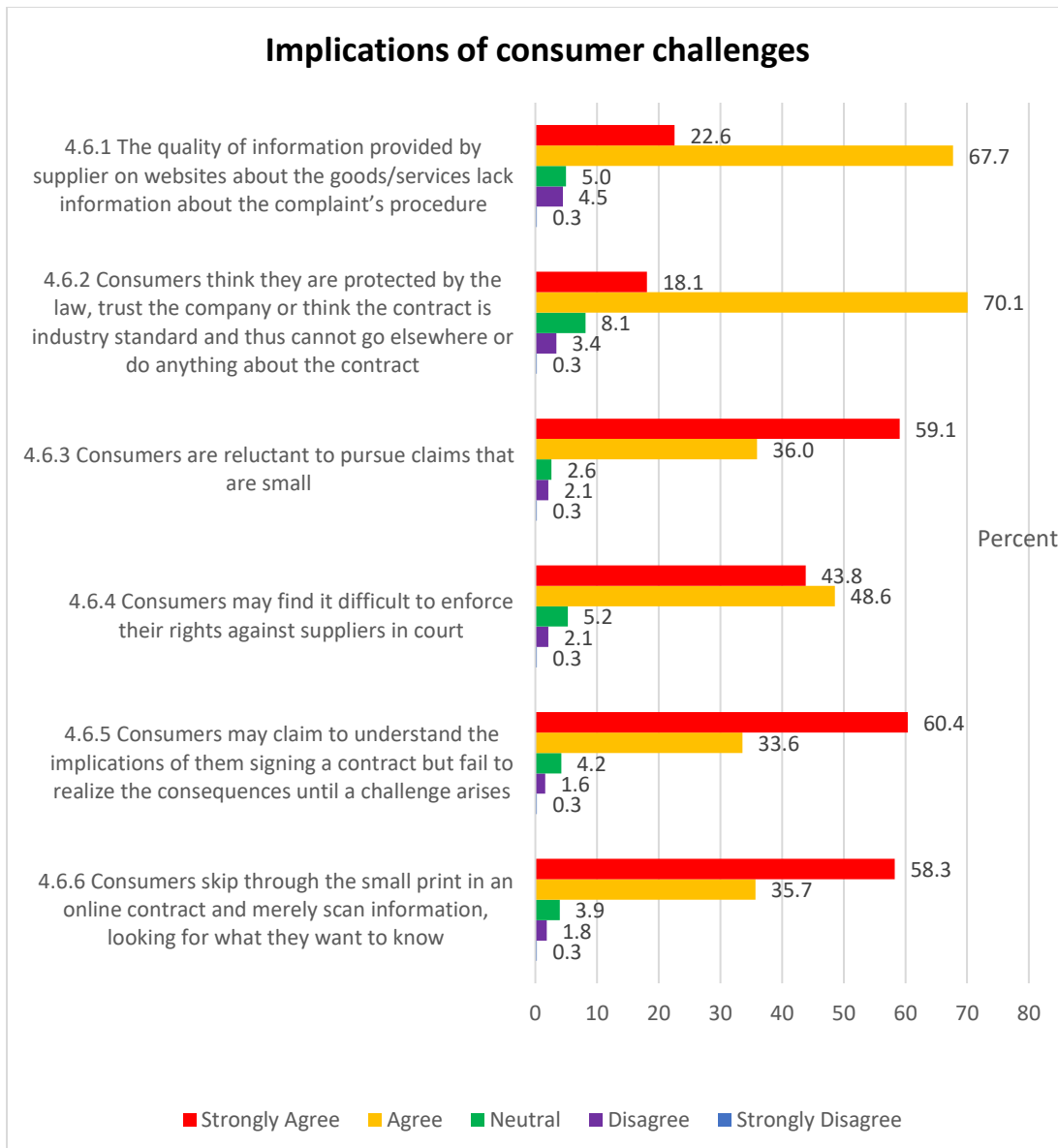
**Table 4.3: Awareness of certain consumer rights and protection**

	<b>Frequency</b>	<b>Percent</b>
<b>Yes</b>	317	83.2
<b>No</b>	64	16.8
<b>Total</b>	381	100.0

As captured in Table 4.3 above, a vast majority of the respondents (83.2%) were aware that they have certain consumer rights and protection afforded to them in terms of the Consumer Protection Act 68 of 2008, whilst 16.8% were unaware. The findings therefore indicate that the majority of the respondents were aware that they have certain rights in terms of the CPA.

### 4.7 Section C: Implications of Consumer Challenges

The purpose of this section was to ascertain the respondents' level of understanding of the implications of the consumer challenges that were generally experienced with electronic contracts. The results relating to various sub-themes are shown in Figure 4.6.1 below.



**Figure 4.10: Implications of consumer challenges**

As shown in Figure 4.10 the following patterns are observed:

- All statements show (significantly) higher levels of agreement;
- There are no statements with higher levels of disagreement;
- There are significantly low levels of disagreement; and
- There were neutral responses to all statements.

The results for each of the sub-themes indicated in Figure 4.10 above are discussed below:



#### **4.7.1 The quality of information provided by suppliers on websites about the goods/services lack information about the complaints procedure**

Figure 4.10 above illustrates that of the 381 consumers surveyed, collectively 90.3% were in agreement that the quality of information provided by suppliers on websites about the goods/services lacked information about the complaints procedure, whilst a small proportion of 4.8% collectively disagreed with the statement. Accordingly, it can be deduced that the findings indicate a vast majority of the respondents agreed with the statement.

In support of the above, Torevasei (2019: 16) views is in agreement with the findings and concludes that consumers are frequently left in the dark about how to file a complaint or resolve a dispute on websites. Furthermore, in certain cases, the company's information is unclear, and information on the company's location and contact information is not provided.

#### **4.7.2 Consumers think they are protected by the law, trust the company or think the contract is industry standard and thus cannot go elsewhere or do anything about the contract**

Figure 4.10 above indicates that, collectively, 88.2% of the respondents stated that they either agree (70.1%) or strongly agree (18.1%) that consumers think they are protected by the law, trust the company or think that the contract is industry standard and thus cannot go elsewhere or do anything about the contract, whilst on the other hand 8.1% remained neutral and a total of 3.7% disagreed with the above statement. Hence, the findings show that the vast majority of the respondents were in agreement with the above statement. Consumers do not understand that when they are involved with an electronic transaction, they could be exposed to fraudulent and deceitful business practices. Bregmans (2014) supports this and makes it clear that at times they may be reluctant and not trust e-commerce as they are potentially more vulnerable.

#### **4.7.3 Consumers are reluctant to pursue claims that are small**

As to whether respondents understood the information provided, collectively, 95.1% of respondents stated that they either strongly agree (59.1%) or agree (36%) that they were reluctant to pursue small claims. Approximately 2.6% of the respondents remained neutral and 2.4% either disagreed (2.1%) or strongly disagreed (0.3%) with

the statement. Consequently, these results indicate that the majority of respondents agreed that they are reluctant to pursue claims that are small.

#### **4.7.4 Consumers may find it difficult to enforce their rights against suppliers in court**

As shown in Figure 4.10 above, collectively 92.4% either strongly agreed (43.8%) or agreed (48.6%) that they find it difficult to enforce their rights against suppliers in court, while collectively 2.4% either disagreed (2.1%) or strongly disagreed (0.3%). Therefore, the findings suggest that the majority of consumers find it difficult to enforce their rights against suppliers in court.

#### **4.7.5 Consumers may claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises**

Figure 4.10 shows that 94% of respondents indicated that they strongly agreed (60.4%) or agreed (33.6%) that they claim to understand the implications of them signing the contract but fail to realize the consequences until a challenge arises. In addition, 4.2% maintained a neutral standpoint and 1.9% agreed with the above statement. Thus, the findings suggest that a large proportion of the respondents failed to realize the implications and consequences of the contract until a challenge occurred.

In addition, consumers may merely just scan information, looking for what they want to know. Gouws (2010) view supports the findings in that consumers might claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises from or related to the terms of the contract.

#### **4.7.6 Consumers skip through the small print in an online contract and merely scan information, looking for what they want to know**

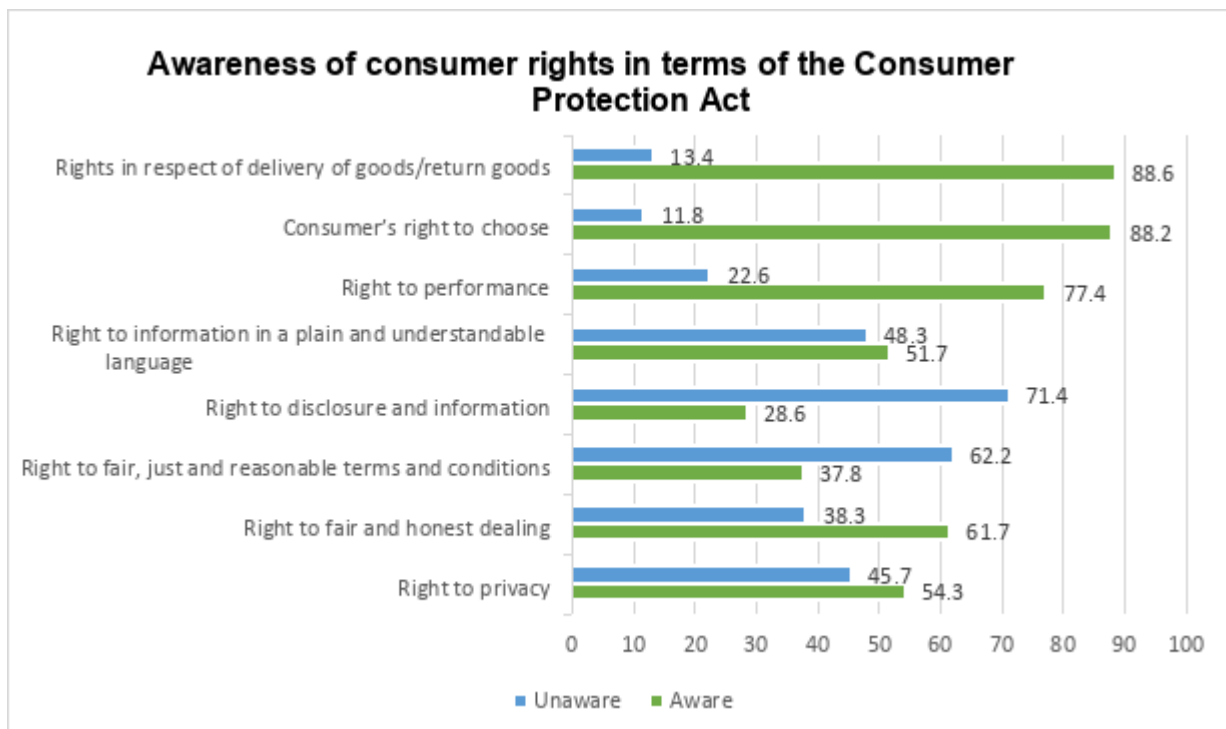
As illustrated in Figure 4.10, 94% of respondents indicated that they skip through the small print and merely scan information, specifically looking for what they want to know. Almost 4% remained neutral and a total of 2.1% disagreed with the above statement. Thus, the findings suggest that a large proportion of the respondents skipped through small print merely scanning information, looking for what they want to know. This discussion can be strengthened by the findings in statement 5 above.

#### 4.8 Section D: Awareness of Consumer Rights

There are specific consumer rights that are set out in terms of the CPA. The respondents were asked to indicate their awareness of seven selected rights in terms of the Act. The selected consumer rights were the following:

- **the right to choose** - the consumer has the right to choose whatever supplier he or she wants to do business with;
- **the right to performance** - the goods should be delivered to the consumer at the agreed upon time and place.;
- **the right to information in plain and understandable language** - agreements should be drafted in a way that allows an ordinary consumer, with average literacy skills, to understand the terms of the agreement;
- **the right to disclosure and information** - suppliers must provide consumers with the necessary information in plain and understandable language as they can only use information that they understand.;
- **the right to fair, just and reasonable terms and conditions** - the content of a contract must be fair to consumers;
- **the right to fair and honest dealing** - consumers should not be misled about anything regarding the transaction.;
- **the right to privacy** - consumers are protected from unsolicited and unwanted marketing from suppliers; and
- **The right to delivery of goods and to return the goods** - the goods should be delivered to the consumer at the time and place agreed upon.

The results are shown in Figure 4.11 below.



**Figure 4.11: Awareness of consumer rights in terms of the Consumer Protection Act**

Consumer rights are made up of those rights that are specifically contained in written legislation. These statements were intended to test whether the respondents were aware of their “consumer rights”.

The following patterns are observed:

- Some statements show (significantly) higher levels of “not aware”, with some being higher than others; and
- There are few statements with higher levels of “not aware”.

The results presented in Figure 4.11 are discussed below for the respective sub-themes:

#### **4.8.1 The right in respect of delivery of goods/return goods**

The statement enquired about the level of awareness of the right in respect of delivery of goods/return goods. The respondents were asked if they were aware of the right available relating to delivery of goods/return goods. 88.6% indicated that they unaware and the other 13.4% aware.

#### **4.8.2 The consumers right to choose**

Figure 4.11 above reveals that of the 391 students surveyed, 88.2% were aware that they had a right to choose whilst 11.8% were unaware of such right available. Accordingly, the findings suggest that majority of the respondents were aware of the above.

#### **4.8.3 The right to performance**

Figure 4.11 shows that 77.4% of respondents were aware that consumers have a right to claim performance and 22.6% were unaware. Therefore, the findings suggest that majority of the respondents are aware of the right to performance.

#### **4.8.4 The right to information in a plain and understandable language**

As shown in Figure 4.11 above, a portion of respondents (51.7%) are aware of the abovementioned right while 48.3% are unaware.

#### **4.8.5 The right to disclosure and information**

Figure 4.11 above reveals that, of the 391 students surveyed, 28.6% were aware that a consumer has the right to disclosure and information, while 71.4% were unaware of such a right available. Accordingly, the findings depict that most of the respondents were unaware of the right to disclosure and information.

#### **4.8.6 The right to fair, just and reasonable terms and conditions**

Figure 4.11 shows that 37.8% of respondents were aware that consumers have the right to fair, just and reasonable terms and conditions and 62.2% were unaware. Therefore, the findings suggest that the more than half of the respondents were unaware that consumers have the right to fair, just and reasonable terms and conditions, as constituted by the CPA.

#### **4.8.7 The right to fair and honest dealings**

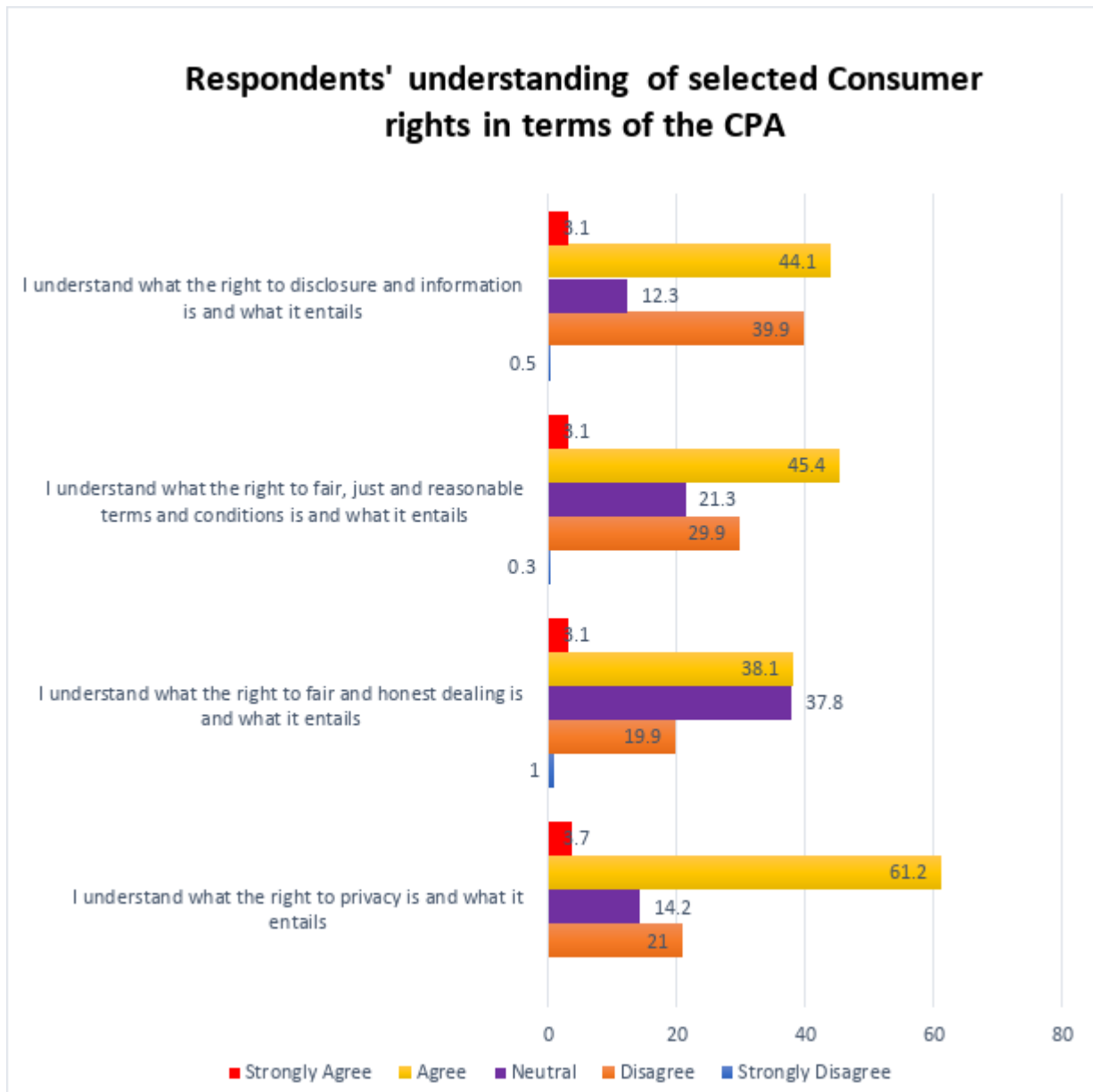
As shown above by Figure 4.11 that 61.7% of respondents were aware that consumers have the right to fair, just and reasonable terms and conditions and 38.3% were unaware of such right. Therefore, the findings show that the majority of respondents were unaware that consumers have the right to fair, just and reasonable terms and conditions, as stipulated in the CPA.

#### **4.8.8 The right to privacy**

Figure 4.11 above, 54.3% of respondents were aware that consumers have the right to privacy in terms of the CPA, whereas the remaining respondents of 45.7% were unaware. Therefore, as per these results, the findings show that almost half of the respondents are aware that consumers have the right to privacy while the other half is unaware.

#### 4.9 Respondents' level of understanding of selected consumer rights

The respondents were asked to indicate their level of agreement with statements relating to each of the selected consumer rights. The results are illustrated below in Figure 4.12.



**Figure 4.12: Rights in terms of the CPA**

From Figure 4.12 above, the following trends are noticed:

- There were high levels of agreement for all the statements;

- There were neutral responses to all statements; and
- There are extremely low levels of disagreement for all statements.

The results presented in Figure 4.12 are discussed below for the respective sub-themes:

#### **4.9.1 I understand what the right to disclosure and information is and what it entails**

Figure 4.12 above shows that collectively, 47.2% indicated that they either agreed (44.1%) or strongly agreed (3.1%) that they understand what the right to disclosure and information is and what it entails, while 39.55% collectively either disagreed (39.9%) or strongly disagreed (0.5%). Approximately 12.3% of respondents chose to remain neutral. The findings show that just under half of the respondents did have an understanding of the right to disclosure and information, while some did not.

#### **4.9.2 I understand what the right to fair, just and reasonable terms and conditions is and what it entails**

As reflected in Figure 4.12, the results show that 45.4% of the respondents agreed and 3.1% strongly agreed i.e. they indicated that they did understand what the right to fair, just and reasonable terms and conditions is and what it entails whilst 30.2% either disagreed (29.9%) or strongly disagreed (0.3%) that they had an understanding of the right to fair, just and reasonable terms and conditions. On the other hand approximately 21.3% held a neutral stance to the statement. Consequently, the findings reveal that almost half of the respondents understand what the right entails.

#### **4.9.3 I understand what the right to fair and honest dealing is and what it entails**

In respect of the theme “right to fair and honest dealing and what it entails”, the results show that the cumulatively, 41.2% of the respondents either agreed (38.1%) or strongly agreed (3.1%) that they understood this right whilst 19.9% disagreed, 1% strongly disagreed and 37.8% of respondents remained neutral.

#### **4.9.4 I understand what the right to privacy is and what it entails:**

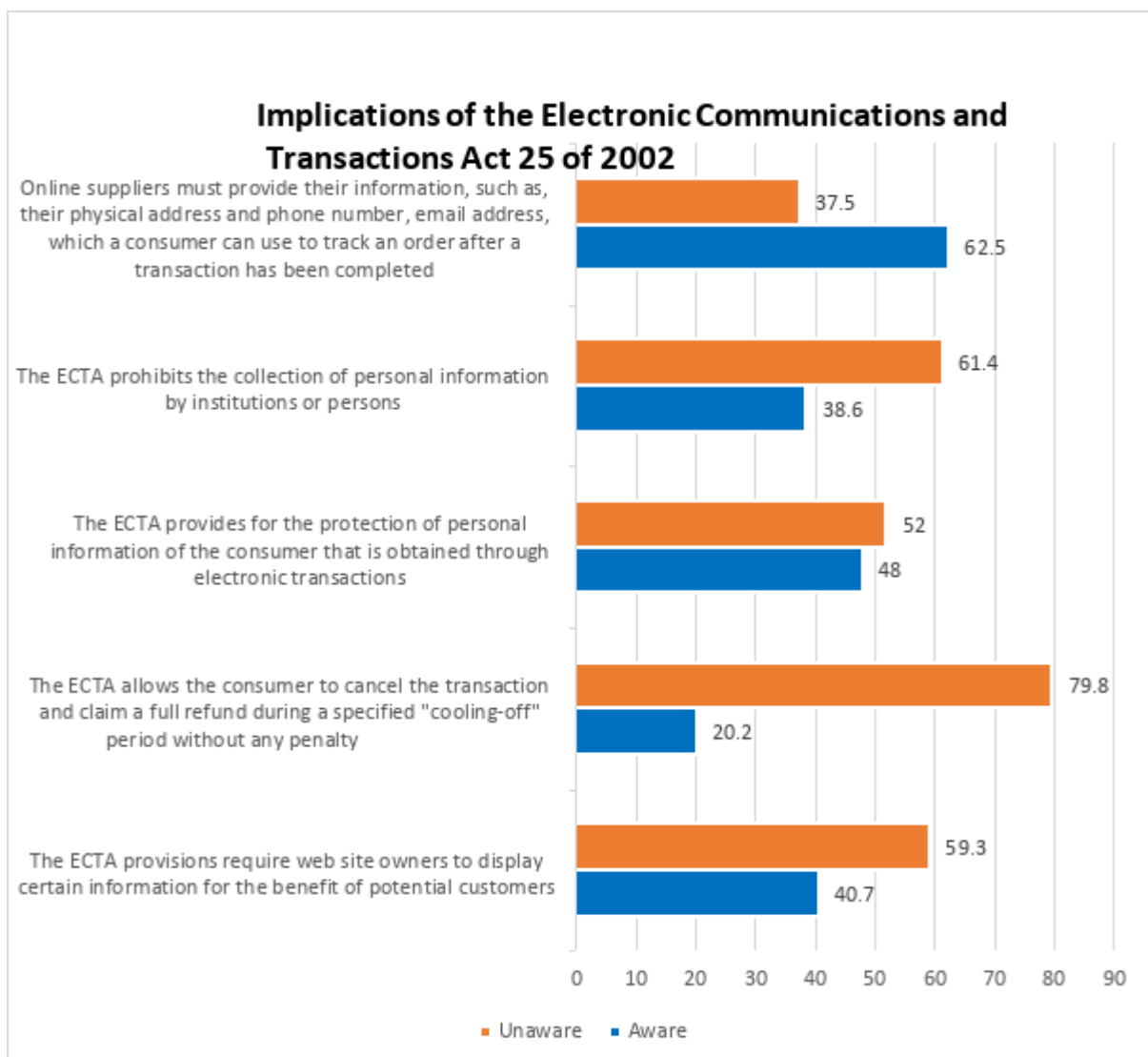
As shown in Figure 4.12 above, collectively 64.9% of respondents were aware that consumers have the right to privacy in respect of the CPA, whereas a total of 35.2%



of respondents disagreed with this statement. Hence, the findings show that the majority of the respondents understand what the right to privacy is and what it entails.

#### 4.10 Implications of the Electronic Communications and Transactions Act 25 of 2002 (ECTA)

Apart from the CPA, the ECTA has certain implications for consumers when entering into electronic contracts. The respondents were asked to indicate whether they were aware of selected implications of the ECTA for consumers. The results are depicted in Figure 4.13 below.



**Figure 4.13: Implications of the Electronic Communications and Transactions Act 25 of 2002**

The following patterns and trends are observed:

- Four out of five statements show higher levels of unawareness, with some being higher than others;
- There are no statements with higher levels of awareness; and

The results graphically presented in Figure 4.13 are discussed below for the sub-themes:

#### **4.10.1 Online suppliers must provide their information, such as, their physical address and phone number, email address, which a consumer can use to track and order after a transaction has been completed**

As shown in Figure 4.13 above, 62.5% of the respondents were aware of the above implication stated, while 37.5 of the respondents indicated that they were not aware of such implications.

Chapter 7 sets out the information that must be provided to the consumer. Online suppliers must comply with section 43(1) by providing a list of information and the procedure that a consumer can use to track an order after a transaction has been completed, and the supplier's security policy.

#### **4.10.2 The ECTA prohibits the collection of personal information by institutions or persons**

Figure 4.13 above indicates that 61.4% of respondents were unaware that the ECTA prohibits the collection of personal information by institutions or persons while 38.6% indicated that they were aware of the statement.

#### **4.10.3 The ECTA provides for the protection of personal information of the consumer that is obtained through electronic transactions**

As depicted in Figure 4.13 above, half of the respondents (52%) were unaware while 48% of the respondents indicated that they were aware of such protection afforded to consumers when entering into electronic contracts.

However, Snail (2015:221) maintains that even though the ECTA provides for consumer protection mechanisms with regard to protection of personal information, the ECTA does not however provide specific context and coverage (in regard to failure

to read terms and conditions) for the areas and challenges of type of language used as well as access to terms and conditions.

#### **4.10.4 The ECTA allows the consumer to cancel the transaction and claim a full refund during a specified "cooling-off" period without any penalty**

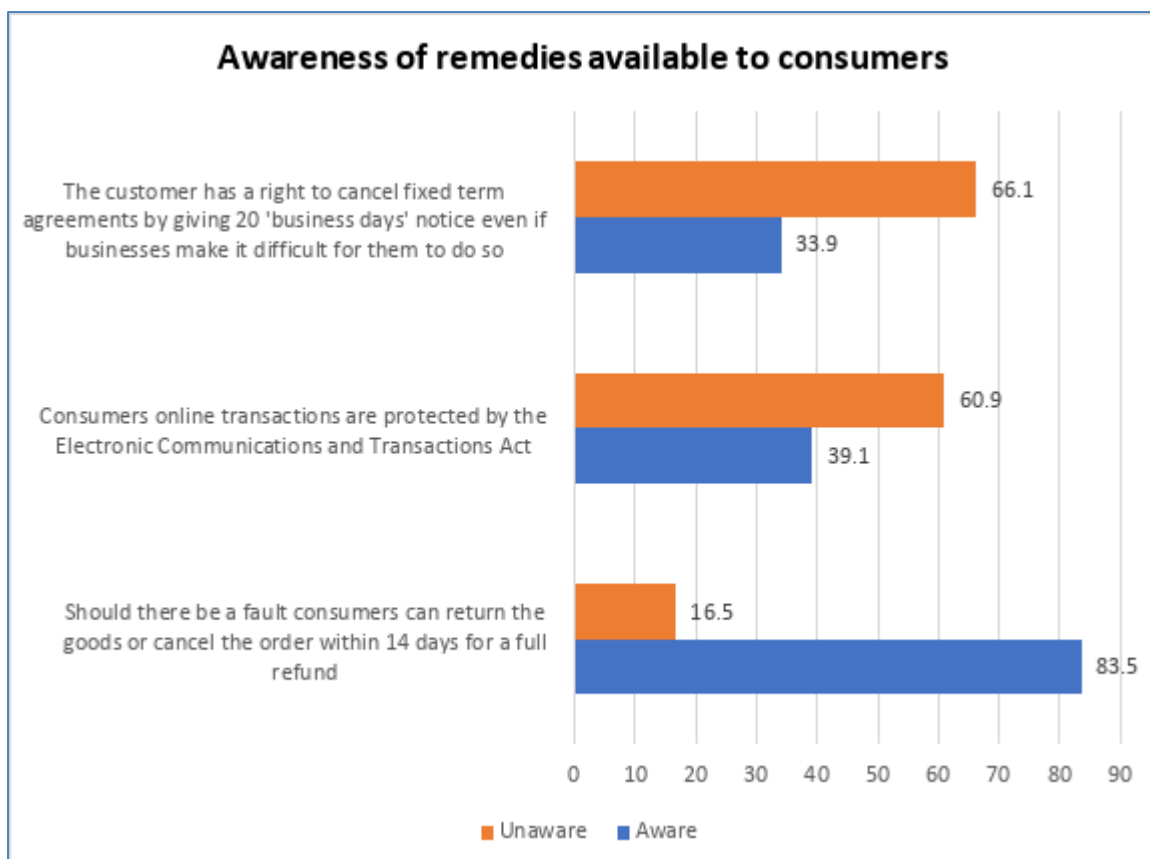
As illustrated in Figure 4.13 above 79.8% of the 381 respondents surveyed indicated that they were unaware and 20.2% of the respondents were aware that the ECTA allows the consumer to cancel transactions and claim a full refund during a specified "cooling-off" period without any penalty.

#### **4.10.5 The ECTA provisions require web site owners to display certain information for the benefit of potential customers**

As graphically illustrated in Figure 4.13 above 50.3% of the respondents stated that they were unaware that provisions require website owners to display specific information for the benefit of customers while 49.7% indicated that they were aware of this statement.

### **4.11 Section E: Remedies available and recommendations regarding alternate measures**

The respondents were asked whether they were aware of the following remedies available to consumers with regard to electronic contracts. Figure 4.13 shows the results



**Figure 4.14: Awareness of remedies available to consumers**

The following patterns are observed:

- Two out of three statements show (significantly) higher levels of unawareness;
- There is just one statement with higher levels of awareness; and

The results presented in Figure 4.14 are discussed below for the respective sub-themes

#### **4.11.1 The customer has a right to cancel fixed term agreements by giving 20 'business days' notice even if businesses make it difficult for them to do so**

As shown in Figure 4.14 above, 33.9% of the respondents were aware that customers have a right to cancel fixed term agreements by giving 20 'business days' notice even if businesses make it difficult for them to do so, while 66.1% of the respondents were not aware, indicating that the majority were unaware of the above mentioned right afforded to them as consumers by the CPA. Often consumers are unaware of the

rights available to them as a consumer. Consumers online transactions are protected by the Electronic Communications and Transactions Act

Figure 4.14 above indicates that 60.9% of respondents were unaware that consumers online transactions are protected by the Electronic Communications and Transactions Act, whilst 39.1% of respondents were aware of the above. Hence, the findings deduce that a majority of the respondents were unaware that protection is afforded to consumers online transactions through the ECTA.

Despite consumers being protected by the CPA. The ECTA affords consumers further protection when contracting online in that consumers may turn to the Electronic Communications and Transactions Act 25 of 2002.

#### **4.11.2 Should there be a fault consumer can return the goods or cancel the order within 14 days for a full refund**

As illustrated in Figure 4.14 above, 16.5% of respondents were unaware of the above statement whilst 83.5% of respondents indicated that they were aware of such a right, should there be a fault in goods delivered. The findings therefore indicate that the majority of respondents were aware that they could return the goods or cancel the order within 14 days for a full refund. Chapter 2 of the CPA lays out fundamental consumer rights.

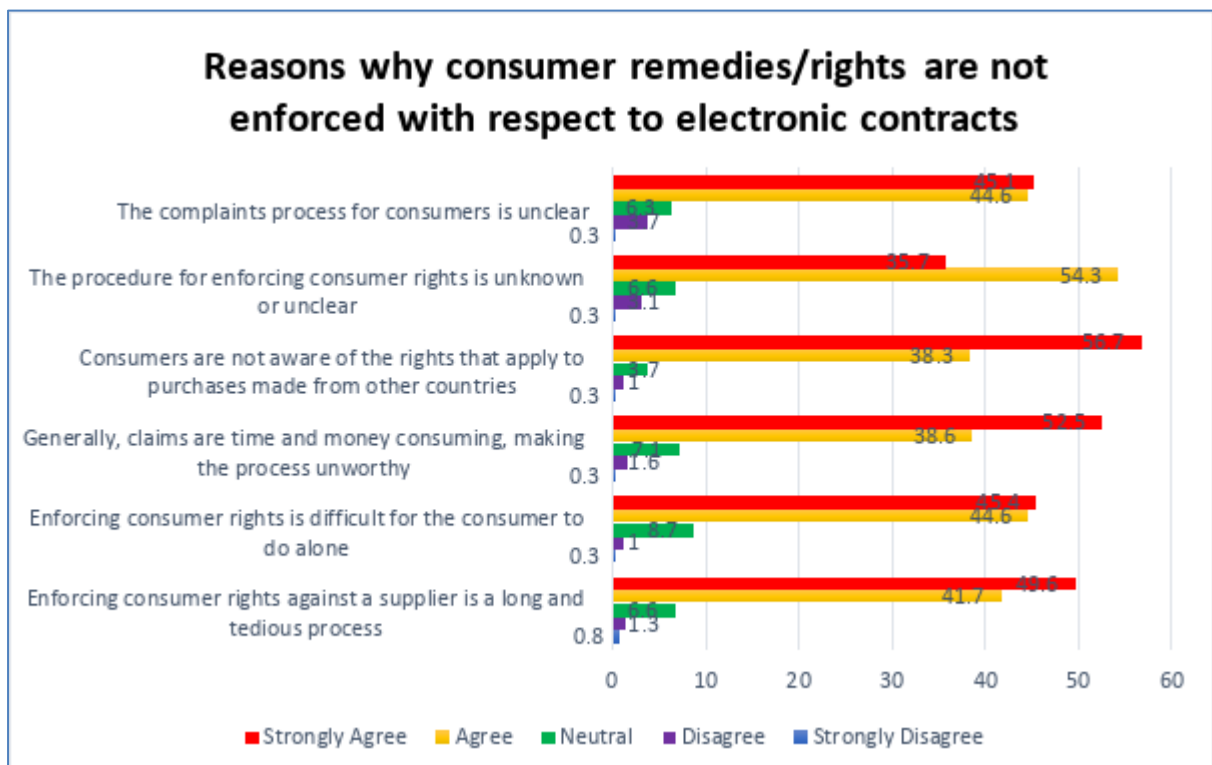
The consumer has the right to return such goods and often claim a refund within a reasonable time. This right is applicable to online shopping. Hence, where a consumer feels that the goods ordered are unsafe or does not comply with what was ordered, the consumer may request a full refund.

The responses are shown below:

- Consumers have a right to complain to an ombudsman if they are not satisfied with the goods and delivery of services; and
- The National Consumer Commission could be contacted for guidance and assistance

#### 4.12 Reasons why consumer remedies/rights are not enforced with respect to electronic contracts

Although consumers have the rights indicated above, they are unable to enforce these. The following statements about the reasons why consumer remedies and rights are not enforced in relation to electronic contracts were presented to the respondents, and they were asked to rate their level of agreement with each one. Figure 4.15 below present the results.



**Figure 4.15: Reasons why consumer remedies/rights are not enforced with respect to electronic contracts**

##### 4.12.1 The complaints process for the consumer is unclear

Collectively, 89.7% of the respondents either strongly agreed (45.1%) or agreed (44.6%) with the statement and 4.1% disagreed and 0.3% strongly disagreed whilst 3.7% remained neutral.

#### **4.12.2 The procedure for enforcing consumer rights is unknown or unclear**

According to the results graphically represented in Figure 4.15 54.3% of the respondents agreed, 35.7% of the respondents strongly agreed while 6.6% of the respondents remained neutral and 3.1% disagreed while 0.3% strongly disagreed.

#### **4.12.3 Consumers are not aware of the rights that apply to purchases made from other countries**

As shown in Figure 4.15, majority of the respondents either strongly agreed (56.7%) or agreed (38.3%) and 3.7% remained neutral whilst a few respondents strongly disagreed (0.3%) and 1% disagreed.

#### **4.12.4 Generally, claims are time and money consuming, making the process unworthy**

Figure 4.15 shows that majority of the respondents either strongly agreed (52.5%) or agreed (38.6%) while a few of the respondents disagreed (1.6%) and strongly disagreed (0.3%)

#### **4.12.5 Enforcing consumer rights is difficult for the consumer to do alone**

Collectively, 90% of the respondents either strongly agreed (45.4%) or agreed (44.6%) and 8.7% chose to remain neutral while a total of 4% of the respondents disagreed with the statement.

#### **4.12.6 Enforcing consumer rights against a supplier is a long and tedious process**

As represented in Figure 4.15 above 91.3% of respondents either strongly agreed (49.6%) or agreed (41.7%) and 6.6% remained neutral while 0.8% strongly disagreed and 1.3% disagreed.

The majority agreed that they had a challenge with:

The contracts "tiny font" makes it difficult to read and there is far too much of information on the actual contract itself and misleading advertisements about goods they have purchased.

### 4.13 Reliability Statistics

Reliability and validity are the two crucial components of precision. Reliability is determined by conducting multiple measurements on the same participants. A reliability coefficient of 0.60 or above is considered “acceptable” when developing a new construct. Bryman and Bell (2015: 169) propose that when determining if a measure is reliable or not, there are three variables that must be considered when deciding whether a metric is dependable or not. These are known as stability, internal dependability, and exterior dependability.

Table 4.4 below reflects the Cronbach’s alpha score for all the items that constituted the questionnaire.

**Table 4.4: Reliability Scores for Survey Themes using Cronbach's Alpha**

	Section	Number of Items	Cronbach's Alpha
B6	Challenges in respect of online contracts	12	0.766
B7	Challenges regarding the terms and conditions	9	0.851
C11	Implications of consumer challenges	6	0.838
D12	Consumer rights in terms of the consumer protection act	8	0.817
D13	Consumer rights in terms of the consumer protection act	4	0.822
D14	Implications of the electronic communications and transactions act	5	0.828
E17	Reasons why consumer remedies/rights are not enforced with respect to electronic contracts	6	0.856

The reliability scores for all sections exceed the recommended Cronbach’s alpha value. This indicates a degree of acceptable, consistent scoring for these sections of the research.

### 4.14 Factor Analysis

Factor analysis is a statistical method primarily used for data reduction. In survey research, it is commonly utilized to condense a large number of questions into a few hypothetical factors. For instance, in a nationwide poll on political attitudes,



participants may be asked three different questions about environmental policy that assess local, state and national concerns. These questions alone are insufficient to evaluate attitudes toward environmental policy, but together, they can yield more accurate results. Factor analysis can be used to determine whether the three measures actually measure the same thing. If they do, they can be combined to create a new variable called a factor score variable, which includes a score for each respondent on the factor. Factor analysis can be applied in various contexts, such as determining whether a decathlete requires a few fundamental skills or if the skills required are as diverse as the ten events. While the factors used in factor analysis need not be real, they are often given names and treated as if they were real entities in practice.

The matrix table/s is preceded by a summarised table that reflects the results of KMO and Bartlett's Test. The **KMO and Bartlett's Test** table below shows two tests that indicate the suitability of data for structure detection. The **Kaiser-Meyer-Olkin Measure of Sampling Adequacy** is a statistic that indicates the proportion of variance in the variables that might be caused by underlying factors. High values (close to 1.0) generally indicate that a factor analysis may be useful with the data. If the value is less than 0.50, the results of the factor analysis probably won't be very useful.

**Bartlett's test of sphericity** tests the hypothesis that the correlation matrix is an identity matrix, which would indicate that the variables are unrelated and therefore unsuitable for structure detection. Small values (less than 0.05) of the significance level indicate that a factor analysis may be useful with the data.

Factor analysis is done only for the Likert scale items. Certain components divided into finer components. This is explained below in the rotated component matrix.

#### 4.15 KMO and Bartlett's Test

Table 4.5 illustrates the results for the KMO and Bartlett's test

**Table 4.5: KMO and Bartlett's test**

	Section	Kaiser-Meyer-Olkin Measure of Sampling Adequacy	Bartlett's Test of Sphericity		
			Approx. Chi-Square	df	Sig.
B6	Challenges in respect of online contracts	0.760	1660.974	66	< 0.001
B7	Challenges regarding the terms and conditions	0.863	1390.154	36	< 0.001
C11	Implications of consumer challenges	0.857	925.202	15	< 0.001
D12	Consumer rights in terms of the consumer protection act	0.733	1319.244	28	< 0.001
D13	Consumer rights in terms of the consumer protection act	0.738	615.024	6	< 0.001
D14	Implications of the electronic communications and transactions act	0.826	728.931	10	< 0.001
E17	Reasons why consumer remedies/rights are not enforced with respect to electronic contracts	0.816	1062.170	15	< 0.001

All of the conditions are satisfied for factor analysis.

That is, the Kaiser-Meyer-Olkin Measure of Sampling Adequacy value should be greater than 0.500 and the Bartlett's Test of Sphericity sig. value should be less than 0.05.

Factor analysis is specifically applied to Likert scale items for data reduction. This process can further split components into finer ones, as shown in the rotated component matrix. In survey research, factor analysis is commonly used to condense a large number of questions into a few hypothetical factors. The table indicates that the statements relating to challenges and implications of online contracts and consumer protection laws all loaded below 0.001 on the identified factors.

## 4.16 Rotated Component Matrix

**Table 4.6: Rotated Component Matrices: Challenges associated with electronic contracts generally**

B6	Component		
	1#	2#	3#
When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable	0.769	0.148	0.109
When concluding an electronic contract, I generally do not understand the terms applicable to the contract	0.840	-0.093	0.031
There are unfair terms in electronic contracts	-0.077	0.662	0.466
Data protection is a major challenge with regard to online contracting Important information is exchanged, for instance, addresses, banking details and identity numbers, which can be misused	0.179	0.132	0.659
I do not understand my rights with respect to electronic contracts	0.819	0.150	0.084
The advertisements for goods that I purchased online were misleading	0.086	0.859	0.044
With electronic contracts that I have concluded, I experienced challenges in terms of the availability of the goods	0.764	0.010	-0.142
With electronic contracts that I have concluded, I experienced challenges in terms of risks associated with such contracts	0.461	0.249	0.005
With electronic contracts that I have concluded, I experienced challenges in terms of the price of goods	0.074	0.782	0.156
In many instances, the goods purchased arrive very late and sometimes not at all	0.710	-0.206	0.155
With online contracts, consumers are also not provided with important information concerning the complaints process	0.195	0.072	0.788
When entering online contracts, I do not have the opportunity to physically inspect the goods	-0.276	0.170	0.724

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 5 iterations.

# Challenges with electronic contracts

# Misleading advertisements and terms

# Complaints process and data protection challenges

It is observed that the variable in the above Table 5.8 that constituted the section on challenges associated with electronic contracts, loaded along three components (sub-themes). This indicates that different trends within the segment were identified.

Within the section, the splits are colour coded and can be interpreted as follows: The trend as indicated on component 1 was identified as “challenges with electronic contracts” which reflected the sub theme “Lack of understanding of terms applicable to the contract” as having the highest score of 0.840. Component 2 was identified as “challenges with electronic contracts” which reflected the sub-theme “Misleading advertisements of goods online” as having the high score of 0.859. This implies that the “lack of understanding of terms applicable to the contract” and “Misleading advertisements of goods online” are significant challenges associated with electronic contracts and component 3 was identified as “challenges with electronic contracts” which reflected the sub-theme “lack of important information concerning the complaints process” as having the high score of 0.788. This implies that the “lack of understanding of terms applicable to the contract”, “Misleading advertisements of goods online” and “lack of important information concerning the complaints process” are significant challenges associated with electronic contracts.

**Table 4.7: Rotated Component Matrix: Challenges pertaining to terms and conditions**

B7	Component
	1#
The contracts contained unfair terms and/or conditions, such as early termination fees and late payment fees	0.742
The terms in the contracts were not in plain and understandable language	0.745
The terms and conditions in the contract were too vague i.e. significant terms are often not readily evident or easily spotted	0.759
The document did not have enough information explaining the terms and consequences of the contract	0.609
I did not understand the information provided	0.508
I did not have enough time to properly read and understand the contract	0.697
Consumers are bound by the terms of the contract even if they are unaware of it or did not read them	0.748
I find that the words used in an online contract are frequently misleading	0.823
The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract	0.546

Extraction Method: Principal Component Analysis.

a. 1 component extracted.

# Challenges with terms and conditions

It is noted that the variables in the above Table 5.8 that constituted the section on challenges associated with terms and conditions.

**Table 4.8: Implications of Consumer Challenges**

C11	Component 1
Consumers skip through the small print in an online contract and merely scan information, looking for what they want to know	0.826
Consumers may claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises	0.846
Consumers may find it difficult to enforce their rights against suppliers in court	0.739
Consumers are reluctant to pursue claims that are small	0.824
Consumers think they are protected by the law, trust the company or think the contract is industry standard and thus cannot go elsewhere or do anything about the contract	0.684
The quality of information provided by supplier on websites about the goods/services lack information about the complaint's procedure	0.527

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

The trend as indicated on component 1 was identified as “implications of consumer challenges” which reflected the sub-theme “consumers claim to understand implications of signing the contract but fail to realize the consequence until challenges arise” as having the highest score of **0.846**. This implies that the sub-theme "consumers claim to understand implications of signing the contract but fail to realize the consequence until challenges arise" had the highest score of 0.846 on the trend identified as "implications of consumer challenges" in component 1.

**Table 4.9: Awareness of consumer rights in respect of electronic contracts**

D12	Component		
	1	2	3
Right to privacy	0.101	0.884	-0.040
Right to fair and honest dealing	0.220	0.686	0.352
Right to fair, just and reasonable terms and conditions	0.192	0.048	0.915
Right to disclosure and information	-0.039	0.295	0.805
Right to information in a plain and understandable language	0.218	0.677	0.367
Right to performance	0.620	0.504	0.179
Consumer's right to choose	0.917	0.130	0.058
Rights in respect of delivery of goods/return goods	0.902	0.141	0.065

Extraction Method: Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 4 iterations.

#Consumer rights in respect of goods.

#Consumer rights

#Consumer rights in respect of terms and disclosure of information

It is noted that the variable in Table 5.10 that constituted the section relating to Consumer rights in respect of electronic contracts loaded along three components (sub-themes). Consequently, this indicates that respondents identified different trends within the section. Within the section, the splits are colour coded and can be interpreted as follows: The trend as indicated on component 1 was identified as “right to performance” which reflected the sub theme “consumers right to choose” “as having the highest score of **0.917** and component 2 was identified as “consumer rights” which reflected the sub-theme “right to privacy” as having the high score of **0.884**.

The statements that constituted the following themes such as: challenges relating to the right to privacy; right to fair and honest dealing; right to fair, just and reasonable terms and conditions; right to disclosure and information; right to information in plain and understandable language; right to performance; consumers right to choose; rights in respect of delivery of goods/return of goods. This means that respondents identified different trends within the section. Within the section, the splits are colour coded.

**Table 4.10: Consumer rights in terms of the Consumer Protection Act 68 of 2008**

D13	Component 1
I understand what the right to privacy is and what it entails	0.735
I understand what the right to fair and honest dealing is and what it entails	0.793
I understand what the right to fair, just and reasonable terms and conditions is and what it entails	0.870
I understand what the right to disclosure and information is and what it entails	0.829

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

# Understanding of consumer rights

**Table 4.11: Provisions/Implications of the Electronic Communications and Transactions Act of 2008**

D14	Component 1
The ECTA provisions require web site owners to display certain information for the benefit of potential customers	0.823
The ECTA allows the consumer to cancel the transaction and claim a full refund during a specified "cooling-off" period without any penalty	0.536
The ECTA provides for the protection of personal information of the consumer that is obtained through electronic transactions	0.837
The ECTA prohibits the collection of personal information by institutions or persons	0.835
Online suppliers must provide their information, such as, their physical address and phone number, email address, which a consumer can use to track an order after a transaction has been completed	0.782

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

# ECTA provisions

**Table 4.12: Remedies available and recommendations regarding alternate measures**

E17	Component
	1
Enforcing consumer rights against a supplier is a long and tedious process	0.775
Enforcing consumer rights is difficult for the consumer to do alone	0.798
Generally, claims are time and money consuming, making the process unworthy	0.819
Consumers are not aware of the rights that apply to purchases made from other countries	0.762
The procedure for enforcing consumer rights is unknown or unclear	0.757
The complaints process for consumers is unclear	0.676

Extraction Method: Principal Component Analysis.

a. 1 components extracted.

# Challenges with enforcing consumer rights

Data reduction is the key aim of the statistical technique known as factor analysis. When conducting survey research, factor analysis is typically used to represent a number of questions with a small number of hypothetical factors. With reference to the table above:

The principal component analysis was applied as the extraction method, and the rotation method was Varimax with Kaiser Normalization. This is an orthogonal rotation method that reduces the number of variables that each factor is heavily loaded with. It simplifies the interpretation of the factors.

Factor analysis/loading reveal the inter-correlations between variables.

Items of questions with comparable loading imply measurement along a similar factor. An examination of the content of items loading at or above 0.5 (and using the higher or highest loading in instances where items cross-loaded at greater than this value) effectively measured along the various components.

The statements that constituted sections B7, C11, D13, D14 and E17 loaded perfectly along a single component. This implies that the statements that constituted these sections perfectly measured what it set out to measure.

It is noted that the variables that constituted Sections B6 and D12 loaded along 3 components (sub-themes). This means that respondents identified different trends within the section. Within the section, the splits are colour coded.



#### 4.17 Crosstabulations

A Chi square test of independence was conducted to determine whether there was a statistically significant link between the variables (rows vs columns). The null hypothesis states that there is no correlation between the two. The alternative hypothesis indicates that there is an association. All p-values more than 0.05 do not have a significant relationship.

Tables 4.4 to 4.9 below show the results for each set of variables.

##### 4.17.1 Theme 1: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and \*Age (in years)

This section presents the cross tabulation between “When concluding an electronic contract, I generally do not understand the terms applicable to the contract” and “Age”.

Table 4.13 below presents the results of the cross tabulations.

**Table 4.13: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and \*Age (in years)**

			Age (in years)						Total
			18 - 20	21 - 30	31 - 40	41 - 50	51 - 60	> 60	
When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable	Strongly Disagree	Count	1	6	7	3	3	0	20
		% within Age	3.2%	4.5%	6.7%	4.6%	8.1%	0.0%	5.2%
	Disagree	Count	10	72	23	17	4	3	129
		% within Age	32.3%	53.7%	22.1%	26.2%	10.8%	30.0%	33.9%
	Neutral	Count	2	5	11	2	8	1	29
		% within Age	6.5%	3.7%	10.6%	3.1%	21.6%	10.0%	7.6%
	Agree	Count	15	38	45	39	10	6	153
		% within Age	48.4%	28.4%	43.3%	60.0%	27.0%	60.0%	40.2%

	Strongly Agree	Count	3	13	18	4	12	0	50
		% within Age	9.7%	9.7%	17.3%	6.2%	32.4%	0.0%	13.1%
Total		Count	31	134	104	65	37	10	381
		% within Age	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Table 4.13 above shows that, collectively, significantly fewer respondents in the age groups 18-20 and 21-30 agreed/strongly agreed with the statement as compared to the older age groups. The p-value between **When concluding an electronic contract, I generally do not understand the terms applicable to the contract** and **Age** is < 0.001. This means that the age of the respondents did play a significant role in whether they understood the terms of the electronic contract or not.

#### 4.17.2 Theme 2: I do not understand my rights with respect to electronic contracts and \*Age (in years)

This section presents the cross tabulation between **I do not understand my rights with respect to electronic contracts** and **Age**. Table 4.14 below presents the results of the cross tabulation.

**Table 4.14: I do not understand my rights with respect to electronic contracts and \*Age (in years)**

			Age (in years)						Total
			18 - 20	21 - 30	31 - 40	41 - 50	51 - 60	> 60	
<b>I do not understand my rights with respect to electronic contracts</b>	Strongly Disagree	Count	1	5	2	2	1	0	11
		% within Age	3,2%	3,7%	1,9%	3,1%	2,7%	0,0%	2,9%
	Disagree	Count	9	69	21	12	2	2	115
		% within Age	29,0%	51,5%	20,2%	18,5%	5,4%	20,0%	30,2%

	Neutral	Count	2	19	24	8	9	4	66
		% within Age	6,5%	14,2%	23,1%	12,3%	24,3%	40,0%	17,3%
	Agree	Count	18	29	39	41	23	4	154
		% within Age	58,1%	21,6%	37,5%	63,1%	62,2%	40,0%	40,4%
	Strongly Agree	Count	1	12	18	2	2	0	35
		% within Age	3,2%	9,0%	17,3%	3,1%	5,4%	0,0%	9,2%
Total	Count	31	134	104	65	37	10	381	
	% within Age	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	

The p-value between **Not understanding rights with respect to electronic contracts** and **Age** is  $< 0.001$ . This means that there is a significant relationship between the variables.

Table 4.5 above shows that a comparatively higher proportion in the age group 21-30 disagreed with the statement, implying that the majority understood the rights to contracts, while the other age groups had a lower proportion of those who understood their contractual rights. Consequently, the younger age groups (apart from the 18-20) seem to be more informed. This means that the age of the respondent did play a significant role in whether they understood their rights in terms of the contract or not.

#### **4.17.3 Theme 3: The document did not have enough information explaining the terms and consequences of the contract and \*Age (in years)**

This section presents the cross tabulation between **The document did not have enough information explaining the terms and consequences of the contract** and **Age**. Table 4.15 below presents the results of the cross tabulation.

**Table 4.15: The document did not have enough information explaining the terms and consequences of the contract and \*Age (in years)**

			Age (in years)						Total
			18 - 20	21 - 30	31 - 40	41 - 50	51 - 60	> 60	
<b>The document did not have enough information explaining the terms and consequences of the contract</b>	Strongly Disagree	Count	1	4	1	0	0	0	6
		% within Age	3,2%	3,0%	1,0%	0,0%	0,0%	0,0%	1,6%
	Disagree	Count	9	13	17	10	7	1	57
		% within Age	29,0%	9,7%	16,3%	15,4%	18,9%	10,0%	15,0%
	Neutral	Count	3	6	8	2	4	0	23
		% within Age	9,7%	4,5%	7,7%	3,1%	10,8%	0,0%	6,0%
	Agree	Count	16	77	44	48	22	9	216
		% within Age	51,6%	57,5%	42,3%	73,8%	59,5%	90,0%	56,7%
	Strongly Agree	Count	2	34	34	5	4	0	79
		% within Age	6,5%	25,4%	32,7%	7,7%	10,8%	0,0%	20,7%
	Total	Count	31	134	104	65	37	10	381
		% within Age	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

The P-value between **The document did not have enough information explaining the terms and consequences of the contract** and **Age** is  $< 0.001$ . This indicates that there is a significant relationship between the variables. A greater proportion of the 18-20 age group disagreed with the statement than in the other age groups. Hence, the age of the respondent did play a significant role as to whether the respondents felt that the document had enough information explaining the terms and consequences of the contract or not.

#### 4.17.4 Theme 4: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and \*Education

This section presents the cross tabulation between when concluding an electronic contract, I generally do not understand the terms applicable to the contract and Education. Table 4.16 below presents the results of the cross tabulation.

**Table 4.16: When concluding an electronic contract, I generally do not understand the terms applicable to the contract and \*Education**

			Education					
			Primary school	Secondary school but did not complete matric	Matric	Tertiary	Other	Total
<b>When concluding an electronic contract, I generally do not understand the terms applicable to the contract</b>	Strongly Disagree	Count	0	2	13	66	0	81
		% within Age	0,0%	10,0%	10,9%	28,6%	0,0%	21,3%
	Disagree	Count	0	3	35	60	2	100
		% within Age	0,0%	15,0%	29,4%	26,0%	20,0%	26,2%
	Neutral	Count	0	2	7	22	0	31
		% within Age	0,0%	10,0%	5,9%	9,5%	0,0%	8,1%
	Agree	Count	1	12	55	78	7	153

		% within Age	100,0%	60,0%	46,2%	33,8%	70,0%	40,2%
	Strongly Agree	Count	0	1	9	5	1	16
		% within Age	0,0%	5,0%	7,6%	2,2%	10,0%	4,2%
Total		Count	1	20	119	231	10	381
		% within Age	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

The results for the cross tabulation between **education** and the respondent **not understanding the terms applicable to the contract** are shown in Table 4.16 above. The findings indicate that the respondents who have completed primary and secondary school but did not complete matric, generally did not understand the terms applicable to the contract. Hence, they indicate that, the higher the education level of the respondent, the more they have an understanding of the terms applicable to the contract. The p-value between **When concluding an electronic contract, I generally do not understand the terms applicable to the contract** and **Education** is < 0.001. This means that there is a significant relationship between the variables. Hence, the level of education of the respondent did play a significant role in whether the respondent understood the terms of the electronic contract or not.

#### **4.17.5 Theme 5: Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties? and \*Education**

This section presents the cross tabulation between **Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties** and **education**. Table 4.17 below presents the results of the cross tabulation.

**Table 4.17: Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties? and \*Education**

Education								
Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties?			Primary school	Secondary school but did not complete Matric	Matric	Tertiary	Other	Total
	Yes	Count	0	4	72	135	8	219
		% within Education	0,0%	20,0%	60,5%	58,4%	80,0%	57,5%
	No	Count	1	16	47	96	2	162
		% within Education	100,0%	80,0%	39,5%	41,6%	20,0%	42,5%
	Total	Count	1	20	119	231	10	381
		% within Education	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

The p-value between **Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties?** and **Education** is 0.016. The results show that the respondents who have a tertiary qualification show higher levels of agreement compared to the other groups indicating that the higher the qualification the greater awareness that electronic contracts have terms and conditions relating to payment, price variation and penalties. Hence, the cross tabulation shows that, the

education level of the respondent did play a significant role in whether the respondent was aware that electronic contracts have terms and conditions setting out the rights and responsibilities that one has, which may relate to payment, price variations and penalties.

#### 4.17.6 Theme 6: Consumers' online transactions are protected by the Electronic Communications and Transactions Act and \*Education

This section presents the cross tabulation between **consumers online transactions are protected by the Electronic Communications and Transactions Act** and **education**. Table 4.18 below presents the results of the cross tabulation.

**Table 4.18: Consumers online transactions are protected by the Electronic Communications and Transactions Act \* Education**

Education									
Consumers online transactions are protected by the Electronic Communications and Transactions Act			Primary school	Secondary school but did not complete Matric	Matric	Tertiary	Other	Total	
	Aware	Count		0	4	21	120	4	149
		% within Education		0,0%	20,0%	17,6%	51,9%	40,0%	39,1%
	Not aware	Count		1	16	98	111	6	232
		% within Education		100,0%	80,0%	82,4%	48,1%	60,0%	60,9%
	Total	Count		1	20	119	231	10	381
		% within Education		100,0%	100,0%	100,0%	100,0%	100,0%	100,0%



The p-value between **Consumers online transactions are protected by the Electronic Communications and Transactions Act and Education** is  $< 0.001$ .

Table 4.18 above shows consumers in 5 different education levels and their awareness of the ECTA. It is evident from the table above that a vast majority of individuals who have only a matric level education or lower, are unaware of their online rights in respect of the ECTA, while those with a tertiary level education have a relatively more even split between aware and unaware. It goes to show that individuals with a higher education level were more aware of their rights in terms of the ECTA. Hence, the education level of the respondent did play a significant role in whether or not the respondent was aware that the ECTA offered protection to consumers engaging in online transactions.

#### **4.18 Correlations**

Bivariate correlation was also performed on the (ordinal) data. The Correlations Table in the appendix contains the results. The results indicate the patterns indicated below. Carpenter (2022) defines simple bivariate correlation as a statistical technique that is used to determine the existence of relationships between two different variables (i.e X and Y). It shows how much X will change when there is a change in Y.

##### **4.18.1 Directly proportional relationships**

Positive results demonstrate a directly proportional relationship between the variables, whereas negative results indicate an inverse relationship. The Correlation Table in the Appendix shows a " or \*\* for each significant link.

Selected significant correlations which have a directly proportional relationship, are shown below:

- **Analysis 1:** The correlation value between “When concluding an electronic contract, I generally do not understand the terms applicable to the contract” and “When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable”, is **0.617**. This is a directly related proportionality, that is, as one increases, so does the other, and vice versa. There is a significant relationship between these variables. The respondents indicated that, the greater the failure to read electronic contracts, the greater their lack of understanding of the terms in such contracts.

- **Analysis 2:** The correlation value between “I do not understand my rights with respect to electronic contracts” and “When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable” is **0.695**. This is a strong and significant directly proportional relationship. That is, as one increases, so does the other, and vice versa. The respondents indicated that they are not aware of their contractual rights, this meant that they did not read the contract thus not aware of the terms applicable. The respondents indicated that the more they failed to read electronic contracts, the more they were not aware of their contractual rights.
- **Analysis 3:** The correlation value between “I did not understand the information provided” and “I did not have enough time to properly read and understand the contract” is **0.270**. The relation is direct and significant. That is, as one increases, so does the other, and vice versa. The respondents indicated that the greater the challenge of not having enough time to properly read and understand the contract, the more they did not understand the information provided.
- **Analysis 4:** The correlation value between “I do not understand my rights with respect to electronic contracts” and “The terms and conditions in the contract were too vague i.e. significant terms are often not readily evident or easily spotted” The correlation value is **0.349**, this is a directly related proportionality. That is, as one increases, so does the other, and vice versa. There is a significant relationship between these variables. The respondents indicated, the more vague the terms and conditions in the contract were, the greater the lack of understanding of the information provided.
- **Analysis 5:** The correlation value between “The terms in the contracts were not in plain and understandable language” and “I find that the words used in an online contract are frequently misleading” is **0.473**. There is a significant relationship between these variables. That is, as one increases, so does the other, and vice versa. The respondents indicated that, the greater the challenge that contracts were not in plain and understandable language, the more the respondent would find that the words used are misleading.

- **Analysis 6:** The correlation value between “The terms in the contracts were not in plain and understandable language” and “The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract” is **0.333**. The association is direct and significant. That is, as one increases, so does the other, and vice versa. The respondents indicated that, the greater the challenge that contracts were not in plain and understandable language, the more they experienced difficulty in understanding the terms in the contract due to low literacy levels.

#### **4.18.2 Inverse relationships (negative correlations)**

An inverse relationship is implied by negative values. This means the variables have an opposite effect on each other, as one increases, the other decreases. The following section sets out selected significant correlations:

**Analysis 7:** The correlation value between “When concluding an electronic contract, I generally do not understand the terms applicable to the contract” and “When entering online contracts, I do not have the opportunity to physically inspect the goods” is **-0.250**. This is an indirectly proportional relationship. As one increases, the other decreases. That is, the more respondents do not understand the terms of a contract, the less likely they are to physically inspect the goods.

**Analysis 8:** The correlation value between “When concluding an electronic contract, I generally do not understand the terms applicable to the contract” and “The terms in the contracts were not in plain and understandable language” is **-0.115**. This is an indirectly proportional relationship. As one increases, the other decreases

This is a strong and significant indirectly proportional relationship. As one increases, the other decreases, and vice versa. That is, the greater the challenge that contracts were not in plain and understandable language, the less respondents understood the terms applicable to the contract.

**Analysis 9:** The correlation value between “When concluding an electronic contract, I generally do not understand the terms applicable to the contract” and “The procedure for enforcing consumer rights is unknown or unclear” is **-0.239**. This is an indirectly

proportional relationship. That is, as one increases, the other decreases, and vice versa. That is, the more they had challenges with the procedure for enforcing consumer rights being unclear, the less they understood the terms applicable to the contract.

**Analysis 10:** The correlation value between “I understand what the right to privacy is and what it entails” and “With electronic contracts that I have concluded, I experienced challenges in terms of risks associated with such contracts” is **-0.217**. That is, as one increases, the other decreases, and vice versa. The respondents indicated that the more they understood what the right to privacy is and what it entails the less they experienced challenges in terms of risks associated with electronic contracts.

#### **4.19 Hypothesis testing**

The traditional approach to reporting a result requires a statement of statistical significance. A p-value is generated from a test statistic. For all values with an \*, a significant result is indicated with " $p < 0.05$ ". For all values with an \*\*, a significant result is indicated with " $p < 0.01$ ".

A second Chi square test was performed to ascertain whether there was a statistically significant relationship between the variables (rows vs columns).

The null hypothesis states that there is no association between the two variables. The alternate hypothesis indicates that there is a relationship between the variables.

** . Correlation is significant at the 0.01 level (2-tailed).
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* . Correlation is significant at the 0.05 level (2-tailed).
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A Chi-square test was conducted on the following and the results are indicated as follows:

#### **4.20 Failure to read contracts Versus lack of understanding of rights**

This section examines the relationship between entering into an electronic contract, “I have not read the contract, so I am not aware of the terms applicable” and “not understanding my rights with respect to electronic contracts.” The p-value between entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable and not understanding my rights with respect to electronic

contracts. is 0.000. This shows that there is a significant relationship between the two variables which means that when consumers failing to read the contract plays a significant role in contributing to lack of understanding.

**Table 4.19: Chi-square test: Failure to read contracts versus lack of understanding of rights**

	<b>When entering into an electronic contract, I do not read the contract so I am not aware of the terms applicable</b>	
	Correlation Co-efficient	P-Value
<b>I do not understand my rights with respect to electronic contracts</b>	.695**	0,000
**. Correlation is significant at the 0.01 level (2-tailed).		

**4.21 Lack of understanding of rights with respect to electronic contracts Versus challenges in terms of risks associated with such contracts**

This section examines the relationship between the lack of understanding of rights with respect to electronic contracts and challenges in terms of risks associated with such contracts. The p-value between lack of understanding of rights with respect to electronic contracts and challenges in terms of risks associated with such contracts. is 0.000. This shows that there is a substantial relationship between the two variables which means that consumers failure to understand the rights with respect to electronic contracts plays a significant role in contributing to challenges in terms of risks associated with such contracts

**Table 4.20: Chi-square test: Lack of understanding of rights with respect to electronic contracts Versus challenges in terms of risks associated with such contracts**

	<b>Lack of understanding of rights with respect to electronic contracts</b>
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	Correlation Co-efficient	P-Value
<b>Challenges in terms of risks associated with such contracts</b>	.326**	0,000
**. Correlation is significant at the 0.01 level (2-tailed).		

#### **4.22 The terms in the contract were not in plain and understandable language Versus words used in online contracts are misleading**

This section examines the relationship between the terms in the contract were not in plain and understandable language and words used in online contracts are misleading. The p-value between terms in the contract were not in plain and understandable language and words used in online contracts are misleading is 0.000. This shows that there is a consequential relationship between the two variables which means that terms not in plain and understandable language in electronic contracts play a significant role in challenges in contributing to words used in online contracts are misleading.

**Table 4.21: Chi-square test: The terms in the contract were not in plain and understandable language Versus words used in online contracts are misleading**

	<b>The terms in the contract were not in plain and understandable language</b>	
	Correlation Co-efficient	P-Value
<b>Words used in online contracts are misleading</b>	.473**	0,000
**. Correlation is significant at the 0.01 level (2-tailed).		

#### **4.23 Conclusions**

The findings of the study were interpreted and discussed in this chapter. The primary objective of the research was to explore how consumer challenges with electronic contracts and certain aspects of protection legislation affected those challenges in the Durban area.

## **CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Introduction**

This is an empirical study which investigated the electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation. As part of the empirical study, a survey was conducted with consumers surrounding the Durban area. The analysis of results was presented in the previous chapter.

This chapter will present the aims and objectives of the study, summary and findings as well as the conclusions from the literature review, limitations and suggestions for further research.

### **5.2 Aims and objectives**

The primary aim of the study was to investigate the electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation.

Objectives of the study are:

- To explore the nature of electronic contracts as a means of concluding contracts;
- To identify the nature and extent of consumer challenges with respect to electronic contracts and the implications they have in the Greater Durban area;
- To determine the consumer rights that are applicable and the remedies that are available with respect to such consumer challenges in respect of electronic contracts.
- To identify the need for additional protection for electronic contract consumers.

### **5.3 Research questions**

The key questions that this study intended to address in order to achieve the aforementioned aims were:

- What is the nature of electronic contracts as a means of concluding contracts?
- What is the nature and extent of consumer challenges with respect to electronic contracts and what are the implications that they have for consumers in the Greater Durban area?



- Which are the consumer rights that are applicable and what are the remedies that are available with respect to such consumer challenges in respect of electronic contracts?
- In which areas is there a need for additional protection for electronic contract consumers?

#### **5.4 Summary of findings**

This section sets out the summary of findings from the empirical study. The findings from the study show that the majority of the respondents agreed that:

- When entering into an electronic contract, consumers did not read the contract, so they were unaware of the terms applicable. This finding is in a agreement with a study by Becher and Unger-Aviram (2010) who state that there is sufficient evidence to show that consumers lack the motivation to read general contract terms in the first place, as they quite easily suffer from information overload and their mental thoughts and resources are saturated;
- There are unfair terms in electronic contracts. This finding is supported by the view expressed by Roy (2019) that the words used in an online offer can frequently be considered misleading which supports the idea of consumers finding contracts having unfair terms;
- Data protection is a major challenge with regard to online contracting as important information is exchanged, for instance, addresses, banking details and identity numbers, which can be misused. This finding is similar to those in a study by Johnson (2003:24) which confirms that online contracts and transactions are subject to various risks. The author adds that shortfalls exist in the area of online data protection of consumers;
- With electronic contracts that the respondents concluded, they experienced challenges in terms of availability of goods. This finding is supported by a study by Daroch *et al.* (2021: 1) who state that the availability of goods is one of the factors that limit online shopping behaviour of consumers.

- In many instances the goods arrive very late and sometimes not at all. This finding is in agreement with a study by Erasmus (2011) who states that one of the major challenges identified by consumers with respect to electronic contracts is the reliability of their services. In many instances, the goods arrived very late and sometimes not at all;
- With online contracts, consumers are also not provided with important information concerning the complaints process. This finding is in agreement with the views of Erasmus (2011:3) who points out that customers are not provided with critical information concerning the complaints procedure;
- When entering online contracts, they do not have the opportunity to physically inspect the goods. This finding is supported by Dahiyat (2011) who explains that a challenge with electronic sales contracts is that it has a self-executing nature and therefore the absence of the face-to-face encounter between buyer and seller thus denying consumers the opportunity to physically inspect goods purchased;
- The contracts contained unfair terms and/or conditions, such as early termination fees and late payment fees. Hence, in support of the findings, what started off as a legitimate aid (when consumers are provided with the opportunity to conclude online contracts), turned into an expense trap for unsuspecting consumers. This finding is supported by Christie and Bradfield (2011:14), this was due to service providers being able to inflict unfair terms upon the consumer, such as early termination fees and late fees in online contracts;
- The terms and conditions in the contract were too vague – i.e. significant terms are often not readily evident or easily spotted. This finding is supported by De Stadler (2017:105) who argues that the challenge with online contracts is that significant terms are often not easily evident or spotted and that consumers merely scan information looking for what they want to know;
- The document did not have enough information explaining the terms and consequences of the contract. This finding is in agreement with a study by Poole (2020), who affirms that an unfair situation arises when

consumers are often not aware of the existence of certain contractual provisions or threats, and where they cannot negotiate more favourable terms;

- They did not understand the information provided. This finding is similar to the view expressed by Reddy and Rampersad (2012: 7407) who explain that the low literacy levels of consumers make it difficult for them to understand the information that is provided when contracting online. The authors add that, as a consequence, they have a lack of understanding of the contracts, nor are they aware of their rights and are not in a position to assert their rights;
- They did not have enough time to properly read and understand the contract. This finding is supported by Obar (2022:2) as the author mentions that the implications of this is that consumers have shown trends of ignoring or merely browsing over the terms of service, privacy policy or terms and conditions documents when entering into electronic contracts;
- They found the words that are used in online contracts to be frequently misleading. The finding is supported by the views expressed by Roy (2019) and Kapdi (2016) who state that disadvantaged consumers become easy targets for unfair, unjust, and unreasonable business practices due to the lack of understanding of misleading contractual terms and provisions
- The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract. This finding is in agreement with Reddy (2012:584) who maintains that consumers with low literacy levels are seriously disadvantaged in comprehending the content and effect of consumer related contracts;
- Understanding of terms and conditions. These findings are different from the views of Knowler (2019) which point to the big gap in understanding the fine print terms and conditions of contracts;
- The quality of information provided by suppliers on websites about the goods/services lack information about the complaints procedure. This finding is in agreement with Torevasei (2019: 16) that consumers are

frequently left in the dark about how to file a complaint or resolve a dispute on websites. Furthermore, in certain cases, the company's information is unclear, and information on the company's location and contact information is not provided;

- Consumers may claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises. This finding is supported by the study by Gouws (2010) which states that consumers might claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises from or related to the terms of the contract;
- The ECTA provides for the protection of personal information of the consumer that is obtained through electronic transactions. This finding is supported by Snail (2015:221) who maintains that, even though the ECTA provides for consumer protection mechanisms with regard to protection of personal information, it does not however provide specific context and coverage (in regard to failure to read terms and conditions) for the areas and challenges of type of language used, as well as access to terms and conditions.

#### **5.4.1 Nature and extent of consumer challenges**

This section deals with the nature of consumer challenges experienced with electronic contracts.

#### **5.4.2 Electronic contract consumer challenges experienced by respondents**

The respondents were asked to respond on various themes relating to consumer challenges with respect to electronic contracts. The findings showed that, from the majority of the respondents, the following challenges were experienced in respect of electronic contracts:

- When entering into an electronic contract, they did not read the contract, so they were not aware of the terms applicable;
- There are unfair terms in electronic contracts;

- Data protection is a major challenge with regard to online contracting. Important information is exchanged, for instance, addresses, banking details and identity numbers which can be misused;
- They did not understand their rights with respect to such electronic contracts;
- The advertisements for goods that they purchased online, were misleading;
- With electronic contracts that they concluded, they experienced challenges in terms of the availability of the goods; risks associated with such contracts; and the price of the goods; and they also did not have the opportunity to physically inspect the goods;
- In many instances, the goods purchased arrive very late and sometimes not at all;
- With online contracts, consumers were also not provided with important information concerning the complaints process.

#### **5.4.3 Consumer challenges that were experienced with respect to the terms and conditions in electronic contracts**

The findings also showed that the majority of the respondents agreed that they experienced the following challenges with respect to the terms and conditions in electronic contracts:

- The contracts contained unfair terms and/or conditions, such as early termination fees and late payment fees;
- The terms in the contracts were not in plain and understandable language;
- The terms and conditions in the contract were too vague i.e. significant terms were often not readily evident or easily spotted;
- The document did not have enough information explaining the terms and consequences of the contract;
- They did not understand the information provided with respect to the transaction;
- They did not have enough time to properly read and understand the contract;
- They are bound by terms of the contract even if they were unaware of them or did not read them;
- The words used in online contracts are frequently misleading; and
- The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract.

#### 5.4.4 Other challenges experienced when concluding electronic contracts

Other challenges experienced when concluding electronic as identified by consumers in terms of sub-themes identified, included:

- **Copies of contracts:** hard copies of the consumer contracts are not provided to consumers;
- **Contracts are lengthy and very time consuming:** consumers do not get a chance to check for fine print clauses; Some contracts do not give the client sufficient time to make an informed decision especially if it is a telephonic salesperson;
- **Direct marketing challenges:** consumers receive numerous calls and emails;
- **Difficulty in receiving assistance from customer services or support:** It is difficult to make direct contact with people to have problem resolved;
- **Challenges with online methods to sort out problems:** depending on the interface of the website it can be tricky for consumers to get to the actions they want to complete. This has an impact on whether they complain or not or if even bother to do so;
- **Challenges with terms and conditions:**
  - Terms and conditions text is always too small; the size of the font for terms and conditions is often too small to read. They also make it far too text heavy and this increases this chance of users/buyers just ticking the box and accepting the terms without going through it accurately;
  - Terms and conditions were hidden and respondents only found out when they signed;
  - Too many terms and conditions were included in the contract and important information may be hidden with the overload of information;
  - Warranties and guarantees are very misleading; and
  - Challenges with refunds for goods not delivered.

#### 5.4.5 Awareness of consumer rights in terms of the Consumer Protection Act

The findings show that the vast majority of respondents were aware that they had the following consumer rights in terms of the CPA: the right to choose; the right to

performance; the right to information in plain and understandable language; the right to disclosure and information; the right to fair just and reasonable terms and conditions; the right to fair and honest dealing; the right to privacy; and the right to delivery of goods and to return the goods. Furthermore, the findings therefore confirm that the majority of the respondents were aware that they have rights relating to payment, price variation and penalties; that they were made aware of the terms and conditions when concluding the contract.

#### **5.4.6 Respondents' level of understanding of terms and conditions**

The findings revealed that the majority of the respondents generally understood the terms and conditions and were aware of payment, price variation and penalties included in the contract.

#### **5.4.7 Implications of consumer challenges**

The purpose of this section was to ascertain the respondents' level of understanding of the implications of the consumer challenges that were generally experienced with electronic contracts. The findings of various sub-themes revealed that the majority of respondents agreed that:

- The quality of information provided by supplier on websites about goods/services lack information about the complaints procedure;
- Consumers think they are protected by the law, have confidence in the company or think the contract to be industry standard, they assume they are unable to seek other remedies or dissolve the contract.;
- Consumers are reluctant to pursue claims that are small;
- Consumers may find it difficult to enforce their rights against suppliers in court;
- Consumers may claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises; and
- Consumers skip through the small print in an online contract and merely scan information, looking for what they want to know.

#### **5.4.8 Awareness of consumer rights**

The respondents were requested to indicate their awareness of seven selected rights in terms of the CPA. The findings revealed that the majority of the respondents did not

understand the following rights in the CPA: the right to choose; the right to performance; the right to information in plain and understandable language; the right to disclosure and information; the right to fair, just and reasonable terms and conditions; the right to fair and honest dealing; the right to privacy; and the right to delivery of goods and to return the goods.

Hence, only some of the respondents to this investigation were aware of the consumer rights in terms of the CPA.

#### **5.4.9 Respondents' level of understanding of selected consumer rights in terms of the CPA**

The respondents were asked to indicate their level of agreement with statements relating to each of the selected consumer rights. A majority of the respondents indicated the following:

- The majority of the respondents indicated that they understood the rights to disclosure and information; the right to fair and honest dealings; and the right to privacy and what each of these rights entailed; and
- Almost half of the respondents indicated that they understood what the right to fair, just and reasonable terms and conditions is and what it entails.

#### **5.4.10 Implications of the Electronic Communications and Transactions Act 25 of 2002 (ECTA)**

The respondents were asked to respond on their awareness of various implications of the ECTA. The findings presented that many of the respondents were unaware of the following implications of the ECTA in respect of electronic contracts:

- Online suppliers must provide their information, such as, their physical address and phone number, email address, which a consumer can use to track an order after a transaction has been completed;
- The ECTA prohibits the collection of personal information by institutions or persons;
- The ECTA provides for the protection of personal information of the consumers that is obtained through electronic transactions;
- The ECTA allows the consumer to cancel the transaction and claim a full refund during a specified "cooling-off" period without any penalty; and that



- The ECTA provisions require website owners to display certain information for the benefit of the potential customers.

#### **5.4.11 Remedies available and recommendations regarding alternate measures**

The respondents were asked whether they were aware of remedies available. The findings reveal that the majority of the respondents were unaware of the following remedies:

- That the customer has a right to cancel fixed term agreements by giving 20 'business days' notice even if businesses make it difficult for them to do so;
- That consumers online transactions are protected by the Electronic Communications and Transactions Act
- That, in the event of a fault, consumers can return the goods or cancel the order within 14 days and were entitled to a full refund.

#### **5.4.12 Reasons why consumer remedies/rights are not enforced with respect to electronic contracts**

Although consumers have the rights indicated and discussed above, they may not enforce these rights. The respondents were asked to indicate their level of agreement with statements relating to the reasons why consumer remedies/rights are not enforced with respect to electronic contracts. A vast majority of the respondents agreed that:

- The complaints process for consumers is unclear;
- The procedure for enforcing consumer rights is unknown or unclear;
- Consumers are not aware of the rights that apply to purchases made from other countries;
- Generally, claims are time and money consuming, making the process unworthy; and
- Enforcing consumer rights against a supplier is a long and tedious process.

### **5.5 Conclusions**

The focal point of this study was to determine the consumer challenges relating to electronic contracts and the ramifications of the CPA.

This chapter provides a synopsis of significant findings of the empirical study. On the basis of these findings, conclusions drawn from the study will be presented. In addition, recommendations based on conclusions will be presented.

## **5.6 Conclusions from the literature review**

The main consumer challenges in respect of electronic contracts are:

- In respect of the challenges and perceptions of consumers with regard to electronic contracts.
  - The respondents were accessible targets for unfair, unjust and unreasonable business practices due to lack of knowledge of their rights. According to Roy (2019), the words used in an online offer can frequently be considered misleading.
  - Some of the respondents felt that the majority of business contracts are not drafted in plain and understandable language. Contracts (particularly standard-form contracts) often have unjust clauses that go against the principle of good faith and policy. According to Gouws (2010), the legislation on plain language must address the standards by which plain language is defined in order for the requirements of Section 22 to be sufficient with regard to rendering consumer agreements understandable.
- The conclusions relating to the implications of the CPA, particularly in respect of consumer rights and protection are:
  - The aim of the right to plain language as set out in the preamble to the CPA, is “to improve access to, and the quality of, information that is fundamental so that consumers are able to make informed choices according to their individual wishes and needs”. (Sections 22-28 of the CPA).
  - The introduction of the CPA embraces the Plain Language Movement, thus the incorporation of Section 22 endeavors to streamline legally binding contract drafting. The problem, however, is whether consumers have a detailed knowledge of their rights as presented by the CPA and whether the suppliers implement the requirements of the CPA without

attempting to exploit or limit the right of consumers because of their ignorance.

## **5.7 Remedies available to consumers**

In light of the aforementioned conclusions, it is asserted that South African legislation stipulates that the CPA aims to improve the quality of information provided to consumers by sellers so that they can make informed decisions that are in line with their needs prior to entering into a contract. The CPA (Section 22) has responded to these challenges. These provisions compel suppliers to draft contracts in plain and understandable language. The test for plain language is whether an ordinary consumer, with average proficiency aptitudes and minimal experience as consumer, understands the contents of the documents, without undue effort (Marus 2011:27). The consumer must understand the agreement by merely reading it. According to Posthumus (2011), the enactment of the CPA revolutionized the South African law governing consumer protection.

## **5.8 Conclusions from the empirical study**

The following are the conclusions from the empirical study:

- The main challenges presented in respect of electronic contracts are that:
  - Consumers did not understand their rights with respect to electronic contracts. This is due to the fact that they do not read the terms and conditions in the contract as they merely just scan information looking for what they want to know. Nahan and Webb (2013) support this view and note that consumers are always in a hurry and do not take time to read due to their unwillingness to scrutinize and look at the details;
  - 
  - There were unfair terms in such contracts and data protection was a major challenge since important information was exchanged. This conclusion supported by Technopedia (2017) who state that data protection is a major challenge with regard to online contracting.; and
  - The respondents did not understand their rights with respect to such electronic contracts. Hawthorne (2008:440) deduces that the consumer is regularly the reluctant contracting party in dealings with contracts and agreements. Therefore, this assertion is consistent with the findings of

the study as consumers experienced challenges in terms of the availability of the goods; risks associated with such contracts; and the price of the goods; and they also did not have the opportunity to physically inspect the goods. In many instances, the goods purchased arrived very late and consumers were also not provided with important information concerning the complaints process.

- With respect to consumer challenges with terms and conditions in electronic contracts, the following conclusions are drawn:

Consumers did not read the contract before signing; thus they were not aware of the terms that applied. A significant issue with online contracting is data protection since addresses, banking information, and identity numbers are among the sensitive information exchanged. Furthermore, consumers indicated that they experienced difficulties with the availability of the items, the risks involved with such transactions, the pricing of the goods, and they were unable to physically inspect the goods when they entered into electronic contracts.

- The conclusions relating to the implications of the CPA are as follows:
  - A person who signs a contract is bound by the ordinary meaning and effect of the words, which appear above his or her signature. This is the principle of Sanctity of Contract. Therefore, an individual who decides not to read a contract faces the risk of being legally bound by it (Christelle 2018).
  - Sharrock (2011:571) expresses that the CPA grants consumers specific rights as well as remedies and avenues for legal recourse, which were not available under common law.
- The following conclusion are drawn with respect to the implications of the ECTA:

The respondents were unaware of the following implications of the ECTA: that online suppliers must provide information such as their physical address, phone number and email address, which a consumer can use to track an order after a transaction has been completed; the ECTA prohibits the collection of personal information by institutions or persons; it provides for the protection of personal information of the consumers that is obtained through electronic transactions and allows the consumer

to cancel the transaction and claim a full refund during a specified “cooling-off” period without any penalty; and its provisions require website owners to display certain information for the benefit of the potential customers. Further, the ECTA outlines the conditions under which transactions involving direct marketing may be canceled as well as a cooling-off period for such transactions.

The ECTA's Chapter 3 covers the legal foundation for enabling electronic transactions. The layout of electronic contracts was previously subject to legal uncertainty, which makes this chapter a crucial component of the Act. One of the main goals of the Act is consumer protection, which is covered in Chapter VII. According to Johnson (2003:24), it offers several ways to protect consumers, like requiring web site operators to disclose specific information for the benefit of potential customers and permitting the cancellation of a purchase during a predetermined "cooling-off" time.

## 5.9 Hypotheses

Regarding the research hypothesis outlined in chapter 1, the study discovered the following:

- There was a significant relationship between the respondents' **failure to read contracts** and their **lack of understanding of rights**;
- There is a significant relationship between the **lack of understanding of rights** with respect to electronic contracts and **challenges in terms of risks associated** with such contracts; and
- There is a significant relationship between the terms in the contract being in **plain and understandable language** and **words used in online contracts were misleading**.

## 5.10 Recommendations

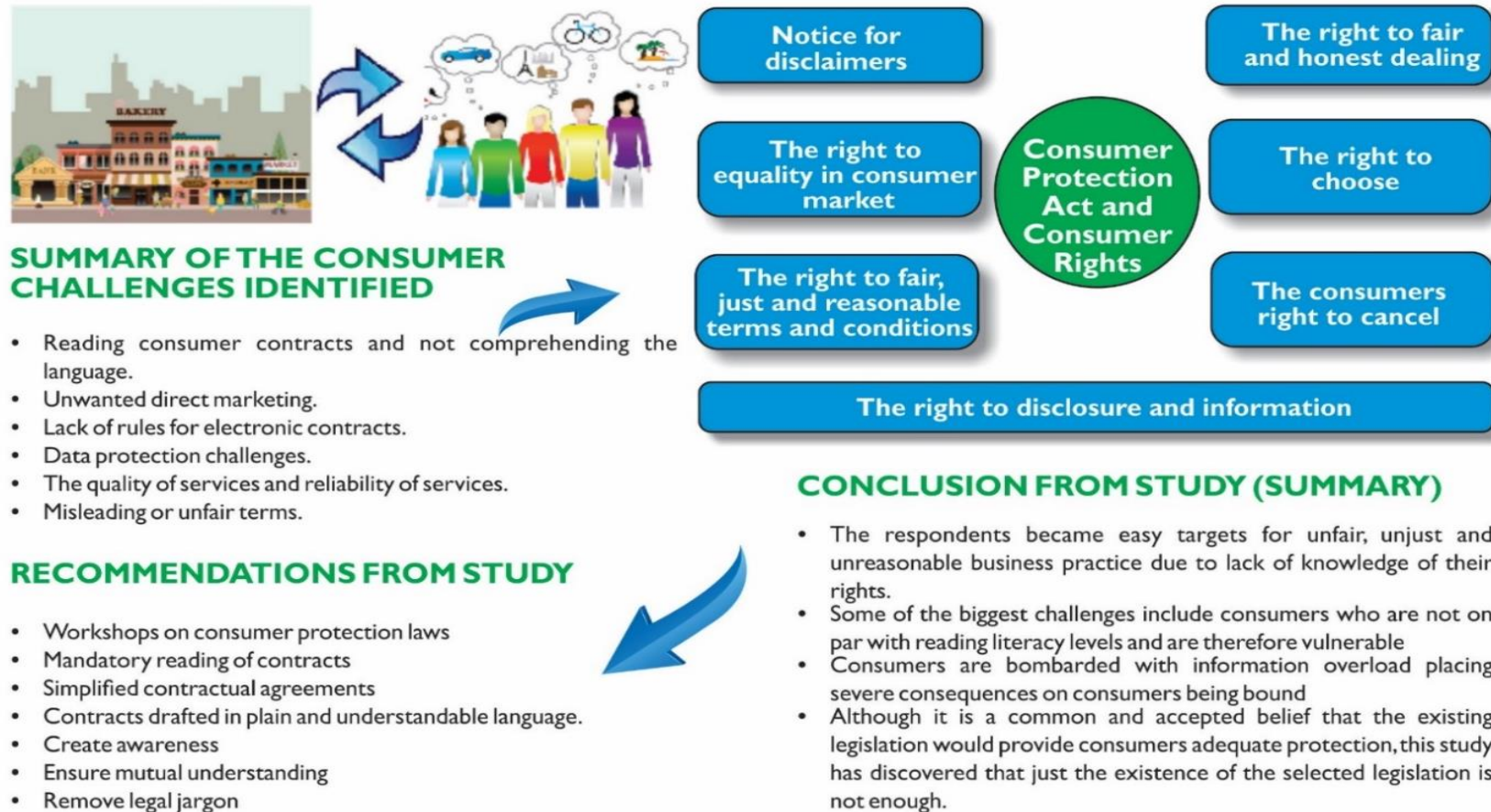
This section sets out the recommendations for the various concerns related to consumer challenges in terms of online electronic contracts. They are based on the conclusions from the empirical study and the literature review, in accordance with the study objectives.

What contract drafters can do to better serve consumer needs in respect of electronic consumer contracts:

- **Workshops on consumer protection laws:** Consumers who wish to conclude contracts online should have easy access to workshops on consumer protection laws so that they are fully equipped and aware of their rights, obligations, and the numerous remedies available to them under consumer protection provisions according to Onyema, Igbanugo and Okpala (2016);
- **Mandatory reading of contracts:** Trujillo and Ponce (2015) state that businesses should insist that consumers fully read and understand the terms of the contractual agreement before signing it.
- **Simplified contractual agreements:** Contracts can be drafted which comprise of language in layman's terms to take into consideration the literacy levels of consumers. This finds support in a study by Van Deventer (2021) in which he outlines that, due to online contracts having lengthier and more ubiquitous text than paper-based contracts, there is a need for simplified contracts.
- **Contracts drafted in plain and understandable language:** Clear and compact comprehension for clear and concise understanding of the content (Brink and Schultz 2019).
- **Create awareness:** Akman and Sowerbutts (2017) states that the “hidden implications” to the disclosure form, highlight negative terms and keep it simple. Do not attach any unfair clauses that may influence consumers unfairly.
- **Ensure mutual understanding:** Create consumer awareness about the terms and conditions within a contract and outline any responsibilities or obligations they have in this respect (Makulilo 2015).

Figure 5.1 below sets out a graphical representation of the study showing some of the main conclusions drawn and recommendations made.

## ELECTRONIC CONTRACTS



**Figure 5.1: Diagrammatic representation of conclusions and recommendations**

### **5.11 Limitations of the study**

The researcher faced a variety of challenges as a result of the COVID-19 pandemic, such as the fact that participants could only submit data by completing questionnaires that were administered to them. The researcher had to wait for responses as a result, which posed further delays and challenges.

### **5.12 Suggestions for further research**

This was an empirical study; a wider survey can be conducted with a larger scale study or sample size may be used to generate results that are more accurate pertaining to consumer challenges regarding electronic contracts and the implications of the Consumer Protection Act 68 of 2008. A study can be conducted on specific goods such as insurance contract agreements and the use of plain and simple language.

Consequently, in order to obtain more precise results, a larger study is required to examine how consumer protection laws impact challenges pertaining to electronic contracts. As a result, many of the themes examined generally in the proposed investigation can be explored in greater detail.

### **5.13 Concluding note**

This study was motivated by the fact that consumer exploitation is still rife and too often, unsuspecting consumers are made to believe that they have no negotiating power, so they eventually just agree to supplier's demands. Like every other part of South African law which needed to restore their authenticity in a constitutional milieu, so too the law of contract is dependent upon the Constitution and its values. Consequently, Ubuntu could be seen as an overarching value system which incorporates the other constitutional values which, in terms of constitutional supremacy, may serve as a benchmark for contractual terms.

The study's findings, the difficulties the researcher encountered, and suggestions for future researchers are all presented in this concluding chapter.



The chapter set out the summary of the study's finding, conclusions and recommendations from the study. The literature reviewed and the analysis and findings of the research undertaken have indicated that, despite the fact that the Consumer Protection Act has been in existence for more than ten years, there are still consumers that still do not know and understand their basic consumer rights. As a result, significant effort must be made to educate them about such rights in order to help prevent consumers from being misled and manipulated by businesses. The study has shown that there are multiple challenges and barriers facing consumers concerning the conclusion of online electronic consumer contracts, notably which have not been adequately addressed.

The study also indicates that some of the biggest challenges include consumers who are not on par with reading literacy levels and are therefore vulnerable, as they are bombarded with information overload thereby placing severe consequences on consumers being bound, which consumers remain unaware of. Although it is a common and accepted belief that the existing legislation would provide consumers adequate protection, this study has discovered that just the existence of the selected legislation is not enough. Generally, consumers remain unaware of the implications these legislations have on electronic contracts and the consequences thereof and need to be educated on the consumer protection legislation and how to utilize it. It is the researcher's hope that the findings and conclusions from this study will allow consumers to make informed decisions with regards to the implications of selected legislation and the associated electronic contract.

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## LIST OF APPENDICES

### APPENDIX A: IREC Full Approval



Institutional Research Ethics Committee Research and Postgraduate  
Support Directorate 2nd Floor, Berwyn Court  
Gate 1, Steve Biko Campus  
Durban University of Technology

P O Box 1334, Durban, South Africa, 4001

Tel: 031 373 2375  
Email: [lavishad@dut.ac.za](mailto:lavishad@dut.ac.za)  
[http://www.dut.ac.za/research/institutional\\_research\\_ethics](http://www.dut.ac.za/research/institutional_research_ethics)

[www.dut.ac.za](http://www.dut.ac.za)

13 December 2021

Ms N Dwarika  
8 Glenhope Place  
Malvern  
Queensburgh

Dear Ms Dwarika

**Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective**

**Ethical Clearance number IREC 080/21**

The Institutional Research Ethics Committee acknowledges receipt of your notification regarding the piloting of your data collection tool.

Kindly ensure that participants used for the pilot study are not part of the main study.

Please note that **FULL APPROVAL** is granted to your research proposal. You may proceed with data collection.

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

Please note that any deviations from the approved proposal require the approval of the IREC as outlined in the IREC SOP's.

Yours Sincerely

Prof J K Adam  
Chairperson: IREC

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fairness • professionalism • commitment • compassion • excellence



## APPENDIX B: Letter of Information



### LETTER OF INFORMATION

**Title of the Research Study:** Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective.

**Principal Investigator/s/researcher:** Miss Nikita Dwarika: (B.Tech: Management Sciences: Business Law).

**Co-Investigator/s/supervisor/s:** Prof. K Reddy (LLD)

**Brief Introduction and Purpose of the Study:**

Good day to you. How are you? I am a postgraduate student at DUT doing research for my Masters Degree in Management Sciences, specializing in Business Law. I would like to invite you to participate in this research study.

Research is a systematic search or enquiry for generalized new knowledge. As a participant in the study, you may ask as many questions as you wish because it is important that you understand the study.

The main objectives of the study are to investigate the nature and extent of consumer challenges with respect to electronic contracts and to examine the implications of existing consumer law in South Africa for electronic contract consumers. The study will also determine the need for additional protection. A survey among consumers in the Durban area will be used to collect data for the study. Should you agree to participate, you will be required to complete a questionnaire. The survey will take about 10-15 minutes to complete.

Please note that you will not face any risks or experience any discomfort from the participation of this study. Please note also that you may withdraw from the study at any time. There will be no adverse consequences should you choose to withdraw.

Participants may benefit by becoming aware of the protection offered by existing consumer legislation with respect to electronic contracts.

Remuneration: None

Confidentiality will be maintained at all times. The questionnaires will be anonymous and your identity will be kept confidential. The results of the study will be made available on the DUT Repository.

There will be no risk of research-related injuries to participants.

Data collected will be stored securely. Hard copies of the data will be stored safely for five years and thereafter be shredded. Electronic records will be kept for five years and thereafter be deleted.

Persons to contact in the Event of Any Queries:

The researcher: Miss Nikita Dwarika 0739040401

Email address: [dwarikanikita18@gmail.com](mailto:dwarikanikita18@gmail.com)

Supervisor: Prof. K Reddy 0730966731

Email address: [reddyk@dut.ac.za](mailto:reddyk@dut.ac.za)

or the Institutional Research Ethics Administrator on 031 373 2375. Complaints can be reported to the Director: Research and Postgraduate Support Dr L Lingano on 031 373 2577 or [researchdirector@dut.ac.za](mailto:researchdirector@dut.ac.za).

## APPENDIX C: Letter of Consent



### CONSENT

**Full Title of the Study:** Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective.

**Names of Researcher/s:** Miss Nikita Dwarika

#### **Statement of Agreement to Participate in the Research Study:**

- I hereby confirm that I have been informed by the researcher, NIKITA DWARIKA, about the nature, conduct, benefits and risks of this study - Research Ethics Clearance Number: IREC 080/21
- I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.
- I am aware that the results of the study, including personal details regarding my sex, age, date of birth, initials and diagnosis will be anonymously processed into a study report.
- In view of the requirements of research, I agree that the data collected during this study can be processed in a computerised system by the researcher.
- I may, at any stage, without prejudice, withdraw my consent and participation in the study.
- I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.
- I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

_____	_____	_____	_____
<b>Full Name of Participant Signature/Right</b>	<b>Date</b>	<b>Time</b>	<b>Thumbprint</b>

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

\_\_\_\_\_  
**Full Name of Researcher**                      **Date**                      \_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Full Name of Witness (If applicable)**    **Date**                      \_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Full Name of Legal Guardian (If applicable)** **Date**                      \_\_\_\_\_  
**Signature**

## APPENDIX D: Questionnaire

### QUESTIONNAIRE

DURBAN UNIVERSITY OF TECHNOLOGY

DEPARTMENT OF APPLIED LAW

TOPIC: Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective

**This questionnaire has been developed to collect data for the above-mentioned study. Please note that electronic contracts are also known as Online contracts.**

**The information provided in the questionnaire will remain confidential and will only be used for the purpose of this study.**

**Where applicable please place a (x) in the appropriate response.**

#### SECTION A: DEMOGRAPHIC DATA

1. Age (in years)

18-20	21-30	31-40	41-50	51-60	60+

2. Education: Qualification

HIGHEST LEVEL OF EDUCATION	
Primary school.	
Secondary school but did not complete matric.	
Matric.	
Tertiary.	
Other: specify -	

3. Have you entered into an electronic contract before?

Yes	No

4. If you answered **Yes** to Question 3, indicate the types of contracts that you have concluded. You may select more than one option.

Insurance contracts.
Cellphone contracts or purchasing of appliances.
Purchasing of groceries, perishables, and other household items.

**SECTION B: Nature and Extent of Consumer Challenges (Closed Questions)**

5. Indicate your level of agreement with each of the following statements relating to challenges that you may have experienced when entering into an electronic contract.

Challenges in respect of online contracts generally	Strongly Disagree	Disagree	Neutral	Agree	Strongly agree
5.1 When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable.					
5.2 When concluding an electronic contract, I generally do not understand the terms applicable to the contract.					
5.3 There are unfair terms in electronic contracts.					
5.4 Data protection is a major challenge with regard to online contracting. Important information is exchanged, for instance, addresses, banking details and identity numbers, which can be misused.					

5.5 I do not understand my rights with respect to electronic contracts.					
5.6 The advertisements for goods that I purchased online were misleading.					
5.7 With electronic contracts that I have concluded, I experienced challenges in terms of: <ul style="list-style-type: none"> <li>• The availability of the goods;</li> </ul>					
5.8 With electronic contracts that I have concluded, I experienced challenges in terms of: <ul style="list-style-type: none"> <li>• Risks associated with such contracts; and/or</li> </ul>					
5.9 With electronic contracts that I have concluded, I experienced challenges in terms of: <ul style="list-style-type: none"> <li>• The price of goods.</li> </ul>					
5.10 In many instances, the goods purchased arrive very late and sometimes not at all.					
5.11 With online contracts, consumers are also not provided with important information concerning the complaints process.					
5.12 When entering online contracts, I do not have the opportunity to physically inspect the goods.					

6. Indicate your level of agreement with each of the following statements relating to challenges that you may have experienced with respect to the terms and conditions in an electronic contract.



Challenges regarding the terms and conditions	Strongly Disagree	Disagree	Neutral	Agree	Strongly agree
6.1 The contracts contained unfair terms and/or conditions, such as early termination fees and late payment fees.					
6.2 The terms in the contracts were not in plain and understandable language.					
6.3 The terms and conditions in the contract were too vague. i.e. significant terms are often not readily evident or easily spotted					
6.4 The document did not have enough information explaining the terms and consequences of the contract.					
6.5 I did not understand the information provided.					
6.6 I did not have enough time to properly read and understand the contract.					
6.7 Consumers are bound by the terms of the contract even if they are unaware of it or did not read them.					
6.8 I find that the words used in an online contract are frequently misleading.					
6.9 The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract.					

7. Please indicate any other challenges that you have experienced, when concluding an electronic contract, which were not indicated in the question above.

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	YES	NO
8. As a consumer, are you aware that you have certain consumer rights and protection in terms of the Consumer Protection Act 68 of 2008?		
9.1 Are you aware that electronic contracts have terms and conditions setting out the rights and responsibilities that you have, which may relate to payment, price variation and penalties?		
9.2 When concluding electronic contracts, were you made aware of the terms and conditions?		
9.3 When concluding electronic contracts, have you generally understood the terms and conditions?		

**SECTION C: Implications of Consumer Challenges**

10 Indicate your level of agreement with each of the following statements relating to challenges that you may have experienced when entering into an electronic contract.

Implications of consumer challenges	Strongly Disagree	Disagree	Neutral	Agree	Strongly agree
10.1 Consumers skip through the small print in an online contract and merely scan information, looking for what they want to know.					

10.2 Consumers may claim to understand the implications of them signing a contract but fail to realize the consequences until a challenge arises.					
10.3 Consumers may find it difficult to enforce their rights against suppliers in court.					
10.4 Consumers are reluctant to pursue claims that are small.					
10.5 Consumers think they are protected by the law, trust the company or think the contract is industry standard and thus cannot go elsewhere or do anything about the contract.					
10.6 The quality of information provided by supplier on websites about the goods/services lack information about the complaint's procedure.					

**SECTION D: Awareness of Consumer Rights**

11 Indicate whether you are aware of each of the following rights that a consumer has in terms of the Consumer Protection Act 68 of 2008.

	<b>Consumer rights in terms of the consumer protection act</b>	<b>Aware</b>	<b>Not aware</b>
--	--	--------------	------------------

11.1	<b>Right to privacy:</b> consumers are protected from unsolicited and unwanted marketing from suppliers.		
11.2	<b>Right to fair and honest dealing:</b> consumers should not be misled about anything regarding the transaction.		
11.3	<b>Right to fair, just and reasonable terms and conditions:</b> the content of a contract must be fair to consumers.		
11.4	<b>Right to disclosure and information:</b> suppliers must provide consumers with the necessary information in plain and understandable language as they can only use information that they understand.		
11.5	<b>Right to information in a plain and understandable language:</b> agreements should be drafted in a way that allows an ordinary consumer, with average literacy skills, to understand the terms of the agreement.		
1.6	<b>Right to performance:</b> the goods should be delivered to the consumer at the agreed upon time and place.		
11.7	<b>Consumer's right to choose:</b> the consumer has the right to choose whatever supplier he or she wants to do business with.		
11.8	<b>Rights in respect of delivery of goods/return goods:</b> Where the goods supplied are unsafe or defective, the consumer has a right to return such goods and claim a refund within a reasonable time.		

12. Indicate your level of agreement with each of the following statements relating to the following rights that a consumer has in terms of the Consumer Protection Act 68 of 2008.

No	Consumer rights in terms of the	Strongly Disagree	Disagree	Neutral	Agree	Strongly agree
----	---------------------------------	-------------------	----------	---------	-------	----------------

	<b>consumer protection act</b>					
12.1	I understand what the right to privacy is and what it entails.					
12.2	I understand what the right to fair and honest dealing is and what it entails.					
12.3	I understand what the right to fair, just and reasonable terms and conditions is and what it entails.					
12.4	I understand what the right to disclosure and information is and what it entails.					

13. Indicate whether you are aware of each of the following rights that a consumer has in terms of the Electronic Communications and Transactions Act 25 of 2002.

<b>No</b>	<b>Implications of the electronic communications and transactions act</b>	<b>Aware</b>	<b>Not aware</b>
13.1	The ECT provisions require web site owners to display certain information for the benefit of potential customers.		
13.2	The ECTA allows the consumer to cancel the transaction and claim a full refund during a specified "cooling-off" period without any penalty.		

13.3	The ECTA provides for the protection of personal information of the consumer that is obtained through electronic transactions.		
13.4	The ECTA prohibits the collection of personal information by institutions or persons.		
13.5	Online suppliers must provide their information, such as, their physical address and phone number, email address, which a consumer can use to track an order after a transaction has been completed.		

**SECTION E: Remedies Available and Recommendations Regarding Alternate Measures (Closed Questions)**

14. Indicate whether you are aware of the following remedies available to consumers with regards to electronic contracts.

No	REMEDIES	Aware	Not aware
14.1	The customer has the right to cancel fixed term agreements by giving 20 'business days' notice even if businesses make it difficult for them to do so		
14.2	Should there be a fault consumers can return the goods or cancel the order within 14 days for a full refund		
14.3	Consumers online transactions are protected by the Electronic Communications and Transactions Act		

15. Please indicate any other remedy you are aware of, which has not been included in the question above.

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16. Although consumers have the rights indicated above, they may not enforce them. Indicate your level of agreement with each of the following statements relating to the reasons why consumer remedies/rights are not enforced with respect to electronic contracts.

No		Strongly Disagree	Disagree	Neutral	Agree	Strongly agree
16.1	Enforcing consumer rights against a supplier is a long and tedious process.					
16.2	Enforcing consumer rights is difficult for the consumer to do alone.					
16.3	Generally, claims are time and money consuming, making the process unworthy.					
16.4	Consumers are not aware of the rights that apply to purchases made from other countries.					
16.5	The procedure for enforcing consumer rights is unknown or unclear.					
16.6	The complaints process for consumers is unclear.					

## APPENDIX E : Correlations Table

Table E.1: Correlations

Correlations												
			When entering into an electronic contract, I do not read the contract, so I am not aware of the terms applicable	When concluding an electronic contract, I generally do not understand the terms applicable to the contract	There are unfair terms in electronic contracts	Data protection is a major challenge with regard to online contracting Important information is exchanged, for instance, addresses, banking details and identity numbers, which can be misused	I do not understand my rights with respect to electronic contracts	The advertisements for goods that I purchased online were misleading	With electronic contracts that I have concluded, I experienced challenges in terms of the availability of the goods	With electronic contracts that I have concluded, I experienced challenges in terms of risks associated with such contracts	With electronic contracts that I have concluded, I experienced challenges in terms of the price of goods	
Spearman's rho	When concluding an electronic contract, I generally do not understand the terms applicable to the contract	Correlation Coefficient	.617**	--								
		Sig. (2-tailed)	0.000									
		N	381	381								
	I do not understand my rights with respect to electronic contracts	Correlation Coefficient	.695**	.667**	0.022	.229**	--					
		Sig. (2-tailed)	0.000	0.000	0.665	0.000						
		N	381	381	381	381	381					
	When entering online contracts, I do not have the opportunity to physically inspect the goods	Correlation Coefficient	-.153**	-.250**	.381**	.290**	-.180**	.184**	-.269**	-0.038	.189**	
		Sig. (2-tailed)	0.003	0.000	0.000	0.000	0.000	0.000	0.000	0.461	0.000	
		N	381	381	381	381	381	381	381	381	381	
	The terms in the contracts were not in plain and understandable language	Correlation Coefficient	0.028	-.115*	.490**	0.099	0.015	.347**	-.222**	-0.042	.247**	
		Sig. (2-tailed)	0.581	0.025	0.000	0.054	0.771	0.000	0.000	0.414	0.000	
		N	381	381	381	381	381	381	381	381	381	
			Correlation Coefficient	.330**	.147**	.241**	.267**	.349**	.400**	.158**	.184**	.206**



The terms and conditions in the contract were too vague i.e. significant terms are often not readily evident or easily spotted	Sig. (2-tailed)	0.000	0.004	0.000	0.000	0.000	0.000	0.002	0.000	0.000
	N	381	381	381	381	381	381	381	381	381
I did not have enough time to properly read and understand the contract	Correlation Coefficient	.111*	-0.042	.287**	0.060	0.079	.353**	-0.008	0.024	.151**
	Sig. (2-tailed)	0.031	0.416	0.000	0.244	0.124	0.000	0.871	0.636	0.003
	N	381	381	381	381	381	381	381	381	381
I find that the words used in an online contract are frequently misleading	Correlation Coefficient	0.015	-.166**	.587**	.204**	0.016	.449**	-.207**	-0.025	.401**
	Sig. (2-tailed)	0.766	0.001	0.000	0.000	0.756	0.000	0.000	0.629	0.000
	N	381	381	381	381	381	381	381	381	381
The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract	Correlation Coefficient	-.304**	-.330**	.258**	0.045	-.314**	.149**	-.318**	-0.047	.167**
	Sig. (2-tailed)	0.000	0.000	0.000	0.386	0.000	0.004	0.000	0.362	0.001
	N	381	381	381	381	381	381	381	381	381
I understand what the right to privacy is and what it entails	Correlation Coefficient	-.365**	-.305**	0.050	0.005	-.370**	0.052	-.278**	-.217**	0.025
	Sig. (2-tailed)	0.000	0.000	0.330	0.926	0.000	0.310	0.000	0.000	0.634
	N	381	381	381	381	381	381	381	381	381
I understand what the right to fair and honest dealing is and what it entails	Correlation Coefficient	-.161**	0.033	-.226**	-0.032	-.161**	-.171**	0.020	-0.051	-.156**
The procedure for enforcing consumer rights is unknown or unclear	Correlation Coefficient	-.121*	-.239**	.330**	0.062	-.185**	.221**	-.273**	-.115*	.215**
	Sig. (2-tailed)	0.018	0.000	0.000	0.226	0.000	0.000	0.000	0.025	0.000
	N	381	381	381	381	381	381	381	381	381

**Correlations**

			In many instances, the goods purchased arrive very late and sometimes not at all	With online contracts, consumers are also not provided with important information concerning the complaints process	When entering online contracts, I do not have the opportunity to physically inspect the goods	The contracts contained unfair terms and/or conditions, such as early termination fees and late payment fees	The terms in the contracts were not in plain and understandable language	The terms and conditions in the contract were too vague i.e. significant terms are often not readily evident or easily spotted	The document did not have enough information explaining the terms and consequences of the contract	I did not understand the information provided	
Spearman's rho	When concluding an electronic contract, I generally do not understand the terms applicable to the contract	Correlation Coefficient									
		Sig. (2-tailed)									
		N									
	I do not understand my rights with respect to electronic contracts	Correlation Coefficient									
		Sig. (2-tailed)									
		N									
	When entering online contracts, I do not have the opportunity to physically inspect the goods	Correlation Coefficient	-.227**	.327**	--						
		Sig. (2-tailed)	0.000	0.000							
		N	381	381	381						
	The terms in the contracts were not in plain and understandable language	Correlation Coefficient	-.211**	.161**	.275**	.412**	--				
		Sig. (2-tailed)	0.000	0.002	0.000	0.000					
		N	381	381	381	381	381				

	The terms and conditions in the contract were too vague i.e. significant terms are often not readily evident or easily spotted	Correlation Coefficient	-0.026	.250**	.247**	.646**	.443**	--		
		Sig. (2-tailed)	0.611	0.000	0.000	0.000	0.000			
		N	381	381	381	381	381	381		
	I did not have enough time to properly read and understand the contract	Correlation Coefficient	-.189**	0.032	.155**	.513**	.317**	.458**	.161**	.270**
		Sig. (2-tailed)	0.000	0.529	0.002	0.000	0.000	0.000	0.002	0.000
		N	381	381	381	381	381	381	381	381
	I find that the words used in an online contract are frequently misleading	Correlation Coefficient	-.244**	.217**	.408**	.440**	.473**	.367**	.411**	.333**
		Sig. (2-tailed)	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
		N	381	381	381	381	381	381	381	381
	The low literacy levels of consumers mean that they have difficulty in understanding the terms in the contract	Correlation Coefficient	-.289**	.222**	.375**	.145**	.333**	.140**	.161**	.276**
		Sig. (2-tailed)	0.000	0.000	0.000	0.004	0.000	0.006	0.002	0.000
		N	381	381	381	381	381	381	381	381
	I understand what the right to privacy is and what it entails	Correlation Coefficient	-.265**	-.138**	0.086	0.001	0.095	-.182**	-0.057	-0.049
		Sig. (2-tailed)	0.000	0.007	0.095	0.986	0.064	0.000	0.264	0.339
		N	381	381	381	381	381	381	381	381
	I understand what the right to fair and honest dealing is and what it entails	Correlation Coefficient	.126*	-.203**	-.141**	-.287**	-.181**	-.332**	-.266**	-.236**
		Sig. (2-tailed)								
		N								
	The procedure for enforcing consumer rights is unknown or unclear	Correlation Coefficient	-.287**	.154**	.313**	0.071	.321**	0.072	.178**	.254**
		Sig. (2-tailed)	0.000	0.003	0.000	0.165	0.000	0.163	0.000	0.000
		N	381	381	381	381	381	381	381	381

\*\* . Correlation is significant at the 0.01 level (2-tailed).

\* . Correlation is significant at the 0.05 level (2-tailed).



## APPENDIX F: Statisticians Certificate



### STATISTICIAN DECLARATION FOR CONSULTATION

This is to confirm that I have given appropriate recommendations relating to the student's research:

<b>Student Name</b>	Nikita Dwarika
<b>Student number</b>	21513159
<b>Title</b>	Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective
<b>Department</b>	Applied Law
<b>Faculty</b>	Management Sciences

	3 May 2022
Deepak Singh DUT Panel of Statisticians	Date

## APPENDIX G: Editors Certificate

### EDITOR'S LETTER

Researchers Beyond-Borders (PTY)  
Umhlanga, Durban  
South Africa  
31 October 2022

To whom it may concern

**Editing of Masters Dissertation: Nikita Dwarika (Student number -91518159)**

**Title of dissertation:** Electronic contract challenges of consumers in the Durban area and the implications of selected consumer legislation from a fairness-based perspective.

This letter serves as confirmation that the aforementioned dissertation has been language edited.  
Any queries may be directed to the author of this letter.



Regards

Maleni Pillay  
Researchers Beyond-Borders  
[consult@researchersbeyondborders.com](mailto:consult@researchersbeyondborders.com)  
[www.researchersbeyondborders.com](http://www.researchersbeyondborders.com)

## APPENDIX H: Turnitin Report

V7 Final Chapters 1-5 submitted 19 10 2022

Supervisor: Prof. K. Reddy  
25/10/2022

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