

Protection of Buyers for Goods Purchased by Description under the Sale of Goods Act 1957

Zeti Zuryani Mohd Zakuan^{1*}, Siti Asishah Hassan², Rusnadewi Abdul Rashid³

¹Department of Law, Universiti Teknologi MARA, Cawangan Perlis, Malaysia

Email: zeti@uitm.edu.my

²Department of Law, Universiti Teknologi MARA, Cawangan Perlis, Malaysia

Email: asishah879@uitm.edu.my

³Department of Law, Universiti Teknologi MARA, Cawangan Perlis, Malaysia

Email: rusnadewi@uitm.edu.my

ABSTRACT

CORRESPONDING AUTHOR (*):

Zeti Zuryani Mohd Zakuan
(zeti@uitm.edu.m)

KEYWORDS:

Buyer
Goods
Sale by description
Section 15
Sale of Goods Act 1957

CITATION:

Zeti Zuryani Mohd Zakuan, Siti Asishah Hassan & Rusnadewi Abdul Rashid. (2022). Protection of Buyers for Goods Purchased by Description under the Sale of Goods Act 1957. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 7(8), e001697. <https://doi.org/10.47405/mjssh.v7i8.1697>

In the era of industrilization, the mass production and distribution of goods cross border has affected the buyers on the market. In order to meet the demand of buyers, the producers produced goods in large quantities without considering the quality of goods. Low quality of goods on the market will affect the buyer. Hence the existing law is important to protect the buyers when dealing with goods on the market. The Sale of Goods Act 1957 is the main Act which applies to contracts for the supply of goods in Malaysia. In a contract of supply of goods, implied terms are essential to cater for issues relating to the trader's civil liability for goods. The weaknesses of the implied terms under the law of supply of goods have become barriers to claims for breach of contract. Currently, the Malaysian Sale of Goods Act 1957 does not adequately protect buyer when entering into a transaction of sale by description. Adopting a doctrinal approach, this article analyses the implied condition as to sale by description under section 15 Sale of Goods Act 1957. The article aims to assess whether the implied condition successfully overcame the problems of buyer in the market. It is submitted the present section 15 Sale of Goods Act 1957 is outdated. It needs a comprehensive revamp to reflect a more standardised and modernised approach. The Malaysian Sale of Goods Act 1957, as it stands, does not sufficiently safeguard buyer when they engage in a sale by description.

Contribution/Originality: This study contributes to the existing literature on sale by description under the Malaysian law since this area of law is important for protection of buyers in the market.

1. Introduction

In today's modern industrialization, mass production and distribution of goods has created problem to the buyers on the market. Buyer issues in the current market have

been made worse by the availability of complex goods on the market. This modern invasion is also present in the Malaysian market, and it is a confusing environment for the Malaysian buyers (Mohamed, 2002). Thus, protection to buyer is important to create a good economic structure so as to contribute to a better society (Yusoff, 2007).

Malaysian buyers are divided into two. The well-informed buyer and vulnerably ignorant buyers (Zakuan, 2015). In today's expanding economy, it is necessary to protect these vulnerable buyers. The mass production of technically complex goods as a result of technological advancement will also have an impact on the vulnerable buyers (Zakuan, 2014). Technically complicated products make it difficult for buyers and consumers to judge the quality of the products (Noorham, 2020). On the other hand, the traders are in a better position because they have knowledge about the products manufactured. This scenario will create unequal bargaining power between the buyer and the trader and finally creates market failure (Ziegel, 1973). According to Rachagan (1992), government intervention is necessary to address this market failure. He emphasised that for buyers to have the best protection possible, government intervention is required. The best intervention to protect the buyers is to have comprehensive legislation in place.

The main legislation governing the supply of goods in Malaysia is the Sale of Goods Act of 1957. However, the Act is only applicable in Peninsular Malaysia. Sabah and Sarawak have different laws regarding the sale of goods. Both of these states have laws that are influenced by English law. The Sale of Goods Act 1957 is not a piece of legislation that provides for protection to buyers. Most of its provisions are derived from those of the common law of the 18th and 19th centuries, when laissez-faire and freedom of contract were prevalent. Thus its effectiveness in protecting buyers in sale of goods transaction is doubtful.

The aim of this paper is perhaps reflected in the dilemma forwarded by Rachagan (1992). According to him, the current Sale of Goods Act 1957 is backdated and grants different rights to buyers in various Malaysian states. In order to reflect a more consistent and modern approach, the Act has to be entirely revised.

2. Literature Review

Sale of Goods Act 1957 is the primary law in relation to contract of sale of goods in Malaysia. The act does provide for protection to buyers in the event of breach of contract between buyer and seller under the sale contract. Globalization and trade liberalization brings with it open market. These phenomena had contributed to the diverse range of goods in the market. The developing global market witnessed the production of complex goods in large quantities (Sutton, 1971). The situation had caused confusion to buyers. This new form of trade pattern leads to the creation of greedy sellers who will sell as many goods produced as possible regardless of the quality of goods. The era of trade liberalization will lead the buyers to obtain massive range of goods without adequate information. Since the goods are produced in a complex manner, the buyers become a party without adequate information compared to the sellers (Zakuan et al., 2013). The well-informed traders will then take advantage over the buyers, for example by providing defective goods (Trebilcock, 1971). The situation creates issue of seller's civil liability for goods. This issue encouraged the buyers to demand justice from the seller by making claims. The claims seek is to reflect consumer dissatisfaction due to unfair practices by the traders. This situation is one of the examples faced by the buyers in the

era of globalization and trade liberalization. Thus, effective substantive law should also be available for the interest of the buyers (Yusoff & Isa, 2007).

Contract which relates to sale by description is govern by section 15 of the Act. However, there are problems with the Act which call for discussion. According to Feltham (1969), the Act fails to provide a good definition for the phase 'sale by description'. Thus, it effects the application of the Act in the event of breach by the seller. Mahmood (1993) opined that the lack of definition of the phase has the potential of denying the buyers of the remedies provided under the Act. Yusoff et al. (2015) opined that lack of definition of the phrase 'description and 'sale by description' will not be able to protect buyers in the sale of goods transactions. She further argued that the provision requires immediate attention. Ahmad Masum et al. (2018) agreed with the opinion. He asserted that the Sale of Goods Act 1957 do not adequately protect buyers in a sale of goods transactions. Thus, the Act needs to be remedied.

3. Methodology

This paper aims to determine specifically provision under the Sale of Goods Act 1957 relating to sale by description and the related issues. This is a doctrinal qualitative research. A doctrinal research deals with the law on a particular issue where the legal doctrine is analysed as to its development and applications (Abdullah, 2020). This type of research is selected because the basic aims of this research is to discover, explain, examine, analyse and present in a systematic form, facts, principles, provisions, concepts, theories or the working of certain laws or legal institution (Yaqin, 2007). The paper adopts the doctrinal analysis by examining the existing primary and secondary materials mainly statutory provisions and case law.

4. Results and Discussions

4.1. The Malaysian Sale of Goods Act 1957

In Malaysia, the law relating to contracts for the sale of goods is contained in the Sale of Goods Act 1957. However, the Act applies to the states of West Malaysia only and it does not apply to the states of Sabah and Sarawak as the latter is governed by English law by virtue of section 5(2) of the Civil Law Act 1956. The Sale of Goods Act 1957 governs the contract of sale of goods between the seller and buyer and set out the rights and duties of parties by providing the remedies in the event of a breach.

Contract of sale is governed by Section 4(1) Sales of Goods Act 1957, which states a *contract of sale is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price. There may be a contract of sale between one part owner and another.* The nature of the contract is that there must exist something, which could be bought and sold. Therefore, contract of sale involves goods and money consideration.

Goods is governed by Section 2 SGA. Goods is every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. It means any goods except for money, land (immovable property) and actionable claims. There are different kinds of goods. It is important to differentiate the goods in the sale of goods. This is because the passing of property in

contract of sale of goods depends on whether the goods are specific, ascertained, unascertained or future goods.

4.2. Conditions and Warranties under Contract of Sale of Goods

In a contract of sale, term of a contract is important, and it is classified into conditions and warranty. Condition is provided under section 12(2) Sale of Goods Act 1957 which defines conditions as a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to reject the goods and treat the contract as repudiated. Condition is used rather loosely to describe any term of a contract. The breach of which allowed the other party to treat the contract as repudiated.

On the other hand, warranty is provided under section 12(3) Sale of Goods Act 1957 which defines warranty as a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

However according to Section 12(4) Sale of Goods Act 1957, condition can be a warranty. The section states whether a stipulation in a contract of sale is a condition or a warranty depends on each case on the construction of the contract. Stipulation maybe a condition, though called a warranty in the contract. In *Bentsen v Taylor, Sons & Co.* (1893) 2 QB 274, according to Bowen LJ, in deciding on this matter, we have to look at the contract itself or the intention of parties whether to treat the term/promise as warranty or condition. Section 13 (1) Sale of Goods Act 1957 provides that where contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of warranty and not as a ground for treating the contract as repudiated. For example, in *Cehave NV v Bremer Handelsgesellschaft mbH* (1976) QB 44. In this case it involves sale of citrus pulp pellets for use as cattle feed. When the goods arrived, it was found that part of the goods was damaged. The buyer sought to reject the whole consignment. Court held that since the buyer was still able to use the goods for their originally intended purpose, the breach was not so serious so as to entitle to repudiate. It was only entitled to recover damages for any loss.

The Act enumerates certain implied conditions and warranties in the contract of sale of goods as protection to the buyer particularly. The following [Table 1](#) summarizes the implied conditions and warranties as provided under the Sale of Goods Act 1957:

Table 1: Implied Conditions and Warranties under the Sale of Goods Act 1957

Sale of Goods Act 1957		
No	List of Implied Conditions and Warranties	Section
1	Stipulations as to time	s.11
2	Implied condition as to title	s.14(a)
3	Implied warranty as to quiet possession	s.14(b)
4	Implied warranty that the goods shall be free from any charge or	s.14(c)
5	encumbrance	s.15
6	Sale by description	s.16(a)
7	Implied condition as to fitness for particular purpose	s.16(b)
8	Implied condition as to merchantable quality	s.17
	Sale by sample	

4.3. Sale by Description Under Section 15 Sale of Goods Act 1957

In sale by description, there is an implied condition that the goods shall correspond with the description at the time of formation of the contract. Section 15 of the Sale of Goods Act 1957 provides that:

Where there is a contract for the sale 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.

Sale by description occurs where the buyer does not see the goods before buying them and having only a description of that goods from the seller. If the seller fails to supply goods that conform exactly to the description, the buyer can refuse to accept the goods. Section 15 provides for the implied conditions of sale by description. Under a contract of sale of goods, a claim for breach of an implied condition under section 15 requires the buyer to prove that the sale was a sale by description. However, this provision presents a problem from the aspect of the definition of the expressions 'sales by description' and 'description'. Sales-related provisions are descriptively considered to be an expression that poses many problems. The term is said to be vague and needs statutory amendment. According to Lord Diplock in *Gill & Duffus S.A. v Berger & Co. Inc.* (no. 2) [1984] AC 382, although "description" is a common English word, the Act doesn't define what it means when it refers to a contract for the sale of goods as a sale by description.

4.4. Problem of the phrase 'Sale by Description' and 'Description'

The phrase 'sale by description' is indeed problematic. Benjamin's definition of sale by description has been widely used in giving the true meaning of the expression. According to [Benjamin \(1931\)](#), sale by description can be divided into two categories: (1) sale of unascertain or future goods that are identified as belonging to a specific kind or class or to which another description in the contract applies; and (2) sales of specific goods that the buyer purchased in full or in part of the description provided.

Relying on Benjamin's definition, it is clear that there are two situations of sale by description. The sale involves unascertain goods or future goods and the purchase was made by the buyer by relying on the description of the goods. As for specific goods, it is considered as sale by description if the goods were purchased in reliance on the description given.

The argument put forward by [Benjamin \(1931\)](#) clearly shows that for a contract of sale of goods involving unascertain goods or future goods, the contract is a contract of sale by description. However, if it involves specific goods, it must be proved that the buyer relied on the words used in the contract to make it a contract of sale by description. This concept of 'dependence' was clearly elaborated by the Court of Appeal of England in the case of *Harlington and Leinster Enterprises Ltd. v Christopher Hull Fine Arts Ltd.* [1990] 1 All ER 737. The case involved the sale of paintings by Munter. In this case, the plaintiff carried on the business as a painting dealer. Plaintiff obtained information from the defendant, who was also the seller of the paintings that had two paintings painted by Munter. Plaintiff directed one of his employees to the defendant's gallery. While looking at the painting, the plaintiff's employees were told by the defendants that they were not

very knowledgeable about the painting because they were not experts in Munter's paintings. However, the plaintiff's employee had purchased one of the paintings. The painting is described as Munter in the invoice. However, upon examination, the plaintiff found that the painting was not a painting by Munter. Plaintiff demanded his money be returned. The Court of Appeal ruled that although there was a description in the contract, it did not constitute a contract of sale by description. Nourse LJ argues that, in order to form a sale descriptively, the description in the contract must be something influential in the sale. It should be an important term in the contract. According to Nourse LJ, the description must have an impact on the sale, not necessarily by itself, but enough to make it a essential term of the agreement.

However, Slade LJ puts forward a different view on the concept of dependence. According to Slade LJ, the presence or absence of reliance on the description, however, may be particularly crucial in cases where it is uncertain whether a sale of goods was one by description because it sheds light on the parties' intentions at the time of the contract. If the buyer did not place any such reliance, this may be strong proof that the parties did not intend for the authenticity of the description to be a condition of the contract, or that they assumed the buyer would be purchasing the products exactly as described.

The opposite judgment was put forward by Stuart-Smith LJ, who rejected the concept of dependence. Stuart-Smith LJ argues if the seller claimed he had no expertise in the item being sold or that the buyer had greater knowledge than the seller, the effect of a condition indicated by statute could be excluded, which would be a severe flaw in the law. That is not how the law is. It has long been established that a statute's implied terms can only be explicitly excluded. In this instance, nothing of the sort exists.

On the other hand, [Aun \(1994\)](#) argues that, from a buyer perspective, Stuart-Smith LJ's judgment is an appropriate view. According to him, buyers lack a clear understanding of these legal complexities. According to them, a term should be considered as such, and it would be unfair to simply eliminate something that is understood to be a term by stating that you are not an expert in it. In fact, it is impossible to infer from such a unilateral act that the implied term is not included.

In Malaysia, the application of the concept of dependence can be seen in the case of *Union Alloy (M) Sdn. Bhd. V Yeoh Tiong Lay Construction Company Sdn. Bhd.* [1993] 3 CLJ 670. The judge argued that the contract entered into by the parties involved was a contract of sale of goods through the description because the goods complied with the description stated in the sales contract and also the brochure and the buyer depending on the description.

The above discussion clarifies that sales by description includes sales involving goods that have a description on their packaging, sales involving statements made during the bargaining process, and statements made through advertisements. The definition of this description also poses a problem because it contradicts the application of existing law. Statements made during the bargaining process and advertisements are deemed to form a contract between the two parties involved as guarantees are implied in the process. In contrast, under contract law, the process is only considered an invitation to form a contract and not the formation of a contract.

The word 'description' under English law is vague and requires a statutory definition (Tan, 1990). Lord Diplock in *Grant v Australian Knitting Mills Ltd.* [1936] AC 85 explained about this problem. Therefore, the meaning of the expression is usually decided by the court when giving a judgment on a case.

Problems regarding the definition of the expression 'description' are highlighted in *Ashington Piggeries Ltd. & Anor v Christopher Hill Ltd.* [1972] AC 441. The case involved the sale of animal feed described as a 'herring meal.' 'Herring meal' was found to contain toxins that caused the deaths of thousands of minks. The toxin only affects mink and not other animals. The court ruled that the goods were adequately described. There is no violation of the implied terms of sale by description. Lord Diplock argues the phrases in the contract that the parties meant to identify the type of goods that were delivered constitute the description by which unascertained goods are sold. The parties may use any description, whether general or specific, as they see fit. The ultimate question is whether the buyer might legitimately and sensibly decline to accept the tangible goods that were recommended to him on the grounds that they fail to match the descriptions provided makes them of a different sort from those he had agreed to purchase.

The problem of the expression 'description' is also discussed in *Reardon Smith Line Ltd. in Hansen-Tangen.* [1976] 3 All ER 570. The case involved shipbuilding by Osaka Shipbuilding Co. The company was instructed to build a ship with reference to the expression 'Yard No. 354 at Osaka Zosen.' However, the ship was built elsewhere. However, the construction of the ship is based on the specifications that have been set. The court ruled the phrase 'Yard No. 354 at Osaka Zosen' is not a subject. Lord Wilberforce argued that descriptive expressions revolve around expressions that are considered 'an essential part of the description of the goods' and not just an indication of something.

Based on the discussion above, it is clear that buyers are not protected when buying goods based on description. The problem exists due to the lack of definition of the term 'description' and 'sale by description'. In order to solve this problem, it is timely for the relevant provision to be repealed.

5. Conclusion

The above discussion illustrates the problem of section 15 Sale of Goods Act 1957. In light of the changes that have occurred in England, Section 15 of the Sale of Goods Act of 1957 needs to be revised. The absence of definitions and interpretations for important terms such as 'description' and 'sale by description' demands prompt attention. It is suggested that the definition should be accompanied by explanations. The definition also must consider the opinion given by researchers in the field. The problem with the definition is one of the reason the Sale of Goods Act 1957 been named one of the most difficult provisions of the Act. There are opinions that section 15 Sale of Goods Act 1957 needs revision, if not outright repeal." But no amendments have been made so far.

Acknowledgement

This study is part of the findings which was derived from research conducted on sale of goods and consumer protection in Malaysia.

Funding

This study is funded by Ministry of Higher Education under the Fundamental Research Grants Scheme (FRGS/1/2021/SS10/UITM/02/42)

Conflict of Interests

The authors reported no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

References

- Abdullah, N.C. (2020). *Legal research methodology*. Subang Jaya: Sweet & Maxwell
- Ahmad Masum, Muhammad Hassan Ahmad, S.M.M. Nafees & Yusramizza Md Isa @ Yusuff. (2018). Consumer protection for sale of goods under the Malaysian Sale of Goods Act 1957 and the Consumer Protection Act 1999: With special reference to quality and fitness of goods. *American Journal of Humanities and Social Science Research*, 2(6), 44-52.
- Aun, W.M. (1994). *Legal aspects of Sale of Goods*. Kuala Lumpur: Longman.
- Benjamin. (1931). *Sales of personal property. 7th Edition*. London: Sweet & Maxwell.
- Feltham, J.D. (1969). The sale by description of specific goods. *J. Bus. Law*, 16-25.
- Mahmood, N.R. (1993). Case law developments relating to sale by description: A Malaysian perspective. *Malayan Law Journal*, 3, 1-11.
- Mohamed, M. (2002). *Globalisation and the new realities*. Selangor: Pelanduk Publication.
- Noorham, N., Anuar, S.N.S., Guliling, H. (2020). The Practices of Local Cosmetic Product on Consumer Loyalty Among Malaysian Youth. *Esteem Journal of Social Science and Humanities*, 5, 1-10.
- Rachagan, S.S. (1992). *Consumer law reform-A report*. Kuala Lumpur: Universiti Malaya Press.
- Sutton, K.C.T. (1971). The Consumer Protection Act 1969 (N.S.W.) and comparable legislation in other states and overseas. *Adelaide Law Review*, 43.
- Tan, K.M.R. (1990). The need to amend section 13 and 14 of the Sale of Goods Act 1979, *2 Current Law Journal* xviii.
- Trebilcock, M.J. (1971). Protecting Consumers against Defective Merchandise. *4 Adelaide Law Review*, 12.
- Yaqin, A. (2007). *Legal research and writing*. Kuala Lumpur: LexisNexis.
- Yusoff, S.S.A. & Isa, S.M. (2007). Pengguna dan pengilang: Liabiliti kontraktual pengilang di Malaysia-Bermulanya satu fasa baru. *Prosiding Persidangan Undang-undang* 2007, 15 – 27.
- Yusoff, S.S.A. (2007). *Undang-undang komersial dan pengguna*. Kuala Lumpur: Dewan Bahasa & Pustaka.
- Yusoff, S.S.A., Ismail, R., Markom, R., Zakuan, Z.Z.M. (2015). Consumer protection and the Malaysian Sale of Goods Act 1957. *International Business Management*, 9(4), 452-459
- Zakuan, Z.Z.M, Ismail, R. Yusoff, S.S.A, Mustafa, C.N. & Markom, R. (2013). Legal framework as a consumer protection framework. *The Social Sciences*, 8: 315-318.
- Zakuan, Z.Z.M., Ismail, R., Yusoff, S.S.A., Markom, R. (2015). Consumer court: Towards a better consumer protection in Malaysia. *International Business Management*, 9(6), 1495 – 1499.

- Zakuan, Z.Z.M., Yusoff, S.S.A., Ismail, R., Markom, R. (2014). Health institution as a consumer protection framework in Malaysia. *Global Journal of Politics and Law*, 2(3), 77-83.
- Ziegel, J.S. (1973). The future of Canadian consumerism. *Canada Law Review*, 52(191), 193.