

Malaysian consumer Law on Sale of Goods: Focusing on statutory implied terms towards the sustainable development goals (SDGs)

Syafrinaldi¹, Yusri Munaf², Muhammad Rizal Razman³, Radin Zulhazmi Radin Abdul Halim³, Sharifah Zarina Syed Zakaria⁴ and Nuriah Abd. Majid⁴

¹*Faculty of Law, Universitas Islam Riau, Jalan Kaharuddin Nasution, No. 113, Simpang Tiga Marpoyan, 28284 Pekanbaru, Riau, Indonesia*

²*Faculty of Social and Political Sciences, Universitas Islam Riau, Jalan Kaharuddin Nasution, No. 113, Simpang Tiga Marpoyan, 28284 Pekanbaru, Riau, Indonesia*

³*Research Centre for Sustainability Science & Governance (SGK), Institute for Environment & Development (LESTARI), Universiti Kebangsaan Malaysia, UKM Bangi, Selangor, Malaysia*

⁴*Research Centre for Environment, Economic and Social Sustainability (KASES), Institute for Environment & Development (LESTARI), Universiti Kebangsaan Malaysia, UKM Bangi, Selangor, Malaysia*

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ABSTRACT

This article will discuss how the Malaysian Consumer Law on Sale of Goods Act, 1957 focusing on the statutory implied terms by providing governance instruments in order to achieve Sustainable Development Goals (SDGs). The core reference of this article is based on the Malaysian Consumer Law on Sale of Goods Act, 1957. This article has been divided into five main parts. The first two parts are looking at the definition of a contract of sale and the formation of the contract, respectively. After that, the third part proceeds to discuss the terms of a contract of sale. In the fourth part of this article discusses the implied terms in the Act and further discuss how these statutory implied terms provide governance instruments in order to achieve the Sustainable Development Goals (SDGs). Finally, the final part of this article concludes the discussion.

Key words: Malaysian consumer law, Sale of goods, Statutory implied terms, Sustainable development Goals (SDGs)

Introduction

The Malaysian Consumer Law on Sale of Goods is basically endowed with from the Sale of Goods Act, 1957 and the relevant common law principles. Therefore, this article will discuss on how the statutory implied terms in the Sale of Goods Act, 1957 provides governance instruments in order to achieve the Sustainable Development Goals (SDGs).

A Contract on Sale of Goods

Based on section 4(1) of the Sale of Goods Act, 1957 laid down that a contract on 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 con-

tract 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 on Sale of Goods

Terms of a contract on 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 the 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, 15, 16 and 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 (Muhammad Rizal and Syahirah 2001a).

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 is 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 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 our 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 (Beatrix and Wu 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.

According to the section 16 of Act, 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 (a) upon the buyer's request, the goods shall be reasonably for it purposes; and (b) 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 (Shaik, 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 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.

Implied Terms Sale of Goods Act, 1957 towards the Sustainable Development Goals (SDGs)

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 (Rizal *et al.*, 2010). 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.

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 (Rizal *et al.*, 2010).

Sands (1995) 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 (M. Rizal *et al.*, 2009; Muhammad Rizal and Azrina, 2009).

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 (Birnie and Boyle, 1994; Muhammad Rizal *et al.*, 2009a, 2009b).

The above-mentioned Article 33 introduces into international legal framework the concept of sustainable development with one of the initiatives as being spelt out by individual country such as Malaysia through Malaysian Sale of Goods Act 1957. This Malaysian Sale of Goods Act 1957 especially section 14 to 17 have highlighted the implied terms for the protection of the consumers. These protections consistent with the concept sustainable development in order to achieve the Sustainable Development Goals (SDGs).

Conclusion

In conclusion, based on the above 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, which also include business transaction on food and environmental safety in order to achieve urban sustainability. In the event, if a seller failed to comply the above-mentioned sections, therefore, the buyer/consumer has the right to repudiate the contract if the above-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 above-mentioned sections provide the matter is being constituted as an implied warranty, which also include business transaction on food and environmental safety in order to achieve the Sustainable Development Goals (SDGs).

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, which also include business transaction on food and environmental safety. 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, which also include business transaction on food and environmental safety in order to achieve the Sustainable Development Goals (SDGs).

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