

A Study on Statutory Implied Terms on Malaysian Sale of Goods Act, 1957: Focusing on Interest Approach Towards Sustainable Development

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Abstract: Statutory implied terms in the Malaysian Sale of Goods Act, 1957 give protection to consumer in order to achieve sustainable development focusing on interest approach. The application of interest approach within the statutory implied terms in the Malaysian Sale of Goods Act, 1957, largely in response to the necessity of every each individual to protect their rights and interests in order to achieve sustainable development. Therefore, this study examines the idea of interest approach which concerns with costs and benefits within the statutory implied terms in the Malaysian Sale of Goods Act, 1957, focusing on consumer protections perspectives, identify cases and actions which deal with the environmental sustainability based on the concept of sustainable development.

Key words: Consumer, interest approach, sustainable development, law, Malaysia

INTRODUCTION

A contract of sale of goods is very common to every each consumer. Almost everyday dealings involve a contract for sale of goods which also, include business transaction on sustainability. As a consumer, one would need a basic knowledge of the law on sale of goods because by having the knowledge, the consumer will enhance the awareness on his or her rights in order to achieve sustainable development focusing on interest approach.

THE INTEREST APPROACH

Based on Barrett (2003) and Hasenclever *et al.* (1997), there are two types of classification on the idea of interest approach namely; the first group that emphasises on the international institutions and the second group which is less using the international institutions.

The first group emphasises on the international institutions effort to bring together states around the globe to realise the common interests that balance with benefits and costs involvement in creating environmental co-operations (Hasenclever *et al.*, 1997). The international

institutions always ensure that all states will be benefited with the co-operation that being created in order to achieve joint gains and to reduce potential costs expenditure. Nevertheless, the international institutions are capable of making all states that are involved to notice the common interest in that particular environmental co-operations even when the elements that brought them in the first place being no longer effective (Hasenclever *et al.*, 1997).

As for Hasenclever, this situation as co-operation under the umbrella of anarchy or utilitarian approach. In addition, Hasenclever *et al.* (1997) also regarded this approach as a game theory. Meanwhile, Keohane (1984) and Oye (1986) argued that the international institutions will not be able to fulfill the optimal outcomes of every member state, for instance, in the position of the prisoner's dilemma game. However, the international institutions may facilitate and smooth the progress of gaining common benefits by heartening reciprocity in the negotiation which treated others as you would like to be treated with upgrading level of communication and information. Therefore, the international institutions will able to persuade state response in order to maneuver results in the international environmental co-operations.

According to Barrett (2003), the second group is less using international institutions and the game-theory as vehicles to gain from the interest approach in the environmental co-operations. As for Barrett (2003), interest in environmental co-operations must be derived from individual state needs and capacity. Each individual state will calculate its own benefits and perceived costs that will be incurred. Interest of a state begins when a particular issue that is being raised has shown a lot of benefits to the said state (Barrett, 2003; Harris, 1991; Snidal, 1991). Finally, it is very important to bring in the interest approach in the negotiations of creating of the environmental co-operations, regardless, if the interest approach is using the first group theory or the second group ideas. The main purpose to build up the co-operations is to tackle consumer problems and subsequently able to achieve sustainability based on the concept of sustainable development (Barrett, 2003; Harris, 1991; Snidal, 1991).

THE CONCEPT OF SUSTAINABLE DEVELOPMENT

The concept of sustainable development has been defined by the World Commission on Environment and Development, as development that meets the needs of the present generation without compromising the ability of the future generations to meet their own needs. The above-said concept covers two essential scopes, i.e., environment and social aspects. This concept of sustainable development has been highlighted in the 1992 United Nations Conference on Sustainable Development in Rio de Janeiro, as the results, Agenda 21 and Rio Declaration has been established. According to Sands (1995), Agenda 21 emphasises the following matters which include sustainable human settlement, population, consumption pattern, poverty and human health. On the other hand, Mensah (1996) stated that the Rio Declaration addresses on mankind entitlements and rights which include health and productive life in order to achieve environmental sustainability.

Basically this concept of sustainable development has been an element in the international legal framework since, early as 1893. According to the case of *United States of America v Great Britain* [1893] 1 Moore's Int. Arb. Awards 755, well known as *Pacific Fur Seals Arbitration* where in this case the United States of America has stated that a right to make sure the appropriate and lawful use of seals and to protect them, for the benefit of human beings, from meaningless destruction (Razman *et al.*, 2009a, 2010; Emrizal and Razman, 2010) in order to achieve environmental sustainability.

Sands (2003) indicated that this concept of sustainable development is perhaps the greatest contemporary expression of environmental policy, commanding support and presented as a fundamental at the Rio Summit, Rio Declaration on environment and development in year 1992. According to Article 33 of the Lome Convention 1989 states that in the framework of this convention, the protection and the enhancement of the environment and natural resources, the halting of deterioration of land and forests, the restoration of ecological balances, the preservation of natural resources and their rational exploitation are basic objectives that the African-Caribbean-Pacific (ACP) states concerned shall strive to achieve with community support with a view to bring an immediate improvement in the living conditions of their populations and to safeguarding those of future generations (Razman *et al.*, 2009b; Emrizal and Razman, 2010) in order to achieve environmental sustainability. The law on sale of goods in Malaysia is basically provided from the Sale of Goods Act, 1957 and the relevant common law principles. Therefore, this study will discuss on how the Malaysian statutory implied terms in the Sale of Goods Act, 1957 give protection, to consumer protection on drinking bottled water in order to achieve environmental safety by focusing on Malaysian sale of goods law.

MALAYSIAN SALE OF GOODS LAW AS PRESCRIBED BY SALE OF GOODS ACT, 1957

Based on section 1(2) of the Sale of Goods Act, 1957 states that this act shall only apply to the states of West Malaysia. As for the states of Sabah and Sarawak, researchers need to refer to section 5 of the Civil Law Act, 1956. According, to the section 5 of the Civil Law Act 1956 stated that:

In all questions or issues which arise or which have to be decided in the states of West Malaysia other than Malacca and Penang with respect to the law of partnerships, corporations, banks and banking, principals and agents carriers by air, land and sea, marine insurance, average, life and fire insurance and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the date of the coming into force of this act, if such question or issue has arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law (Razman and Shukor, 2001) 5(1)

In all questions or issues which arise or which have to be decided in the states of Malacca, Penang, Sabah and Sarawak with respect of the law concerning any of the matters referred to in the last preceding subsection, the law to be administered shall be the same as would be administered in England in the like case at the corresponding period, if such question or issue has arisen or has to be decided in England, unless in any case other provision is or shall be made by any written law (Razman and Syahirah, 2001) 5(2)

Therefore, based on the above-mentioned section 5 of the Civil Law Act, 1956 (Revised 1972), Sabah and Sarawak are governed by English Sale of Goods Act, 1979 (Razman and Syahirah, 2001). Notwithstanding the fact that in Malaysia there are 2 statutes that being used on the sale of goods and on top of that there are a few slight differences in law applicable throughout Malaysia due to Malaysian Sale of Goods Act is almost similar to the English Sale of Goods Act upon that it was modelled (Pheng, 1997; Vohrah and Aun, 1991).

A contract of sale of goods: Based on section 4(1) of the Sale of Goods Act, 1957 laid down that a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. By virtue of section 4(2) of the act, a contract of sale may be absolute or conditional. A contract of sale will be classified as absolute if the seller transfers the property in goods to buyer for a price and the contract will be known as a sale but a contract of sale will be classified as conditional if the seller agrees to transfer the property in goods to buyer for a price subject to some conditions to be fulfilled and the contract will be known as an agreement to sell, according to section 4(3) of the act. Meanwhile, section 4(4) of the act stated that the agreement to sell becomes a sale when the conditions are fulfilled.

After we have understood the meaning of a contract of sale of goods from the legal perspectives, next we need to know about the formation of the contract of sale of goods. These provisions have been laid down by the section 5 of the act. The contract of sale is formed up and created by an offer to buy or an offer to sell for a price. Secondly, it is required to follow with an acceptance to the offer and finally, the contract may provide for the immediate delivery or immediate payment or both or instalments delivery or instalments payment or both. The contract may be made by the seller and buyer in writing or by words of mouth or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Terms of a contract of sale of goods: Terms of a contract of sale of goods can be divided into 2 parts. There are a condition and a warranty. A condition is a stipulation essential to main purpose of the contract; the breach of condition gives the right to the injured party to repudiate the contract. As for warranty, a warranty is stipulation collateral to the main purpose of the contract, breach of warranty gives the right the injured party to claim for damages but not to a right to reject or refuse to accept the goods and treat the contract as repudiated. These provisions are based on section 12 of the act.

In addition, section 13(1) of the act allowed the injured party to treat a breach of condition as a breach of warranty as the result of it, the injured party entitled to claim for damages but not repudiate the contract. As provided in the case of Associated Metal Smelters Ltd. v Tham Cheow Toh [1972] 1 MLJ 171 where the Federal Court allowed the buyer (respondent) to treat breach of condition, as breach of warranty as the result of it, the buyer entitled to claim for damages within the scope of section 13(1) of Sale of Goods Act, 1957.

Implied terms according to Sale of Goods Act, 1957: There are about 4 sections in the Sale of Goods Act, 1957 which laid down the implied terms in every contract of sale of goods. The main purpose of these statutory implied terms is to protect the rights of every each consumer (buyer) which include the protection to the consumer on food and environmental safety. These statutory implied terms are being laid down in section 14-17 of the act.

In section 14 of the Sale of Goods Act, 1957 has been divided into 3 paragraphs. Based on paragraph (a) of the section 14 of the act mentioned that there is an implied condition on the part of the seller that in the case of the sale, he has a right to sell the goods and that in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass. In other words, it is an implied condition to the seller to ensure that the buyer will enjoy the ownership, as well as the possession and the use of the goods. If the seller failed to comply, therefore the buyer has the right to repudiate the contract since, the matter is being constituted as an implied condition (Razman and Syahirah, 2001).

As for paragraph (b) of the section 14 of the act also highlighted that there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods. Hence, the seller must make sure that buyer will not be disturbed during the buyer's possession of the goods. If the seller failed to comply, therefore the buyer has the right to claim for damages since the matter is being constituted as an implied warranty.

The last paragraph in the section 14 of act that paragraph (c) stated that there is an implied warranty that

the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made. If the seller failed to comply, therefore the buyer has the right to claim for damages, since the matter is being constituted as an implied warranty.

Next section of the act, i.e., section 15 on the matter of sale of goods by description. In this section, it indicates that where there is a contract of goods by description, there is an implied condition that the goods shall correspond with the description and if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

For further discussion, refer to the case of *Nagurdas Purshotumdas and Co. v Mitsui Bussan Kaisha Ltd.* [1911] 12 SSLR 67. In this case, where the previous contracts between the contractual parties for the sale of goods that was sale of flour had been sold in bags bearing a well-known trademark. Later, further flour was ordered based on description similar with the same as the previous contracts. Flour identical in quality was delivered but it failed to bear the same well-known trademark. The court held that the goods did not comply with the description (Vohrah and Aun, 1991). In the event where the seller failed to comply with the description, therefore the buyer has the right to repudiate the contract since the matter is being constituted as an implied condition.

As for section 16 of the Sale of Goods Act, 1957 stated that:

Subject to this act and of any other law for time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows; a) where the buyer, expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill and judgment and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose; b) where the goods are

bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects, which such examined ought to have revealed 16(1). An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by usage of trade 16(2). An express warranty or condition does not negative a warranty or condition implied by this act unless inconsistent there with 16(3)

Therefore, based on the long provisions laid down in section 16 of act, researchers can put in other words that there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods except in 2 events/exceptions. There are; upon the buyer's request, the goods shall be reasonably for it purposes and the goods shall be of merchantable quality.

Finally, implied terms on sale of goods by sample. Normally business transaction will be created through sale of goods by sample when it involved with huge goods which difficult to carry along (Hussain and dan Pustaka, 1995). Therefore, on regards the matter of sale of goods by sample, an individual buyer is suggested to know section 17 of the act. In the section 17 of the act laid down that:

A contract of sale is a contract for sale by sample where there is a term in the contract express or implied to that effect 17(1). In the case of a contract for sale by sample there is an implied condition; a) That the bulk shall correspond with the sample in quality; b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample; c) That the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample 17(2)

In short, when dealing with sale of goods by sample, it is required by the seller to ensure that the bulks of the goods must be corresponding with the sample. If the seller failed to comply with the section 17 of the Sale of Goods Act, 1957, therefore the buyer has the right to repudiate the contract since the matter is being constituted as an implied condition.

CONCLUSION

In this study based on the discussion, it is clearly that the seller is required to ensure the basic rights of

an individual buyer/consumer in every each sale of goods will not be infringed and violated by the seller in order to achieve sustainability based on the concept of sustainable development focusing on interest approach. In the event, if a seller failed to comply the earlier-mentioned sections, therefore the buyer/consumer has the right to repudiate the contract if the earlier-mentioned sections provide the matter is being constituted as an implied condition or the buyer/consumer has the right to claim for damages if the earlier mentioned sections provide the matter is being constituted as an implied warranty water in order to achieve sustainability based on the concept of sustainable development focusing on interest approach.

However, according to section 62 of the Sale of Goods Act, 1957 provided that the contractual parties of sale of goods may exclude implied warranties and conditions by having express agreement or by course of dealing between the contractual parties or by usage. In other words, the seller may exclude himself/herself from the implied warranties and conditions if the seller and the buyer/consumer having express agreement or by course of dealing between the seller and the buyer/consumer or by usage.

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