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## **Voetstoots - Patent and Latent defects**



***Voetstoots....Do you know your rights to good quality services?***

Every consumer has, amongst other rights, a right to goods and services that are in a good condition. This would mean that goods or services should be safe and of good quality. In terms of the Consumer Protection Act, 2008 (Act No. 68 of 2008) (CPA), the right to good quality is twofold. Firstly, section 56, which deals with the quality of goods as such, stipulates that the consumer would receive an implied warranty that the goods meet the standards as envisaged in section 55 of the CPA. Secondly, the CPA deals with the compensation payable to a consumer who has suffered harm or loss as a result of defective goods. Section 55(2) reads: *Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that— (a) are reasonably suitable for the purposes for which they are generally intended; (b) are of good quality, in good working order and free of any defects; (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.* In South African law, the concept of **Voetstoets** is well known and freely used in various sale agreements. This means that the consumer buys the product “as is”, which could include latent or patent defects. What is the difference between latent or patent defects?

- **Patent defects** - are those defects that are visible (or at least visible after reasonable inspection) at the time the sale was concluded. In this instance, there would be no implied warranty as the defect would be visible and the consumer knew about it, yet still proceeded with the transaction.
- **Latent defects** - are those defects that are not visible at the time of the sale/purchase. Unlike patent defects, latent defects may be more difficult to spot before the conclusion of the contract. When looking at section 55(2)(a) and (b) above, it is clear that there is an implied warranty that applies to the purchase of goods. This would also mean that although a defect had not been latent at the time of the sale and had only developed later, the consumer would be protected under section 55(2). This is a broader application as it creates circumstances possibly unforeseen even by the supplier. To regulate this better and not leave an open-ended warranty, section 55(6) was introduced.

Section 55(6) reads: *Subsection (2) (a) and (b) do not apply to a transaction if the consumer— (a) has been expressly informed that particular goods were offered in a specific condition; and (b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.* Section 55(6) merely allows the supplier to sell products after the consumer had been made aware of certain defects. Adding the term *Voetstoots* in a contract, however, does not alert the consumer to the possibility that a certain defect might be present and that a careful inspection would be advisable. For these instances, section 56 is applicable. Regardless of the interpretation of section 55 and whether a defect was latent/patent or whether an implied warranty could be enforced, *the consumer is still protected by section 56 of the CPA*. Section 56 deals with the implied warranties and the rights of the consumer with regard to returns, refunds etc. Reference: *The Law of Contract*, Second edition, 2012 *About the author: Audrey Cloete obtained her LLB degree from the North-West University Potchefstroom in 2003. She completed her articles with the main focus on Criminal Law and broadened her horizons after being admitted as attorney to take on other legal disciplines. She is also an admitted Conveyancer. Audrey joined SERR Synergy in 2015 where she currently works as a Legal Compliance Advisor.*

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