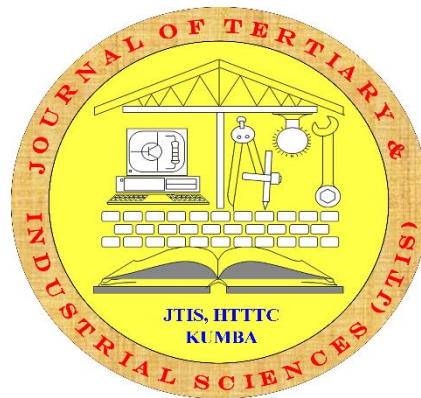


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ADVANCED TECHNOLOGY TRIGGER COMMON LAW PRINCIPLES: INSIDE TRIBUNALS IN ANGLOPHONE CAMEROON.

By

DR A. B EBAKO DIBO¹ (PhD)

Abstract

Common Law Principles are postulates derived from judge made law, judicial precedence, case law or stare decisis enacted by judges during proceedings in situations that the laws are not clear, confusing, conflicting and ambiguous to appropriately cluster evidence for the prevalence of justice. It is worth noting that in Cameroon Common Law Principles are applicable only in areas that National laws have not been developed as it comes under the auspices of Received English law. This process in Cameroon is also depicted from the discretionary power bestowed to the judiciary by the constitution. Common Law Principles are not rooted from judicial decisions, rather from National legislations made by the parliament, policymakers and ombudsmen. This article seeks to provide a clear view on the level that technological advancement triggers the application of Common Law Principles inside the tribunals in Anglophone Cameroon, especially in the service sector. To achieve the aforementioned objectives, the researcher makes use of an empirical study based-approach with data gathered using primary and secondary sources. With case study carried out on two main Common Law Principles which are *Caveat Emptor*, *Contributing Negligence*. The researcher equally came up with this specific question: what are the mechanisms put in place by the judiciary to solve the exigency brought by advanced technology that affects Common law Principles? The review of literature reveals that a harmonised scheme of both judicial and scientific method of gathering evidence is needed to yield suitable dispute resolution. Unfortunately, Common Law Principles cannot efficiently handle disputes with scientific aspect if they are not upgraded. Other gettable data's encompasses inadequate method of gathering and interpreting scientific proofs by trier of fact, magistrates and legist in a lawsuit because of lack of experts as well as the limitation of case law and manual reporting system. This study will be significant to judges, magistrates and legal practitioners. It will be useful to students, lecturers and administrators.

1. Introduction

The legal implications of judges, magistrates, legal practitioners in Anglophone Cameroon and their effort to ply Common Law Principles in tribunals to resolve

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disputes presented by disputants are judicially centric, whereas disputes that are brought to tribunals today do not only have judicial components but also scientific ones. Advanced technology in the service sectors have created an atmosphere of regular dispute resolution that has given birth to some impediments that upset the application of Common Law Principles inside the tribunals of Anglophone Cameroon. Consequently, Common Law Principles are today triggered by advanced technology especially with the use of Information, Communication and Technological Products (ICTP) such as telephones, computers, video cameras, automated teller machines, telematics devices and global positioning devices just to list the most common ICTP used in Cameroon's service sector. This scenario has caught the attention of members of the judicial core in Anglophone Cameroon.

With today's modern reality, the attention of judges, magistrates and legists are based not only on the judicial constrains but to a broader concern of scientific constraints enhanced by advancement in technology. To fulfil the quest of respecting legal, economic, social as well as ethical obligations to offer justice to litigants. Generally, this article seeks to provide a clear view on the level that technological advancement threatens the application of Common Law Principles inside the courtrooms in Anglophone Cameroon especially in the service sector. Specifically, this write-up aims at assessing the challenges faced by Common Law judges, magistrates and lawyers in applying the Common Law Principles in the tribunals of Former West Cameroon, evaluating the legal framework put in place by Common-Law judges, magistrates and lawyers to grasp the prevalence sitch, suggesting ways to upgrade the legal framework setup by the judiciary to suit the exigency of advancement in modern technology. Common Law Principles previously held as valuable and adequate means to resolve disputes to enhance justice by Judges and magistrates inside the tribunals in Anglophone Cameroon are today termed insufficient in addressing issues with scientific elements. Howbeit, to fill this gap members of the judiciary have adopted the application of Cameroon National Legal Framework to supplement and implement Common Law Principles. Rather than developing newly qualified principles or upgrading the existing ones to suit the exigencies brought about by advanced technology. Therefore, a detail analysis of this topic is paramount to test the above hypothesis.

2. Methodology

To achieve the aforementioned objectives, an empirical study based-approach with data gathered using primary and secondary sources is used. The Primary sources used to gather data in this study are direct and first-hand information's such as results gotten from interviewing members of the judicial core having profound and pertinent knowledge of the subject matter. The secondary sources used to gather data are made up of information gotten from libraries, textbooks, articles, magazines, television and radio news, as well as online sources. To further achieve the surpassing objectives, a case study is carried out on three

main Common Law Principles which are *Caveat Emptor, Contributing Negligence and Res Ipsa loquitur*.

3. Definition of Key Words

With the surpassing presentation, an analyses of some Common Law Principles triggered by technological advancement are worth exploring. Prior to this analysis, it is paramount to present a broad definition of key words used in this article to ease understanding of the subject matter.

3.1 Anglophone Cameroon

Anglophone Cameroon is the English speaking section of Cameroon as per the League of Nations in its Article 22 of its covenant. Indeed, after the First World War I with the defeat of Germany, the world organ, the League of Nations instigated the partition of "Kamerun," which was till then into French and English Cameroon. French Cameroon was administered by France and English Cameroon by the Great Britain. The English or British Cameroon is also known as Anglophone Cameroon, English speaking part of Cameroon, Southern Cameroon or Former West Cameroon and French Cameroon as the French speaking part of Cameroon or Former East Cameroon. Historically, after the independence of the Republic of Cameroon on 1st January 1961 and that of British Southern Cameroon 1960, Cameroon was united forming one country with a bilingual and bilingual system with the above appellations still used till date to identify each section respectively.

3.2 Common Law Principles

Common Law Principles (C L P) are perception with historical origin from the legal system in England. Generally, C L P developed from the courts in England basically at the Common Plea, Court of Chancery, Ecclesiastical Courts and Admiralty Court as well as other Common Law Courts which became also the Courts of Colonies where disputes brought by litigants were settled during legal proceedings under the authority of the Crown in England. They emanate specifically from judge made law, judicial precedence, case law or stare decisis that developed in the early Middle Ages². Forby, the Common Law Principles farther betoken legal precedence made by judges cited in courts using their dissertations to mould judgements that are later administered by other judges in tribunal. By passing similar decisions on similar indictments, this creates precedence³ through their written judgements⁴. This precedence provides contextual background form many legal concepts as basis for deciding future similar rulings⁵ in tribunals. To withal the designation Common Law Principles

² See Frederic William Maitland: *The Legal Classic; the history of English Law before the time of Edward*, in which Pollock and Maitland expanded the work of Coke (17th Century) and Blackstone (18th Century) published 1895.

³ See Barrister Lorna Elliot: *Common Law in England*; published 8 November 2019.

⁴ See Barrister Lorna Elliot *Ibid*.

⁵ See Gerald and Kethlean Hill *legal Dictionary* published 1992.

typified notions that are developed by judges and applicable only by tribunals in in Former West Cameroon as distinct from National Laws in Cameroon that are Codified Parliamentary Act enacted by the parliament that composes two houses: The Upper House (senate) and Lower House (National Assembly) respectively. This National Laws blooms within the jurisdiction of the national territory in the Republic of Cameroon.

3.3 National Law

National Laws are binding rules or body of rules prescribed by the government of a sovereign State that holds fore throughout the regions and territories within the government domains. They are equally rules of order having the force of law, prescribed by a superior and competent authority relating to the actions of those under the authority's control. National Laws are issued by the government departments to carry out the intent of the legislation enacted by congress or parliament⁶. Under public policy National Laws refers to the promulgation of targeted rules, typically accompanied by some authoritative mechanisms for monitoring and enforcing compliance

3.4 Trigger

Trigger⁷ is defined as failure to produce expected output due to misalignment that causes strong emotional fear, shock, anger or worry in someone especially because they are made to remember something bad that has or may happened leading to a complex and unpredictable atmosphere that needs to be amended.

3.5 Technology

Technology⁸ is the use of scientific devices (machines) and techniques to manufacture goods and render services. Technology also means an application of scientific knowledge for practical purposes especially in the industry. Technology⁹ is equally that branch of knowledge that deals with the creation and use of technical means as well as their interaction with life, society and the environment. It is applicable to subjects such as industry, arts, engineering, applied science and pure science.

In furtherance, technology is defined as follows¹⁰ ;

1-[a] A practical application of knowledge especially in a particular area such as, engineering and. medical technology

[b] A capability given by the practical application of knowledge for example car fuel saving technology.

⁶ See Gerald and Kethlean Hill legal Dictionary Ibid.

^{7 7} See Richard Rognehaugh; Technological Dictionary; 1st edition, publish by Amazon 1999; See George Merriam and Charles Edward Merriam; Online Dictionary, published by Webster Inc 2018.

⁸ See Richard Rognehaugh; Technological Dictionary; 1st edition, publish by Amazon 1999;

⁹ See George Merriam and Charles Edward Merriam; Online Dictionary, published by Webster Inc 2018.

¹⁰ See Gerald and Kathleen Hill legal Dictionary (supra).

2-A manner of accomplishing a task especially technological process, methods and knowledge for new technology as well as information storage.

3-A specialised aspect of a particular field of endeavour such as educational technology.

4. Results and Discussion

4.1 Results

The review in this research reveals that there are four premises on which the concept of Common Law Principles is based. The first premise holds that during the 19th century judges, magistrates and lawyers in Anglophone Cameroon have been using Common Law Principles to settle disputes in tribunals with dexterity. The second premise states that with the advancement of modern technology during the 21st century, scientific elements predominate in most disputes. Consequently, there is a threat in the ply of Common Law Principles to address trails because these principles are basically only judicial in nature, hence scientific nature is lacking. Whence, a harmonised scheme of both judicial and scientific method of gathering evidence is needed to yield suitable dispute resolution. The third premise asserts that Common Law Principles cannot efficiently handle disputes with scientific aspect without them being upgraded to scientific ebb. While the fourth premise affirms that National Laws are not suitable for the complementation of Common Law Principle based on the grounds that these principles are applicable only in areas that National laws have not been developed in Cameroon as it comes under the auspices of Received English Law. They are also applicable in situations that the laws are not clear, confusing, conflicting and ambiguous to appropriately cluster evidence for the prevalence of justices. Therefore, going back to the legal legislative instrument that is National laws to seek for remedy to adequately implement the smooth application of Common Law Principles is a setback. Other gettable data's encompasses inadequate method of gathering and interpreting scientific proofs by trier of fact, magistrates and legists in a lawsuit because of lack of experts as well as the limitation of case law and manual reporting system.

Significantly, technological hazards in the service sector of Cameroon are increasing in a geometric progression while the laws created to combat these hazards are increasing at an arithmetic progression. Therefore, the contribution of this work is of great significance as it evaluates the advancement of modern technology and its strength as it triggers Common Law Principles inside tribunals in Anglophone Cameroon. With the above explanation, the significance of this work will be elaborated in fivefold namely; economically, socially, altruistically, academically and scientifically.

Economically, this work is an important document that will help improve the understanding of judges, magistrates and legal practitioners in Anglophone Cameroon in taking into consideration the difficulties faced by the corporate

men rendering service to citizen. This work can be used as a material to help facilitate the understanding of consumers of services and educates them on how to prevent the ills of modern technology. The assessment made in this work as well as the recommendations will serve as an important material to the Cameroonian government and pave the way for the enactment of laws in areas that are lacking to limit the application of Common Law Principles that are first class colonial laws, thereby, helping Cameroon to realize her goal of becoming an emerging nation by 2035.

Socially, this work will help service providers to look at advanced technology as a concept that goes beyond providers' struggle of profit maximization but equally that they should also have a special interest on the rights of consumers and make them realize their importance to partaking in the sustainable management of technological risk in Cameroon.

Academically, this work will serve as a reference document for students, lecturers, legal practitioners, administrators, policymakers as well as institutions contributing a valuable quota to Cameroons education.

Scientifically, this work will facilitate the implementation of scientific evidence during court proceeding, thereby, facilitating judicial procedures and getting hold of the right culprits of civil as well as criminal act.

Altruistically, this work will sensitize the actors on how to protect consumers' life, properties and the environment, hence, making Cameroon service sector a safer arena for home and foreign investors.

4.2 Discussion

4.2.1. The Application of Common Law Principles

It is fundamental to note here that Common Law Principles are applicable in the tribunals of Former West Cameroon based on the use of English law in this part of the country that emanates from the logical consequences of colonial heritage from Britain and France¹¹. These two powers administered their respective portions Former West and Former East Cameroon under the ascendancy of the League of Nations Mandate¹², subsequently, under the United Nations Trusteeship Agreement¹³. Consequently, Article 2 of the British Mandate Agreement put forward the application of English law in British Cameroon as such when British Cameroon gained independence¹⁴. It maintains the legal system of English Law while French Cameroon after gaining their independence¹⁵ equally maintain the French legal system of Civil Law. In furtherance, the Federal Constitution enacted in Cameroon 1961 expressly provide for the continuous application of the pre-independence pieces of legislation in the following manner: Previous legislation of the Federal States

¹¹ See Article 119 of the Treaty of Versailles, 28th June, 1919; after the German rule from July 1884-March 1916.

¹² See Article 22 of the Covenants of League of Nations 1922.

¹³ See Article 85 of the charter of the United Nations of June 26 1945.

¹⁴ October 1st 1960.

¹⁵ 1st January 1961.

shall remain in force in so far as it does not conflict with the provision of the constitution.¹⁶

To boot, the usage of Common Law Principles in Former West Cameroon is as a result of the practice of English law guaranteed by the provision of Section 11 of the Southern Cameroon High Court Law 1955. This law stipulates that “subject to the provisions of any written law and in particular of this Sections and of Section 10, 15 and 27 of this Law, the Common Law, Doctrine of Equity and Statute of General Application which were in force in England on or before the 1st day of January 1900 shall in so far as they relates to any matter with respect to which the legislature of the Southern Cameroon is for the time being competent to make laws be in force with the jurisdiction of the court”. Section 11 simply states that all received English laws applicable in Cameroon from 1900 are meant to remain in force until such a time that Cameroon legislature has enacted its own National Laws. The word “for the time being in force” in Section 11 gives the courts in Former West Cameroon power to apply post 1900 statutes. It follows in probate that since Common Law Principles are principles that are applicable in England, it should also be applicable in Former West Cameroon. These therefore give impetus for the continuous implementation of Common Law Principles in the tribunals of Former West Cameroon.

4.2.2 The Insufficiency of Common Law Principles

Advancement in technology has triggered the application of some Common Law Principles used by judges, magistrates and jurists to administer justice to litigants in legal suits of the English Speaking Part of Cameroons. Therefore, it is worth examining the *raison d'être* for the existence of such a threat.

Firstly, Common Law Principles are judicial in nature with novel and logical based characteristics emanated from opinion, discussions, social norms and beliefs. Therefore, they are suitable to offer justice only for cases with judicial elements. Common Law Principles are ply to achieve truth for the ultimate purpose of attaining an authoritative, final, just and socially acceptable resolution of disputes to offer justice to litigants. Ergo¹⁷ in contrast disputes with scientific element embraces experimental analysis, testable data's, used for scientific equipment, expert results and interpretations, empirical analysis that are used to discover¹⁸ the truth as found in verifiable facts by descriptive pursuit on how things actually are presented¹⁹, to merge the implementation, interpretation and application of judicial and scientific data, by the trier of fact, magistrates and legists in Anglophone Cameroon. Whence, it is clearly viewed that technology

¹⁶ See Article 45 of the Federal Constitution of the Republic of Cameroon September 1 1961.

¹⁷ See Harvard Law Review : Development in the Law –Confronting the New Challenges of Scientific Evidence, vol 108 No. 7 7(May 1995)

¹⁸See M. A Berger and L M Solan: The Uneasy Relationship between Science and Law; an Essay and Introduction. 73 Brook L, Rev 847 (2008).

¹⁹ See M A Berger and L M Solan Ibid.

does trigger the manoeuvre of some Common Law Principles inside the tribunals in Former West Cameroon.

Secondly, Common Law Principles are notions in England composed of judge made laws, that is, laws that were enacted by judges in England to resolve disputes in tribunals. These laws were developed in an era where technology was at the lowest ebb as opposed to today's modern realities where technology is at the highest calibre and very much used in the business world. Accordingly, it is obvious for some of these Common Law Principles to be triggered today by technology.

Thirdly, the legal rules employed in the solicitation of Common Law Principles are Adjective Rules. These rules comprised of the certainty that the trier of fact provides solutions for each case as it is presented in that particular period and does not formulate solutions for future cases. Therefore, it is easily perceived that Common Law Principles enacted in the 19th century is today being triggered by advancement in technology.

Finally, Common Law Principles are concepts that respect the rules of litigation and focus on the administration of justice to exhibit a fair trial. On this account Common Law judges and magistrates can upgrade or create new qualified principles to furnish justice to disputants.

4.2.3 Advanced Technology Trigger Common Law Principles

Common law principles are held as valuable and adequate means by judges, magistrates and legal practitioners to resolve service disputes to enhance justice. These principles have been used during court proceedings in Former West Cameroon with ease. However, in today's legal proceedings that unavoidably have technological issues especially with the use of Information Communications and Technology (ICT) products by providers, Common Law Principles are triggered in a manner that judges and Magistrates find the use of some of its Principles to be insufficient in the absence of National Laws to foster a better court decision with the use of ICT products to perform contractual transactions. Eventually, legal practitioners find it difficult to apply some of the principles without the aid of National Laws. This state of affairs presents a very porous countenance that affects the smooth enrolment of business in English Speaking Cameroon. Accordingly, it is paramount to analyse the situation via case study carried out on three main Common Law Principles namely: *Caveat Emptor*, *Contributing Negligence* and *Res Ipsa loquitur*.

4.2.3.1 The Common Law Principle of *caveat emptor*

The Common Law Principle of *caveat emptor* (buyer beware) is one of the principles triggered by technology. The first drawback experienced by the courts with the use of this principle, is in the settlement of service disputes particularly in Electronics Commerce (EC). To better analyse how this principle is being threatened by technology, it is necessary to give a brief history of how the principle originated and how it was threatened by other factors. The Latin word

caveat emptor is a word that was commonly used in England during the medieval period²⁰. The courts use this word to illustrate that a buyer has the obligation to use his own judgement and knowledge to be careful or accept the cost of his intention. The continues usage and importance of the word *caveat emptor* makes the English courts in the medieval time to start applying the word as a principle. With the use of precedence in English Law, until date the English courts are still making use of this principle. The principle of *caveat emptor* was first illustrated in the land mark case of:

Chandelor V Lopus.²¹

Facts

In this case a man paid 100 pounds for what he thought was a bezoar stone. This stone comes from an animal intestine system and was believed to have magical healing properties. The vendor said it was a bezoar stone this turns out to be false. The buyer sue for the return of the 100 pounds purchase price. During trial the courts intended to find out whether there had been an act of deceit in the transaction.

Held

The exchequer court held that, the buyer had no right to reclaim his money back, saying the bare affirmation that it was a bezoar stone without warranting it to be, is no call for cause of action. Majority of the judges held that the buyer was required to show either that the seller knew the stone was not a bezoar stone in which case the seller was liable for deceit or that they had warranted (contractually guaranteed) that the stone was a bezoar, in which case the plaintiff was not alleged to have done either of those things. Hence, the buyer's claimed failed.

The use of the principle *caveat emptor* after the medieval period started having some limitation as some legal practitioners during that period put forward the debate that, the principle was best for cases of which goods were of small quantity and lesser fare.²² To help, the buyer has an easy knowledge to recognise a defect in the goods and to discuss the price with the seller. Instead of offering a warranty the buyer could accept an eventual reduction in price. Despite the above criticism the principle of *caveat emptor* was reaffirmed in

*Smith V Hughes*²³.

²⁰ See Macro Pistis: Caveat Emptor a brief History of English Sale of Goods Law, published 26/January /2018.

²¹ See 79 ER 3(1603) a famous case in common law of England. Stand for the difference between warranties and mere affirmation.

²² See Macro pistils (supra).

²³ See LRG QB 597 (1960).

Where the court of the Queen's Bench held that Mr. Smith was under no duty to inform Mr. Hughes of his possible mistake about the Kind of oats, reaffirming the old principles of caveat emptor (buyer beware). Crock Burn CJ in this case states that "the question is not what a scrupulous morality or more honored man would do under such circumstances", reaffirming the principle of caveat emptor. Black Burn J also said in this case that, "The purchaser is bound unless the vendor is guilty of fraud or deceit and that the mere abstinences from disabusing the purchasers of that impression is not fraud", Stating the principle of caveat emptor.

The principle of **caveat emptor** places a lot of burden on consumers to be careful or accept the consequence of their transaction or to prove the fraud of the vendor. This principle today is superseded by the use of technology in Electronic Commerce. It place lots of responsibility on the buyer to use his/her own judgement when purchasing goods or services. In Electronic Commerce, where services and products are sold and bought online with the use of phones and computers and the tender of payment by electronics money transfer. A buyer purchasing goods or services online is not in the best position to use a skilful judgement because he/she cannot properly examine the goods or service as the transaction is been carried out with the aid of machines. Rather, relies on the information given them by the vendor or on the trade name of the goods or services. In this kind of situation it is unfair to task buyers with the responsibility of having knowledge and a good judgment about the quality of the goods or services. Consequently the old principle of **caveat emptor** is triggered by technological advancement.

However, judges, magistrates and legal practitioners in Former West Cameroon take the very first step to combat the hindrance brought by advanced technology by putting in place some possible solutions gotten from the National Legislation Framework in Cameroon. In this case, Law No_2010/021 of 21st December 2010 governing Electronics Commerce in the Republic of Cameroon, provides that a provider or producer must supply goods or services of merchantable quality. The concept of merchantability stipulates that an item or service is deemed merchantable if it is reasonable fit for the ordinary purposes for which such products are manufactured and sold as well as services are rendered or supplied. This whole set up has created a shift in the application of the principle **caveat emptor** by judges, magistrates and lawyers in Former West Cameroon as they now employ National Legislation to bring solutions to the huddles instituted by

advanced technology in the implementation of the Common Law Principles *caveat emptor*.

The second step was made by the application of Law No_2010/021 of 21st December 2010 governing Electronics Commerce in Cameroon. This law is in line with the United Nations Commission on International Trade, Modern Law of Electronic Commerce. This law is further supplemented by a Prime-Ministerial Decree of 2011 on the Modalities of the Application of Electronics Commerce Law in Cameroon. The Decree of 2011²⁴ stipulates that those involved in Electronics Commerce must give vital information with regards to the business. Such information must be easy to assess and be permanent on the welcoming page of the website of the supplier of the goods and services and should be assessable at each stage of the transactions. It states that a vendor should state the price, the nature and quality of the goods or services thereby putting the responsibility on the vendor. Thus reversing the old age adage of *caveat emptor*.

The tribunals in the English speaking part of the country during proceedings further takes a third step by making use of Law No_2011/021 of 6 May 2011 that lays down the General Framework for Consumer Protection in the Republic of Cameroon. This law elaborates on Consumer Contract for Goods, Digital contents and service²⁵ requiring goods to be of merchantable quality. This standard of merchantability is not only realistic but is suitable to our context. Hence, a service is also bound to be of merchantable quality even though it has been succinctly pointed out that there is no such thing as absolute safety when dealing with goods or services as safety can only be judged against a certain background²⁶. The Framework Law still insists that a business transaction should be a fair and honest dealing²⁷. This law states that a good or service must fit the consumers' particular purpose²⁸: It further stipulates²⁹ that the vendor or provider of a technology, good or service should provide or deliver to the consumer a technology, good or service that meets the minimum requirements of sustainability, reliability and utilization to guarantee his legitimate satisfaction. This piece of legislation supplementary states³⁰ that technology, good or service provided or delivered must be accompanied by a manual, receipt or any other document containing inter alia, information on technical features, mode of operation, utilization and warranty. To boot, this legal instrument stipulates that an after-sale service must be provided to consumer for transaction

²⁴ See section 6 of the Prime Ministerial Decree on the modalities of the application of Electronics Commerce in the Republic of Cameroon.

²⁵ See section 9 of Law no_2011/021 of 6 May 2011 that lays down the General Framework for Consumer Protection in the Republic of Cameroon.

²⁶ See Samgena D Gallegan: Strict Liability for Defective Products in Cameroon; Some Illuminating Lessons from Abroad, published by Journal of African Law, Vol 48, No 2 (2004) at pg. 267.

²⁷ See Section 39 of Law no_2011/021 of 6 May 2011 that lays down the General framework of Consumer Protection in the Republic of Cameroon. .

²⁸ See section 10 *ibid*.

²⁹ See section 10(1) *ibid*.

³⁰ See section 10(2) *ibid*

relating to durables³¹. This legal instrument went ahead to stipulate that to protect consumers they have 30 days as a limit³² to reject the goods rather than the previous time limit of a reasonable time to be determined by the courts.

The law also ensures that any statement made by a vendor when a consumer is still deciding to enter into the contract is a binding contractual term. With the above explanations, we can confidently say that technology has displaced the Common Law principle of *caveat emptor* in the settlement of service disputes on Electronic Commerce. The judiciary is deliberately using National Laws to restructure and accommodate the challenges brought by technological advancement. By so doing, it jettisons some of the rules of *caveat emptor* in electronic commerce.

4.2.3. 2 The Common Law Principle of Contributory Negligence

The Common Law Principle of Contributory Negligence is another principle that is challenged by the advancement of modern technology. Contributory Negligence which is distinct from Negligence is the negligence of the plaintiff which adds to the defendant negligence to bring about the plaintiff's injury. In seeking for justice through the principle of Contributory Negligence, tribunals in the English Speaking Part of Cameroon are interested to know if the plaintiff contributed to the damage and to know the degree of fault to be distributed between the plaintiff and the defendant to adjust the damages to be awarded. Under Contributory Negligence the plaintiff's award of damages is reduced by the proportion of loss attributed to his negligence. As illustrated in landmark case of:

*McDonald's coffee case. In this case the jury awarded³³
the plaintiff 200,000 pounds in compensatory damage
because the jury found the plaintiff 20% at fault. The
amount was reduced to 160,000 pounds.*

The use of technological products to provide services by companies such as banks and insurance companies has made the performance of services to consumers easy and almost efficient but has posed tension between providers' and consumers' in case of disputes in connection to Contributory Negligence. In situations like this, judges, magistrates and lawyers in Former West Cameroon are left with the task of finding out who is negligent and if the plaintiff has contributed to the defendant's negligence. Contributory Negligence, here, is examined in the context of providers utilizing Information Communications and

³¹ See section 10(3) *ibid*

³² See section 11(*supra*)

³³ See product liability law suit (1992). *Liebeck V McDonald's restaurants*. Texas trial August 18, 1994.

Technology (ITC) machines such as Automated Teller Machines (ATM), Computer and Internet Connected Video Doorbells use to render services to consumers. The attributions of Contributory Negligence with the use of ICT machines listed above poses hardship to tribunals in many instances in line with the dictation Contributory Negligence. For better understanding, two examples are used to illustrate the constraints experienced by trier of fact, magistrates and proctors during legal proceedings

To boot, a glaring example is where a judicature is faced with the issue of Contributory Negligence with regards to Automated Teller Machines (ATM). ATM is an electronic equipment that allows card holding customers to perform their routine banking transactions without interacting with human tellers. It offers a range of services in modern banking, namely, deposit, cash withdrawal and account balance verification, with the help of personal identification code number or electronic cards. It offers round the clock banking service to customers. To illustrate the issue of Contributory Negligence with regards to ATM. It is best to examine it in connection with the withdrawal of money from consumers bank account without their authorization, in sitch like this, the judges, magistrates and attorneys can in some circumstances identify if the fault is from the bank desk or the consumer. In other conditions tribunals finds it strenuous to ascertain whether the customer also contributed to the existing fault. It might happened that the customer did not follow the prescribed procedure for logging in and out of the ATM thereby, giving an opportunity to a third party (a scammer) to get into his/her account thus contributing negligently to the withdrawer of money from the account. It might also be that with a reflection of a particular light rays, a third party if carefully observe the ATM machine can get the code number of the customer. It might as well happen that, a customer's credit card was stolen and used by a third party or was counterfeited by a third party. States of affair like these are very common with the huddles of advanced technology.

Liability based on Contributory Negligence that occurs with the use of ICT products is not favourable to a consumer who receives service through the use of those products. As the burden of prove is usually on the plaintiff (consumer) who is not familiar with the manner in which the machine was installed or how it functions. The consumer is not even sure of the effectiveness of the machine and can hardly dictate if the machine is bad. The principle of Contributory Negligence does not also favour such consumers in Cameroon because there is lack of adequate equipment to test evidence using figure print through the use of DNA or any other method. If finger prints could be tested to assist the tribunal identifying the person that used the card it would have been easier for the courts to identify the culprit. However, the courts in Former West Cameroon are not furnished with sophisticated machines to carry out the necessary test to establish finger print evidence. To bridge this loophole, courts in the English Speaking Part of Cameroon are insisting that all banks should setup video cameras in their buildings especially where the ATM are planted. This is in line with the Criminal

Procedure Code of the Republic of Cameroon 2005, enacted by Law no_2005/007 of 27TH July 2005. This code states that³⁴, proof can be by means of wire trapping, electronic listening device or other instruments of surveillance and is admissible under the condition laid down in section 92 and 245 of this code herein referred to as Criminal Procedure Code of 2005. It is very evident herein that the judges, magistrates and legal practitioners in the English Speaking part of Cameroon are using National Laws to supplement the application of Common Law Principles to bring justice to disputants rather than creating newly qualified scientific principles.

In one Cameroon case (unreported)³⁵, a plaintiff's account was tempered with and money withdrawn from it by a third party using the plaintiff's credit card. The plaintiff took the case to the police and the case was later sent to court. With the help of a video camera, it was proven that, the money was withdraw from the account, by the plaintiff's girlfriend after stealing the plaintiff's credit card. Also, when the user of the ATM is a masked third party, it would still be difficult for tribunals to identify the masked person because there are no scientific rules experts and equipment to facilitate the studying of the video to identify the masked person, from the way he walks, his body structure and finger prints. Henceforth, National Laws loopholes are not yet completely covered by the judiciary. With regards to this, the judiciary is facing some setbacks in handling such situations. The courts are conscious of such setbacks that come with the advancement in modern technology. Thus, based on their special consideration, they come up with the guideline that the defendant (service provider) is responsible for any fault caused by the machine he/she chooses to use in the place of human. They also based their consideration on the presumption that the relationship between a service provider and consumer is of a fiduciary nature, meaning, based on good faith.

The judiciary in the English speaking part of Cameroon is applying the principle of strict liability that is basically a judicial principle to handle disputes of contributory negligent with scientific elements: this is a weakness on the part of the judiciary and a setback to the application of justice. Strict liability in law is an imposition of liability on a party without the finding of fault since, it is impossible for the plaintiff to prove that the tort occurred and the defendant was responsible. The courts in Former West Cameroon use strict liability to render protection to consumers by holding the service provider liable for any poor service rendered by the machine they set up to replace humans and also due to the fact that providers have the obligation to undertake an insurance policy to cover any predicted and unpredicted risks.

In furtherance, the tribunals in the English speaking part of Cameroon are using the principle of estoppel technological problems that arises with the use of the

³⁴ See Section 308 (b) of Law no_2005/007 of 27TH July 2005 enacting the Criminal Procedure Code in the Republic of Cameroon.

³⁵ Information gotten from magistrates in English speaking Cameroon. The case took place in Tiko Magistrate court 14/8/2017.

pimples of Contributory Negligent to resolve disputes, this is another short miming as the principles of estoppel is of a judicial nature to bring justice to a technological dispute. Under English Law, the principle of estoppel is a doctrine that is administered to protect a person who is relying upon certain rights or a set of fact. For example, words said or actions performed which are different from an earlier set of fact. In this light the principle holds that the service provider cannot deny any fault caused by his machine due to the fact that he made the consumers to believe that the machine can effectively performed the duty of a human being making consumers to relay on their words that the machine is effective.

4.2.4. Impediments

Despite the fact that National Laws are applied for the supplementation of Common Law Principles ply for settlement of disputes with scientific elements in the service sector, it has unavoidable recorded some short comings which are worth pointing out especially with the advancement of modern technology.

To commence, Common Law Principles are applicable in the English speaking part of Cameroon only in areas that the National Law has not been developed or where the laws are confusing, conflicting and ambiguous³⁶. It is worth noting here that the application of Common Law Principles is based on the discretionary power bestowed on the judiciary by the legislation. Hence National Laws are not appropriate for the supplementation of Common Law Principles. Consequently, new principles that are scientific in nature are more suitable but notably judicial principles are still used by the judiciary to handle technological issues.

To boot, the most outstanding jeopardy hindering the effective implementation of National Laws by trier of fact, magistrates and legal practitioners to enhance Common Law Principles in tribunals of the English Speaking part of Cameroon is that the legislature, in drafting laws that are scientific in nature and do not carry out a rigorous accessibility between the complexity of scientific matters and its application in courtrooms (the kind of problems that arises with the ply of scientific products and the method of assessing the problem). This makes some National Laws that are scientific in nature not to be strong enough to steer scientific cases presented in tribunals.

The incentive for the aforementioned state of affair is that the members in the legislative branch are not trained to assess the complexity of science through forensic study to handle problems initiated by advancement in modern technology. They have minimal knowledge about the problems caused by the scientific products used for the performance services transaction. The reality here is that, to use scientific products does not means knowing what makes the products to start working or causes it to stop working. As a result of the lack of

³⁶ See the 2005 Criminal Procedure Code (supra) as well as the 1974 Constitution of the Republic of Cameroon revised in 1992.

scientific knowledge by the members of legislative bench there is a limitation to boost the establishment of effective justice to meet up with the exigency brought about by advancement in modern technology.

Another rationale for the exceeding setting is that most scientific laws enacted by Cameroon legislature do not state the modalities or qualifications for the selection of legal administrators and experts to test scientific evidence. Legal administrators here signify members of the judicial corps. The inducement for selecting them is based on the fact that not all the players in the judicial core do have basic scientific knowledge and capacity required to manage judicial matters with scientific components. Hence, where the judges and magistrates are not expert and are not provided with experts, they are bound to use their discretion that reproduces substandard solutions. Experts here, signify persons with scientific knowledge pertinent to a particular case or person.³⁷ Experts here also denote persons who has special skilled in the field in which they are offering the evidence.

A further defence for the surpassing atmosphere is rooted from the certainty that the legislature has not put into force a recognised standard principle to test scientific evidence presented by selected experts to make sure that it fits the standard performance that is accepted worldwide. For example, Law No. 2005 of 27th July 2005 governing Criminal Procedure in the Republic of Cameroon. This law states that, the³⁸ judge may commission any person of his choice to set him straight in the form of finding and consulting or any expert on a question of a fact that requires the insight of an expert. The law further stipulates that the³⁹ expert empowered by the judge for his qualification must fulfil personally, the mission entrusted to him. If the appointed expert is a corporate entity, its authorised representatives will submit to the judge an accreditation in the name of the individual who will perform within its ranks and on its behalf the order. Article 232 and 233 would have been more suitable and helpful to the judge if it had highlighted the modalities to be used by a judge in selecting an expert and steps he needs to follow to examine if the expert testimony is of standard. For example in United States⁴⁰, the law has fixed the standards for the kind of testimony or evidence to be provided by an expert. These standards are as follow:

- 1- The expert offering the scientific testimony or evidence must show that the evidence has gain a general acceptance within a pertinent scientific community.

³⁷ See Aguda (supra) pg. 87.

³⁸ See section 232 of Law No. 2005 of 27 July 2005 governing Criminal Procedure in the Republic of Cameroon.

³⁹ See section 233 Criminal Produce Code (supra).

⁴⁰ See Craig Adam: Forensic Evidence in Court Evaluation and Scientific Opinion: 1st Edition.

- 2- The expert must show the extent of acceptance of the scientific evidence.
- 3- There must be reserve of experts to evaluate the scientific testimony or evidence of the presiding expert.

To wit, the complexity of interpreting and enforcing National Laws that are scientific by judges and magistrates in a lawsuit is a setback. The judges and magistrates as judicial persons have the judicial authority to hear and resolve cases in civil, criminal, military and ecclesiastical matters as the final arbiter in the courts of Cameroon to render justice to its litigants. The general rule in the interpretations and enforcement of scientific laws in court cases entails the presentation of absolute truth such as: the method of collection, organisation and presentation of the data gotten to review the facts and proposal of the subject matter, the test of data using an experimental method to conduct a logical examination of the test result, the analysis of results presented in the form of table, graph drawing and photograph, the comparison of results with that of others within the same subject matter, the analysis of the conflicting results and unexpected findings. These procedures are complex to the judges and magistrates in Cameroon as they are not science inclined. To top it all the procedure is costly as it requires experts' assistant thus hindering the smooth interpretation and enforcement of national laws that are scientific.

Another example is portrayed in the law on Electronic Commerce that is Law No_2010/02 of 21st December 2010 governing Electronic Commerce in the Republic of Cameroon supplemented by Prime-Ministerial Decree of 2011.⁴¹ The law of Electronic Commerce states that expert shall be chosen from a national list and sub-section (2) further stipulates that the⁴² condition of enrolment of expert striking them off the list and revision of the list shall be fixed by a decree. It is paramount noting that this decree has not been enacted.

Finally the Cameroonian legislature has not fabricated National Laws in some branches of the laws. For example, there is no Civil Procedure Code in Cameroon. There is no law governing the conditions to rent Residential Houses in Cameroon. Notably the fabrication of a Family Law Code is still pending. This scenario is a bar to Common Law judges, magistrates and legal practitioners as it establishes a shift as they are forced to apply post 1900 Received English Law that is basically case law. This shift leads to the production of Common Law Principles that are less efficient to readdress disputes with technological issues.

⁴¹ See section 206(1) of Law No_2010/02 of 21 December 2010 governing Electronic Commerce in the Republic of Cameroon supplemented by Prime-Ministerial Decree of 2011.

⁴² See sub-section (2) *ibid*.

Howbeit, more is still to be done by judges and magistrates of the English speaking part of Cameroon.

4.2.5. Reforms

With the above analysis it is clear that judges, magistrates and lawyers in Former West Cameroon have ply National Legislations to water down some of the constraints brought about by technological advancement in settling disputes especially service disputes brought to the tribunals with scientific component. As such the judges, magistrates, and attorney have jettisoned the unfair rule of Common Law Principles in favour of National Legislations. In spite of their efforts to institute National Laws in order to fill in the vacuum manifested by advanced technology to enhance Common Law Principles. The National Laws have in several instances proven abortive as they have some impediments as already explained above. Therefore there is a great need for both judicial and legislative reforms.

4.2.5.1 Judicial Reforms

The constraints faced by judges, magistrates and attorneys in the application of Common Law Principles in the world in general and English Speaking part of Cameroon in particular should be a tool to prompt them to consider restructuring those Common Law Principles by upgrading the principles to support scientific constraints, applying the Common Law Principles in accordance with the existing dilemma, reinforce the principle, or launch another principle to support the original principle for suitable interpretations. To eradicate the challenge initiated by technological advancement. Notably, from every indication these Common Law Principles require new qualifications to be invented by judges, magistrates and attorneys to meet up with the exigency brought by technological advancement since these Common Law Principles are principles that have come to stay as they help to resolve disputes that have nothing to do with technology issues and some disputes that have technological issues. Also, they are Judge Made Principles and can still be amended by other judges to suit the prevalence circumstance brought by technological advancements. The enfeeblement in Common Law Principles should act like an incentive to trier of fact, magistrates and legal practitioners to concern themselves with all harm that advanced technology is causing rather than just those the ombudsmen may identify. Ergo, they should prompt the government to organize seminars to upgrade their knowledge of science and provide allowances for research to be carryout. Forensic study should be taught in top administrative institutions like National School of Administration and Magistracy.

4.2.5.2 Legislative Reform

The Common Law Principles have paved the way for a high and constant usage of National Legislation by the tribunals in Former West Cameroon and is playing a valuable role⁴³ in testing the strength of the legislature in enacting adequate legislation to meet the huddles established by advanced technology. Thus, the

⁴³ See Mary L Lyndon: Tort Law and Technology published 2017.

parliament of Cameroon that is made up of the National assembly (the lower house) and the Senate (the upper house) should create National Laws in areas that are lacking to solve technological problems, upgrade the existing legal instruments to meet the huddles of advanced technology. The parliament should stop enacting fragmented legislations. They should carry out a rigorous assessment; forensic study should be carried out before the enactment of scientific laws. Finally, seminars should be organized to groom judges, magistrates and lawyers on the interpretation and enforcement of scientific laws

5. Conclusion

Upon complete evaluation of this work, it can be held that the objective of the judges, magistrates and lawyers in the English Speaking Part of Cameroon to render justice to litigant using Common Law Principles where the laws are not established, confusing, conflicting and ambiguous has only been partially achieved because the National Laws they use to supplement the Common Law Principles recorded some impediments. As a call for concern, it is continuously held that with the values placed on Common Law Principles, the judges, magistrates and lawyers in Former West Cameroon should come up with new qualified principles to supplement or upgrade the existing principles where necessary to meet up with the exigency brought by technological advancement since Common Law Principles are legal precedence made by judges sited in courts using their dissertations to mould judgements that are later administered by other judges in tribunal. They can continuously be amended by other judges to suit the prevalence circumstance brought by technological advancements rather than using National Laws to enhance Common Law Principles. This scenario is a clear indication of weakness on the part of judges and magistrates in Former West Cameroon. Thus I challenged them to restructure these Common Law Principles with new qualifications to meet up with the exigency brought by technological advancement because notably, from every indication the Common Law Principles have come to stay as it brings solution to disputes with judicial elements and some with scientific component.

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9. List of Abbreviations

ATM	Automatic Teller Machine
ICTP	Information Communications Technology Product
ICT	Information Communication and Technology
MTN	Mobile Telecommunication Network
CRTV	Cameroon Radio and Television